

SECURITIES AND EXCHANGE COMMISSION

FORM 10-K

Annual report pursuant to section 13 and 15(d)

Filing Date: **2012-02-09** | Period of Report: **2011-12-31**  
SEC Accession No. [0001193125-12-049265](#)

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FILER

**ENCORE CAPITAL GROUP INC**

CIK: **1084961** | IRS No.: **481090909** | State of Incorp.: **DE** | Fiscal Year End: **1231**  
Type: **10-K** | Act: **34** | File No.: **000-26489** | Film No.: **12587288**  
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UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

**FORM 10-K**

**(Mark One)**

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

For the fiscal year ended December 31, 2011 or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

COMMISSION FILE NUMBER: 000-26489

**ENCORE CAPITAL GROUP, INC.**

(Exact name of registrant as specified in its charter)

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

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

**3111 Camino Del Rio North, Suite 1300 San Diego, California**  
(Address of principal executive offices)

**92108**  
(Zip code)

**(877) 445-4581**

(Registrant's telephone number, including area code)

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

<u>Title of Each Class</u>	<u>Name of Each Exchange on Which Registered</u>
Common Stock, \$.01 Par Value Per Share	The NASDAQ Stock Market LLC

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

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

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

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

The aggregate market value of the voting stock held by non-affiliates of the registrant totaling 16,317,228 shares was approximately \$501,265,244 at June 30, 2011, based on the closing price of the common stock of \$30.72 per share on such date, as reported by the NASDAQ Global Select Market.

The number of shares of our Common Stock outstanding at February 1, 2012, was 24,521,576.

#### **Documents Incorporated by Reference**

Portions of the registrant’s proxy statement in connection with its annual meeting of stockholders to be held in 2012 are incorporated by reference in Items 10, 11, 12, 13, and 14 of Part III of this Annual Report on Form 10-K for the fiscal year ended December 31, 2011.

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**PART I**

**Item 1–Business**

**An Overview of Our Business**

*Nature of Our Business*

We are a leader in consumer debt buying and recovery. We purchase portfolios of defaulted consumer receivables at deep discounts to face value and use a variety of operational channels to maximize our collections from these portfolios. We manage our receivables by partnering with individuals as they repay their obligations and work toward financial recovery. Defaulted receivables are consumers’ unpaid financial commitments to credit originators, including banks, credit unions, consumer finance companies, commercial retailers, auto finance companies, and telecommunication companies, and may also include receivables subject to bankruptcy proceedings, or consumer bankruptcy receivables.

Four competitive, strategic advantages underpin our success and drive our future growth:

The sophisticated and widespread use of analytics (**Analytic Strength**)

Broad investments in data and behavioral science (**Consumer Intelligence**)

Significant cost advantages based on our operations in India, as well as our enterprise-wide, account-level cost database (**Cost Leadership**)

A demonstrated commitment to conduct business ethically and in ways that support our consumers’ financial recovery (**Principled Intent**)

Although we have enabled over two million consumers to retire a portion of their outstanding debt since 2007, one of the industry’ s most formidable challenges is that many distressed consumers will never make a payment, much less retire their total debt obligation. In fact, at the peak of the collection cycle, we generate payments from fewer than one percent of our accounts every month. To address these challenges, we evaluate portfolios of receivables that are available for purchase using robust, account-level valuation methods, and we employ a suite of proprietary statistical and behavioral models across the full extent of our operations. We believe these business practices contribute to our ability to value portfolios accurately, avoid buying portfolios that are incompatible with our methods or goals, and align the accounts we purchase with our operational channels to maximize future collections. We also have one of the industry’ s largest distressed consumer databases containing information regarding approximately 25 million consumer accounts. We believe that our specialized knowledge, along with our investments in data and analytic tools, have enabled us to realize significant returns from the receivables we have acquired. From inception through December 31, 2011, we have invested approximately \$2.1 billion to acquire 40.1 million consumer accounts with a face value of approximately \$66.4 billion. We maintain strong relationships with many of the largest credit providers in the United States, and believe that we possess one of the industry’ s best collection staff retention rates.

While seasonality does not have a material impact on our business, collections are generally strongest in our first calendar quarter, slower in the second and third calendar quarters, and slowest in the fourth calendar quarter. Relatively higher collections in the first quarter could result in a lower cost-to-collect ratio compared to the fourth quarter, as our fixed costs would be constant and applied against a larger collection base. The seasonal impact on our business may be influenced by our purchasing levels, the types of portfolios we purchase, and our operating strategies.

In addition, we provide bankruptcy support services to some of the largest companies in the financial services industry through our wholly owned subsidiary, Ascension Capital Group, Inc. (“Ascension”). Leveraging a proprietary software platform dedicated to bankruptcy servicing, Ascension’ s operational platform integrates lenders, trustees, and consumers across the bankruptcy lifecycle.

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Investors wishing to obtain more information about us may access our Internet site (<http://www.encorecapital.com>). The site provides access to relevant investor related information, such as Securities and Exchange Commission (“SEC”) filings, press releases, featured articles, an event calendar, and frequently asked questions. SEC filings are available on the website as soon as reasonably practicable after being filed with, or furnished to, the SEC. The content of the Internet site is not incorporated by reference into this Annual Report on Form 10-K. Any materials that we filed with the SEC may also be read and copied at the SEC’s Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC (<http://www.sec.gov>).

### ***Our Competitive Advantages***

*Analytic Strength.* We believe that success in our business depends on the ability to establish and maintain an information advantage. Leveraging an industry-leading distressed consumer database, our in-house team of statisticians, business analysts, and software programmers have developed, and continually enhance, proprietary behavioral and valuation models, custom software applications, and other business tools that guide our portfolio purchases. Moreover, our collection channels are informed by powerful statistical models specific to each collection activity, and each year we deploy significant capital to purchase credit bureau and customized consumer data that describe demographic, account level, and macroeconomic factors related to credit, savings, and payment behavior.

*Consumer Intelligence.* At the core of our analytic approach is a focus on understanding, measuring, and predicting distressed consumer behavior. In this effort, we apply tools and methods borrowed from statistics, psychology, economics, and management science across the full extent of our business. During portfolio valuation, we use an internally-developed and proprietary family of statistical models that determines the likelihood and expected amount of payment for each consumer within a portfolio. Subsequently, the expectations for each account are aggregated to arrive at a portfolio-level liquidation solution and a valuation for the entire portfolio is determined. During collections, we apply our “willingness-capability” framework, which allows us to match our collection approach to an individual consumer’s payment behavior.

*Cost Leadership.* Cost efficiency is central to our collection and purchasing strategies. We experience considerable cost advantages, stemming from our operations in India, our enterprise-wide, activity-level cost database, and the development and implementation of operational models that enhance profitability. We believe that we are the only company in our industry with a successful, late-stage collection platform in India. This cost-saving, first-mover advantage helps to reduce our call center variable cost-to-collect.

*Principled Intent.* We strive to treat consumers with respect, compassion, and integrity. From discounts and payment plans to hardship solutions, we partner with our consumers as they attempt to return to financial health. We are committed to dialogue that is honorable and constructive, and hope to play an important and positive role in our consumers’ lives.

### ***Our Strategy***

We have implemented a business strategy that emphasizes the following elements:

*Extend our knowledge about distressed consumers.* We believe our investments in data, analytic tools, and expertise related to both general and distressed consumers provide us with a competitive advantage. In addition to rigorous data collection practices that take advantage of our unique relationship with distressed consumers, our consumer intelligence program focuses on segmentation, marketing communications, and original research conducted in partnership with experts from both industry and academia. We believe this work will continue to bolster our operational success while fueling our efforts to understand the actions and motivations of our consumer base.

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*Realize the full strength of our operations in India.* We believe that our operations in India will be critical for both our future collections strategy as well as our future growth. Our call center has expanded considerably over the past few years, and we anticipate that this growth will continue. Our attrition rate for experienced account managers in India is approximately 40% per year in an industry where 100% attrition is not uncommon. Moreover, we have expanded our talented work force in India beyond call center operations and are now developing software, managing portions of our IT infrastructure, handling complex analytics, supporting our bankruptcy servicing teams, and processing a large portion of our back-office needs in India. As portfolio prices fluctuate and the complexity of our industry continues to increase, we expect that our operations in India will continue to provide a significant competitive advantage.

*Safeguard and promote financial health and literacy.* We believe that our interests, and those of the financial institutions from which we purchase portfolios, are closely aligned with the interests of government agencies seeking to protect consumer rights. Accordingly, we expect to continue investing in infrastructure and processes that support consumer advocacy and financial literacy, while promoting an appropriate balance between corporate and consumer responsibility.

*Consider growth opportunities in adjacent businesses and new geographies.* We may consider acquisitions of complementary companies in order to expand into new geographic markets or new types of defaulted consumer receivables, add capacity to our current business lines, or leverage our knowledge of the distressed consumer. We believe that our existing underwriting and collection processes can be extended to a variety of charged-off consumer receivables. These capabilities may allow us to develop and provide complementary products or services to specified distressed consumer segments.

### ***Acquisition of Receivables***

We provide sellers of delinquent receivables liquidity and immediate value through the purchase of charged-off consumer receivables. We believe that we are an appealing partner for these sellers given our financial strength, focus on principled intent, and track record of financial success.

*Identify purchase opportunities.* We maintain relationships with some of the largest credit grantors and sellers of charged-off consumer receivables in the United States. We identify purchase opportunities and secure, where possible, exclusive negotiation rights. We believe that we are a valued partner for primary issuers and sellers from whom we purchase portfolios, and our ability to secure exclusive negotiation rights is typically a result of our strong relationships and our scale of purchasing. Receivable portfolios are sold either through a general auction, where the seller requests bids from market participants or through an exclusive negotiation where the seller and buyer negotiate the sale privately. The sale transaction can be either for a one-time spot purchase or for a “forward flow” contract. A “forward flow” contract is a commitment to purchase receivables over a duration that is typically three to twelve months with specifically defined volume, frequency, and pricing. Typically, these contracts have provisions that allow for early termination or price re-negotiation should the underlying quality of the portfolio deteriorate over time or if any particular month’s delivery is materially different than the original portfolio used to price the forward flow contract. We generally attempt to secure forward flow contracts for receivables because a consistent volume of receivables over a set duration can allow us more precision in forecasting and planning our operational needs.

*Evaluate purchase opportunities using account level analytics.* Once a portfolio of interest is identified, we obtain detailed information regarding the portfolio’s accounts, including certain information regarding the consumers themselves. We then purchase additional information for the consumers whose accounts we are contemplating purchasing, including credit, savings, or payment behavior. Our internal modeling team then analyzes this information to determine the expected value of each potential new consumer. Our collection expectations are based on these demographic data, account characteristics, and economic variables, which we use to predict a consumer’s willingness and ability to repay its debt. The expected value of collections for each account is aggregated to calculate an overall value for the portfolio. Additional adjustments are made to account

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for qualitative factors that may impact the payment behavior of our consumers (such as prior collection activities, or the underwriting approaches of the seller), and servicing related adjustments to ensure our valuations are aligned with our operations.

*Formal approval process.* Once we have determined the value of the portfolio and have completed our qualitative diligence, we present the purchase opportunity to our investment committee, which either sets the maximum purchase price for the portfolio based on corporate Internal Rate of Return (“IRR”) objectives or declines to bid. Members of the investment committee include our CEO, CFO, other members of our senior management team, and experts, as needed.

We believe long-term success is best pursued by combining a diverse sourcing approach with an account-level scoring methodology and a disciplined evaluation process.

### ***Collection Approach***

We expand and build upon the insight developed during our purchase process when developing our account collection strategies for portfolios we have acquired. Our proprietary consumer-level collectability analysis is the primary determinant of whether an account is actively serviced post-purchase. Generally, we pursue collection activities on only a fraction of the accounts we purchase, through one or more of our collection channels. The channel identification process is analogous to a decision tree where we first differentiate those consumers who we believe are unable to pay from those who we believe are able to pay. Consumers who we believe are financially incapable of making any payments, or are facing extenuating circumstances or hardships that would prevent them from making payments are excluded from our collection process. It is our practice to assess each consumer’s willingness to pay through analytics, phone calls and/or letters. Despite our efforts to reach consumers and work out a settlement option, only a small number of consumers who we contact choose to engage with us. Those who do are often offered discounts on their obligations, or are presented with payments plans that are intended to suit their needs. However, the majority of consumers we contact ignore our calls and our letters and we must then make the decision about whether to pursue collections through legal means. During 2011, we called approximately 11.1 million unique consumers, of which 2.3 million, or 21%, made contact with us. Similarly, during the same time period, we mailed 9.7 million consumers, of which 2.4% engaged with us. Throughout our ownership period, we periodically refine our collection approach to determine the most effective collection strategy to pursue for each account. These strategies consist of:

Inactive. We strive to use our financial resources judiciously and efficiently by not deploying resources on accounts where the prospects of collection are remote. For example, for accounts where we believe that the consumer is currently unemployed, overburdened by debt, incarcerated, or deceased, no collection method of any sort is assigned.

Direct Mail. We develop innovative, low cost mail campaigns offering consumers appropriate discounts to encourage settlement of their accounts.

Call Centers. We maintain domestic collection call centers in San Diego, California, Phoenix, Arizona, and St. Cloud, Minnesota and international call centers in Gurgaon, India and Costa Rica (opened in January 2012). Call centers generally consist of multiple collection departments. Account managers supervised by group managers are trained and divided into specialty teams. Account managers use a friendly, but firm, approach to further assess our consumers’ willingness and capacity to pay. They attempt to work with consumers to evaluate sources and means of repayment to achieve a full or negotiated lump sum settlement or develop payment programs customized to the individual’s ability to pay. In cases where a payment plan is developed, account managers encourage consumers to pay through automatic payment arrangements. During our new hire training period, we educate account managers to understand and apply applicable laws and policies that are relevant in the account manager’s daily collection activities. Our ongoing training and monitoring efforts help ensure compliance with applicable laws and policies by account managers.

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Skip Tracing. If a consumer's phone number proves inaccurate when an account manager calls an account, or if current contact information for a consumer is not available at the time of account purchase, then the account is automatically routed to our skip tracing process. We currently use a number of different skip tracing companies to provide phone numbers and addresses.

Legal Action. We generally refer accounts for legal action where the consumer has not responded to our direct mail efforts or our calls and it appears the consumer is able, but unwilling, to pay his or her obligations. When we decide to refer an account for legal action, we hire attorneys in-house or we retain law firms that specialize in collection matters in the states where we intend to pursue collections. Prior to engaging a collection firm, we evaluate the firm's operations, financial condition, and experience, among other key criteria. We rely on the law firms' expertise with respect to applicable debt collection laws to evaluate the accounts we refer to them and to make the decision about whether or not to pursue collection litigation. The law firms we have hired may also attempt to communicate with the consumers in an attempt to collect their debts prior to initiating litigation. We pay the law firms a contingency fee based on amounts they collect on our behalf.

Third Party Collection Agencies. We selectively employ a strategy that uses collection agencies. Collection agencies receive a contingency fee for each dollar collected. Generally, we use these agencies on accounts when we believe they can liquidate better or less expensively than we can or to supplement capacity in our internal call centers. We also use agencies to initially provide us a way to scale quickly when large purchases are made and as a challenge to our internal call center collection teams. Prior to engaging a collection agency, we evaluate, among other things, those aspects of the agency's business that we believe are relevant to its performance and compliance with consumer credit laws and regulations.

Account Balance Transfer. We may transfer to our credit card partners accounts for which this approach offers the highest opportunity for success. The credit card partners may offer the consumer the opportunity to establish new credit and to transfer the balance onto a new credit card. If the account is transferred, we receive an agreed-upon payment. We did not transfer any accounts pursuant to this program in 2011.

Sale. We do not resell accounts to third parties in the ordinary course of our business. If we have an occasional instance when we do resell accounts, we only do so when we can provide the purchaser with documentation evidencing the amount owed on the account and clear title of ownership.

### ***Corporate Compliance and Legal Oversight***

Our corporate compliance and legal oversight functions are divided between our legal and financial compliance departments. Our legal department manages regulatory compliance, litigation, corporate transactions, and compliance with our internal ethics policy, while our financial compliance department manages our Sarbanes Oxley 404 compliance, internal audit, and Legal Outsourcing audit initiatives.

The legal department is responsible for interpreting and administering our Standards of Business Conduct (the "Standards"), which apply to all of our directors, officers, and employees and outlines our commitment to a culture of professionalism and ethical behavior. The Standards promote honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships, compliance with applicable laws, rules and regulations, and full and fair disclosure in reports that we file with, or submit to, the SEC and in other public communications made by us. As described in the Standards, we have also established a toll-free Accounting and Fraud Hotline to allow directors, officers, and employees to report any detected or suspected fraud, misappropriations, or other fiscal irregularities, any good faith concern about our accounting and/or auditing practices, or any other violations of the Standards.

Beyond written policies, one of our core internal goals is the adherence to principled intent as it pertains to all consumer interactions. We believe that it is in our shareholders, and our employees' best interest to treat all consumers with the highest standards of integrity. Specifically, we have strict policies and a code of ethics, which

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guide all dealings with our consumers. To reinforce existing written policies, we have established a number of quality assurance procedures. Through our Quality Assurance program, our Fair Debt Collection Practices Act (“FDCPA”) training for new account managers, our FDCPA recertification program for continuing account managers, and our Consumer Support Services department, we take significant steps to ensure compliance with applicable laws and regulations and seek to promote consumer satisfaction. Our Quality Assurance team aims to enhance the skills of account managers and to drive compliance initiatives through active call monitoring, account manager coaching and mentoring, and the tracking and distribution of company-wide best practices. Finally, our Consumer Support Services department works directly with consumers to seek to resolve incoming consumer inquiries and to respond to consumer disputes as they may arise.

### ***Information Technology***

*Technical Infrastructure.* Our internal network has been configured to be redundant in all critical functions, at all sites. This backup system has been implemented within the local area network switches, the data center network, and includes our redundant Multiprotocol Label Switching (MPLS) networks. We have the capability to handle high transaction volume in our server network architecture, which can be scaled seamlessly with our future growth plans.

*Predictive Dialer Technology.* Our upgraded predictive dialer technology continues to accommodate the ongoing expansion of our call centers. The technology allows additional call volume capacity and greater efficiency through shorter wait times and an increase in the number of live contacts. We believe this technology helps maximize account manager productivity and further optimizes the yield on our portfolio purchases. We also believe that the use of predictive dialing technology helps us to ensure compliance with certain applicable federal and state laws that restrict the time, place, and manner in which debt collectors can call consumers.

*Computer Hardware.* We use a robust computer platform to perform our daily operations, including the collection efforts of our global workforce. Because our custom software applications are integrated within our database server environment, we are able to process transaction loads with speed and efficiency. The computer platform offers us reliability and expansion opportunities. Furthermore, this hardware incorporates state of the art data security protection. We back up our data daily, and store copies at a secured off-site location. We also mirror our production data to a remote location to give us full protection in the event of the loss of our primary data center. To ensure the integrity and reliability of our computer platform we periodically engage outside auditors specializing in information technology to examine both our operating systems and disaster recovery plans.

*Process Control.* To ensure that our entire infrastructure continues to operate efficiently and securely we have developed a strong process and control environment. These controls govern all areas of the enterprise from physical security and virtual security, change management, data protection and segregation of duties.

### ***Ability to Attract and Retain Employees***

Of crucial importance to our success is the recruitment and retention of our key employees, account managers, and executive management team. In addition to offering attractive compensation structures for account managers, we may offer employee programs that promote personal and professional goals, such as leadership and skills training, tuition assistance in support of continued education, and wellness initiatives. Our wellness initiatives earned us the distinction as San Diego’s Healthiest Company, Large Company category, in 2011, and in India, we were selected as one of “India’s Best Companies to Work For” by India’s Great Place to Work Institute. We believe that these tangible benefits, combined with intangible differentiators, such as a diverse employee base and the prospect of living and working in an extremely temperate climate where our Corporate Headquarters is located, all contribute to a sustainable competitive advantage with respect to recruitment and retention.

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### ***Competition***

The consumer credit recovery industry is highly competitive and fragmented. We compete with a wide range of collection companies, financial services companies, and a number of well-funded entrants with limited experience in our industry. We also compete with traditional contingency collection agencies and in-house recovery departments. Competitive pressures affect the availability and pricing of receivable portfolios, as well as the availability and cost of qualified recovery personnel. In addition, some of our competitors may have signed forward flow contracts under which originating institutions have agreed to transfer charged-off receivables to them in the future, which could restrict those originating institutions from selling receivables to us. We believe some of our major competitors, which include companies that focus primarily on the purchase of charged-off receivable portfolios, have continued to diversify into third-party agency collections and into offering credit card and other financial services as part of their recovery strategy.

When purchasing receivables, we compete primarily on the basis of the price paid for receivable portfolios, the ease of negotiating and closing the prospective portfolio purchases with us, including our ability to obtain funding and our reputation with respect to the quality of services that we provide. We believe that our ability to compete effectively in this market is also dependent upon, among other things, our relationships with originators and sellers of charged-off consumer receivables, and our ability to provide quality collection strategies in compliance with applicable collections laws.

### ***Government Regulation***

In a number of states we must maintain licenses to perform debt recovery services and must satisfy related bonding requirements. It is our policy to comply with all material licensing and bonding requirements. Our failure to comply with existing licensing requirements, changing interpretations of existing requirements, or adoption of new licensing requirements, could restrict our ability to collect in states, subject us to increased regulation, increase our costs, or adversely affect our ability to collect our receivables.

Federal and state statutes establish specific guidelines and procedures which debt collectors must follow when collecting consumer receivables. The FDCPA and comparable state statutes establish specific guidelines and procedures which debt collectors must follow when communicating with consumers, including the time, place and manner of the communications. It is our policy to comply with the provisions of the FDCPA and comparable state statutes in all of our recovery activities. Our failure to comply with these laws could have a material adverse effect on us if they apply to some or all of our recovery activities. Alongside the FDCPA, the federal laws that apply to our business (in addition to the regulations that relate to these laws) include the following:

Truth-In-Lending Act	Credit CARD Act
Fair Credit Billing Act	Gramm-Leach-Bliley Act
Equal Credit Opportunity Act	Servicemembers' Civil Relief Act
Fair Credit Reporting Act	Health Insurance Portability and Accountability Act
Electronic Funds Transfer Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
U.S. Bankruptcy Code	Wire Act
Telephone Consumer Protection Act	

State laws, among other things, may also limit the interest rate and the fees that a credit originator may impose on our consumers, and limit the time in which we may file legal actions to enforce consumer accounts.

The relationship between a consumer and a credit card issuer is extensively regulated by federal and state consumer protection and related laws and regulations. While we do not issue credit cards, these laws affect some of our operations because the majority of our receivables originate through credit card transactions. The laws and regulations applicable to credit card issuers, among other things, impose disclosure requirements when a credit

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card account is advertised, when it is applied for and when it is opened, at the end of monthly billing cycles and at year-end. Federal law requires, among other things, that credit card issuers disclose to consumers the interest rates; fees, grace periods, and balance calculation methods associated with their credit card accounts. Some laws prohibit discriminatory practices in connection with the extension of credit. If the originating institution fails to comply with applicable statutes, rules, and regulations, it could create claims and rights for the consumers that would reduce or eliminate their obligations related to those receivables. When we acquire receivables, we generally require the originating institution to contractually indemnify us against losses caused by its failure to comply with applicable statutes, rules and regulations relating to the receivables before they are sold to us.

Federal statutes further provide that, in some cases, consumers cannot be held liable for, or their liability is limited with respect to, charges to their credit card accounts that resulted from unauthorized use of their credit cards. These laws, among others, may give consumers a legal cause of action against us, or may limit our ability to recover amounts owing with respect to the receivables, whether or not we committed any wrongful act or omission in connection with the account.

State and federal laws concerning identity theft, privacy, data security, the use of automated dialing equipment and other laws related to consumers and consumer protection, as well as laws applicable to specific types of debt, impose requirements or restrictions on collection methods or our ability to enforce and recover certain of our receivables.

The laws described above, among others, as well as any new or changed laws, rules or regulations, may adversely affect our ability to recover amounts owing with respect to our receivables.

### ***Employees***

We are a Delaware corporation incorporated in 1999. As of December 31, 2011, we had approximately 2,200 employees. None of our employees is represented by a labor union. We believe that our relations with our employees are good.

## **Item 1A–Risk Factors**

There are certain risks and uncertainties in our business that could cause our actual results to differ materially from those anticipated. We urge you to read these risk factors carefully in connection with evaluating our business and in connection with the forward-looking statements and other information contained in this Annual Report on Form 10-K. Any of the risks described herein could materially affect our business, financial condition or future results and the actual outcome of matters as to which forward-looking statements are made. The list of risks is not intended to be exhaustive and the order in which the risks appear is not intended as an indication of their relative weight or importance. Additional risks and uncertainties not currently known to us, or that we currently deem to be immaterial, also may materially adversely affect our business, financial condition and/or future results.

### **Risk Factors**

#### ***We are exposed to risks associated with worldwide financial markets and the global economy.***

As a result of the continuing global economic downturn, individual consumers are experiencing high unemployment, a lack of credit availability and depressed real estate values. This in turn places continued financial pressure on the consumer, which may reduce our ability to collect on our purchased consumer receivable portfolios and may adversely affect the value of our consumer receivable portfolios. Further, increased financial pressures on the distressed consumer may result in additional regulatory restrictions on our operations and increased litigation filed against us. We cannot predict the likely duration or severity of the current disruption in financial markets and adverse economic conditions and the effects they may have on our business, financial condition, and results of operations.

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### ***Our operating results may fluctuate significantly in the future.***

Our operating results will likely vary in the future due to a variety of factors that could affect our revenues and operating expenses. We expect that our operating expenses as a percentage of collections will fluctuate in the future as we expand into new markets, increase our business development efforts, hire additional personnel, and incur increased insurance and regulatory compliance costs. In addition, our operating results have fluctuated and may continue to fluctuate as a result of the factors described below and elsewhere in this Annual Report on Form 10-K for the fiscal year ended December 31, 2011:

the timing and amount of collections on our receivable portfolios, including the effects of seasonality and economic conditions;

any charge to earnings resulting from an allowance against the carrying value of our receivable portfolios;

increases in operating expenses associated with the growth or change of our operations;

the cost of credit to finance our purchases of receivable portfolios; and

the timing and terms of our purchases of receivable portfolios.

Due, in part, to fluctuating prices for receivable portfolios, there has been considerable variation in our purchasing volume from quarter to quarter and we expect that to continue. The volume of our portfolio purchases will be limited when prices are high, and may or may not increase when portfolio pricing is more favorable to us. We believe our ability to collect on receivable portfolios may be negatively impacted because of current economic conditions, and this may require us to increase our projected return hurdles in calculating prices we are willing to pay for individual portfolios. An increase in portfolio return hurdles may decrease the volume of portfolios we are successful in purchasing. Because we recognize revenue on the basis of projected collections on purchased portfolios, we may experience variations in quarterly revenue and earnings due to the timing of portfolio purchases.

### ***We may not be able to purchase receivables at favorable prices or terms, or at all.***

Our ability to continue to operate profitably depends upon the continued availability of receivable portfolios that meet our purchasing standards and are cost-effective based upon projected collections exceeding our costs. Our profitability also depends on our actual collections on accounts meeting or exceeding our projected collections. We do not know how long portfolios will be available for purchase on terms acceptable to us, or at all.

The availability of receivable portfolios at favorable prices and on favorable terms depends on a number of factors, including:

continued high levels of default in consumer debt;

continued sale of receivable portfolios by originating institutions and portfolio resellers at sufficient volumes and prevailing price levels;

our ability to develop and maintain long-term relationships with key major credit originators and portfolio resellers;

our ability to obtain adequate data from credit originators or portfolio resellers to appropriately evaluate the collectability of, and estimate the value of, portfolios;

changes in laws and regulations governing consumer lending, bankruptcy and collections; and

potential availability of government funding to competing purchasers for the acquisition of account portfolios under various programs intended to serve as an economic stimulus.

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In addition, because of the length of time involved in collecting charged-off consumer receivables on acquired portfolios and the volatility in the timing of our collections, we may not be able to identify trends and make changes in our purchasing strategies in a timely manner. Ultimately, if we are unable to continually purchase and collect on a sufficient volume of receivables to generate cash collections that exceed our costs, our business will be materially and adversely affected.

***We may experience losses on portfolios consisting of new types of receivables due to our lack of collection experience with these receivables.***

We continually look for opportunities to expand the classes of assets that make up the portfolios we acquire. Therefore, we may acquire portfolios consisting of assets with which we have little or no collection experience. Our lack of experience with new types of receivables may cause us to pay too much for these receivable portfolios, which may substantially hinder our ability to generate profits from such portfolios. Further, our existing methods of collections may prove ineffective for such new receivables, and we may not be able to collect on these portfolios. Our inexperience may have a material adverse effect on our results of operations.

***We may purchase receivable portfolios that contain unprofitable accounts and we may not be able to collect sufficient amounts to recover our costs and to fund our operations.***

We acquire and service receivables that the obligors have failed to pay and the sellers have deemed uncollectible and written off. The originating institutions generally make numerous attempts to recover on their nonperforming receivables, often using a combination of their in-house collection and legal departments, as well as third-party collection agencies. In order to operate profitably over the long term, we must continually purchase and collect on a sufficient volume of receivables to generate revenue that exceeds our costs. These receivables are difficult to collect, and we may not be successful in collecting amounts sufficient to cover the costs associated with purchasing the receivables and funding our operations. If we are not able to collect on these receivables or collect sufficient amounts to cover our costs, this may materially and adversely affect our results of operations.

***Sellers may deliver portfolios that contain accounts which do not meet our account collection criteria.***

In the normal course of our portfolio acquisitions, some receivables may be included in the portfolios that fail to conform to the terms of the purchase agreements and we may seek to return these receivables to the sellers for payment or replacement. However, sellers may not be able to meet their obligations to us. Accounts that we are unable to return to sellers may yield no return. If sellers deliver portfolios containing too many accounts that do not conform to the terms of the purchase agreements, we may be unable to collect a sufficient amount and the portfolio purchase could be unprofitable, which would have an adverse effect on our cash flows. If cash flows from operations are less than anticipated, our ability to satisfy our debt obligations and purchase new portfolios may be materially and adversely affected. If we are not able to satisfy our debt obligations and purchase new portfolios, this may materially and adversely affect our results of operations.

***A significant portion of our portfolio purchases during any period may be concentrated with a small number of sellers.***

We expect that a significant percentage of our portfolio purchases for any given fiscal year may be concentrated with a few large sellers, some of which also may involve forward flow arrangements. We cannot be certain that any of our significant sellers will continue to sell charged-off receivables to us on terms or in quantities acceptable to us, or that we would be able to replace such purchases with purchases from other sellers.

A significant decrease in the volume of purchases available from any of our principal sellers on terms acceptable to us would force us to seek alternative sources of charged-off receivables. We may be unable to find alternative sources from which to purchase charged-off receivables, and even if we could successfully replace such purchases, the search could take time, the receivables could be of lower quality, cost more, or both, any of which could materially adversely affect our financial performance.

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***The statistical models we use to project remaining cash flows from our receivable portfolios may prove to be inaccurate and, if so, our financial results may be adversely impacted.***

We use our internally developed Unified Collection Score, or UCS model, and Behavioral Liquidation Score, or BLS model, to project the remaining cash flows from our receivable portfolios. Our UCS and BLS models consider known data about our consumers' accounts, including, among other things, our collection experience and changes in external consumer factors, in addition to all data known when we acquired the accounts. However, we may not be able to achieve the collections forecasted by our UCS and BLS models. If we are not able to achieve these levels of forecasted collection, our revenues will be reduced or we may be required to record an allowance charge, which may materially and adversely impact our results of operations.

***We may incur allowance charges based on the authoritative guidance for loans and debt securities acquired with deteriorated credit quality.***

We account for our portfolio revenue in accordance with the authoritative guidance for loans and debt securities acquired with deteriorated credit quality. The authoritative guidance limits the revenue that may be accrued to the excess of the estimate of expected future cash flows over a portfolio's initial cost of accounts receivable acquired, requires that the excess of the contractual cash flows over expected cash flows not be recognized as an adjustment of revenue, expense, or on the balance sheet, and freezes the IRR originally estimated when the accounts receivable are purchased for subsequent allowance testing. Rather than lower the estimated IRR if the expected future cash flow estimates are decreased, the carrying value of our receivable portfolios would be written down to maintain the then-current IRR. Increases in expected future cash flows would be recognized prospectively through an upward adjustment of the IRR over a portfolio's remaining life. Any increased yield then becomes the new benchmark for allowance testing. Since the authoritative guidance does not permit yields to be lowered, there is an increased probability of our having to incur allowance charges in the future, which would negatively impact our results of operations.

***If our goodwill or amortizable intangible assets become impaired we may be required to record a significant charge to earnings.***

We carry approximately \$16.0 million in goodwill and approximately \$0.5 million in amortizable intangible assets on our balance sheet. Under authoritative guidance, we review our goodwill for potential impairment at least annually, and review our amortizable intangible assets for impairment whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Factors that may indicate that the carrying value of our goodwill or amortizable intangible assets may not be recoverable include adverse changes in estimated future cash flows, growth rates and discount rates. We may be required to record a significant charge in our financial statements during the period in which any impairment of our goodwill or amortizable intangible assets is determined, which could negatively impact our results of operations.

***Our business of enforcing the collection of purchased receivables is subject to extensive statutory and regulatory oversight, which has increased and may continue to increase.***

Laws relating to debt collections directly apply to our business. Our failure or the failure of third party agencies and attorneys or the originators of our receivables to comply with existing or new laws, rules or regulations could limit our ability to recover on receivables or cause us to pay damages to the original consumers, which could reduce our revenues and harm our business.

We sometimes purchase accounts in asset classes that are subject to industry-specific restrictions that limit the collection methods that we can use on those accounts. Our inability to collect sufficient amounts from these accounts through available collections methods could materially and adversely affect our results of operations.

In response to the global economic downturn, or otherwise, additional consumer protection or privacy laws, rules and regulations may be enacted that impose additional restrictions on the collection of receivables. Such

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new laws, rules and regulations and the enforcement of them or increased enforcement of existing consumer protection or privacy laws, rules and regulations may materially and adversely affect our ability to collect on our receivables, which could materially and adversely affect our business and results of operations.

### ***Our results of operations may be materially and adversely affected if bankruptcy filings increase or if bankruptcy or other debt collection laws change.***

Our business model may be uniquely vulnerable to an economic recession, which typically results in an increase in the amount of defaulted consumer receivables, thereby contributing to an increase in the amount of personal bankruptcy filings. Under certain bankruptcy filings, a consumer's assets are sold to repay credit originators, with priority given to holders of secured debt. Since the defaulted consumer receivables we purchase are generally unsecured, we often are not able to collect on those receivables. In addition, since we purchase receivables that may have been delinquent for a long period of time, this may be an indication that many of the consumers from whom we collect will be unable to service their debts going forward and are more likely to file for bankruptcy in an economic recession. We cannot be certain that our collection experience would not decline with an increase in bankruptcy filings. If our actual collection experience with respect to a defaulted consumer receivable portfolio is significantly lower than we projected when we purchased the portfolio, our results of operations could be materially and adversely affected.

### ***Failure to comply with government regulation could result in the suspension or termination of our ability to conduct business, may require the payment of significant fines and penalties, or require other significant expenditures.***

The collections industry is heavily regulated under various federal, state, and local laws, rules and regulations. Many states and several cities require that we be licensed as a debt collection company. The Federal Trade Commission, state attorneys general and other regulatory bodies have the authority to investigate a variety of matters, including consumer complaints against debt collection companies, and to recommend enforcement actions and seek monetary penalties. If we, or our third party collection agencies or law firms fail to comply with applicable laws, rules and regulations, including, but not limited to, identity theft, privacy, data security, the use of automated dialing equipment, laws related to consumer protection, debt collection, and laws applicable to specific types of debt, it could result in the suspension or termination of our ability to conduct collection operations, which would materially adversely affect us. Further, our ability to collect our receivables may be impacted by state laws, which require that certain types of account documentation be in our possession prior to the institution of any collection activities. In addition, new federal, state or local laws or regulations, or changes in the ways these rules or laws are interpreted or enforced, could limit our activities in the future and/or significantly increase the cost of regulatory compliance.

### ***We are dependent upon third parties to service more than half of our consumer receivable portfolios.***

We use outside collection services to collect a substantial portion of our receivables. We are dependent upon the efforts of third-party collection agencies and attorneys to service and collect our consumer receivables. Any failure by our third-party collection agencies and attorneys to perform collection services for us adequately or remit such collections to us could materially reduce our revenue and our profitability. In addition, if one or more of those third-party collection agencies or attorneys were to cease operations abruptly, or to become insolvent, such cessation or insolvency could materially reduce our revenue and profitability. Our revenue and profitability could also be materially adversely affected if we were not able to secure replacement third party collection agencies or attorneys or promptly transfer account information to our new third party collection agencies, attorneys or in-house in the event our agreements with our third-party collection agencies and attorneys were terminated. Our revenue and profitability could also be materially adversely affected if our third-party collection agencies or attorneys fail to perform their obligations adequately, or if our relationships with such third-party collection agencies and attorneys otherwise change adversely.

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***Increases in costs associated with our collections through collection litigation can materially raise our costs associated with our collection strategies and the individual lawsuits brought against consumers to collect on judgments in our favor.***

We hire in-house counsel and contract with a nationwide network of attorneys that specialize in collection matters. In connection with collection litigation, we advance certain out-of-pocket court costs, or Deferred Court Costs. Deferred Court Costs represent amounts we believe we will recover from our consumers, in addition to the amounts owed on our consumers' accounts that we expect to collect. These court costs may be difficult or impossible to collect, and we may not be successful in collecting amounts sufficient to cover the amounts deferred in our financial statements. If we are not able to recover these court costs, this may materially and adversely affect our results of operations.

Further, we have substantial collection activity through our legal channel and as a consequence, increases in Deferred Court Costs, increases in costs related to counterclaims and an increase in other court costs, may increase our costs in collecting on these accounts, which may have a material adverse effect on our results of operations.

***Our network of third party agencies and attorneys may not utilize amounts collected on our behalf or amounts we advance for court costs in the manner for which they were intended.***

In the normal course of operations our third party collection agencies and attorneys collect funds on our behalf. These third parties may fail to remit amounts owed to us in a timely manner or at all. Additionally, we advance court costs to our third party attorneys which are intended for their use in filing lawsuits on our behalf. These third party attorneys may misuse some or all of the funds we advance to them. Our ability to recoup our funds may be diminished if these third parties become insolvent or enter into bankruptcy proceedings.

***A significant portion of our collections relies upon our success in individual lawsuits brought against consumers and our ability to collect on judgments in our favor.***

We generate a significant portion of our revenue by collecting on judgments that are granted by courts in lawsuits filed against consumers. A decrease in the willingness of courts to grant such judgments, a change in the requirements for filing such cases or obtaining such judgments, or a decrease in our ability to collect on such judgments could have a material and adverse effect on our results of operations. As we increase our use of the legal channel for collections, our short-term margins may decrease as a result of an increase in upfront court costs and costs related to counter claims. We may not be able to collect on certain aged accounts because of applicable statutes of limitations and we may be subject to adverse effects of regulatory changes. Further, courts in certain jurisdictions require that a copy of the account statements or applications be attached to the pleadings in order to obtain a judgment against consumers. If we are unable to produce those account documents, because the account documents have not been provided by the account's seller or otherwise, these courts could deny our claims.

***We are subject to ongoing risks of litigation, including individual and class action lawsuits, under consumer credit, consumer protection, theft, privacy, collections, and other laws, and may be subject to awards of substantial damages.***

We operate in an extremely litigious climate and currently are, and may in the future be, named as defendants in litigation, including individual and class action lawsuits under consumer credit, consumer protection, theft, privacy, data security, automated dialing equipment, debt collections and other laws. Many of these cases present novel issues on which there is no clear legal precedent, which increases the difficulty in predicting both the potential outcomes and costs of defending these cases. We currently are, and may in the future be, subject to regulatory investigations, inquiries, litigation, and other actions by the Federal Trade Commission, state attorneys general or other governmental bodies relating to our activities. The litigation and

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regulatory actions in which we are currently engaged or which we may become subject to involve potential compensatory or punitive damage claims, fines, sanctions or injunctive relief that, if granted, could require us to pay damages or make other expenditures in amounts that could have a material adverse effect on our financial position and negatively impact results of operations. We have recorded loss contingencies in our financial statements only for matters on which losses are probable and can be reasonably estimated. Our assessments of these matters involve significant judgments, and may change from time to time. Actual losses incurred by us in connection with judgments or settlements of these matters may be more than our associated reserves. Furthermore, defending lawsuits and responding to governmental inquiries or investigations, regardless of their merit, could be costly and divert management's attention from the operation of our business. All of these factors could have a material adverse effect on our business, financial condition, and results of operations.

### ***Negative publicity associated with litigation, governmental investigations, regulatory actions, and other public statements could damage our reputation.***

From time to time there are negative news stories about our industry or company, especially with respect to alleged conduct in collecting debt from customers. Such stories may follow the announcements of litigation or regulatory actions involving us or others in our industry. Negative publicity about our alleged or actual debt collection practices or about the debt collection industry generally could adversely impact our stock price and our ability to retain and attract customers and employees.

### ***We may make acquisitions that prove unsuccessful or strain or divert our resources.***

From time to time, we consider acquisitions of other companies that could complement our business, including the acquisition of entities in diverse geographic regions and entities offering greater access to businesses and markets that we do not currently serve. We may not be able to successfully acquire other businesses or, if we do, the acquisition may be unprofitable. If we do acquire one or more businesses, we may not successfully operate the businesses acquired, or may not successfully integrate such businesses with our own, which may result in our inability to maintain our goals, objectives, standards, controls, policies, culture, or profitability. In addition, through acquisitions, we may enter markets in which we have limited or no experience. The occurrence of one or more of these events may place additional constraints on our resources such as diverting the attention of our management from other business concerns, which may materially adversely affect our operations and financial condition. Moreover, any acquisition may result in a potentially dilutive issuance of equity securities, incurrence of additional debt, and amortization of identifiable intangible assets, all of which could reduce our profitability.

### ***We are dependent on our management team for the adoption and implementation of our strategies and the loss of its services could have a material adverse effect on our business.***

Our management team has considerable experience in finance, banking, consumer collections, and other industries. We believe that the expertise of our executives obtained by managing businesses across numerous other industries has been critical to the enhancement of our operations. Our management team has created a culture of new ideas and progressive thinking, coupled with increased use of technology and statistical analysis. The loss of the services of one or more of our key executive officers could disrupt our operations and seriously impair our ability to continue to acquire or collect on portfolios of charged-off consumer receivables and to manage and expand our business. Our success depends on the continued service and performance of our management team, and we may not be able to retain such individuals.

### ***Regulatory, political, and economic conditions in India expose us to risk, including loss of business.***

A significant element of our business strategy is to continue to develop and expand offshore operations in India. While wage costs in India are significantly lower than in the U.S. and other industrialized countries for comparably skilled workers, wages in India are increasing at a faster rate than in the U.S., and we experience

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higher employee turnover in our operations in India than is typical in our U.S. locations. The continuation of these trends could result in the loss of the cost savings we sought to achieve by establishing a portion of our collection operations in India. In the past, India has experienced significant inflation and shortages of readily available foreign currency for exchange and has been subject to civil unrest. We may be adversely affected by changes in inflation, exchange rate fluctuations, interest rates, tax provisions, social stability or other political, economic or diplomatic developments in or affecting India in the future. In addition, the infrastructure of the economy in India is relatively poor. Further, the Indian government is significantly involved in and exerts considerable influence over its economy through its complicated tax code and pervasive bureaucracy. In the recent past, the Indian government has provided significant tax incentives and relaxed certain regulatory restrictions in order to encourage foreign investment in certain sectors of the economy, including the technology industry. Changes in the business or regulatory climate of India could have a material and adverse effect on our business, results of operations and financial condition.

***We may not be able to manage our growth effectively, including the expansion of our operations in India, and our newly established operations in Costa Rica.***

We have expanded significantly in recent years. However, future growth will place additional demands on our resources, and we cannot be sure that we will be able to manage our growth effectively. Continued growth could place a strain on our management, operations, and financial resources. Our infrastructure, facilities, and personnel may not be adequate to support our future operations or to effectively adapt to future growth. To support our growth and improve our operations, we continue to make investments in infrastructure, facilities and personnel in our operations in the U.S., India and Costa Rica; however, these additional investments may not be successful or our investments may not produce profitable results. If we cannot manage our growth effectively, our results of operations may be materially and adversely affected.

***If our technology and telecommunications systems were to fail, or if we are not able to successfully anticipate, invest in, or adopt technological advances within our industry, it could have an adverse effect on our operations.***

Our success depends in large part on sophisticated computer and telecommunications systems. The temporary or permanent loss of our computer and telecommunications equipment and software systems, through casualty, operating malfunction, software virus, or service provider failure, could disrupt our operations. In the normal course of our business, we must record and process significant amounts of data quickly and accurately to properly bid on prospective acquisitions of receivable portfolios and to access, maintain and expand the databases we use for our collection activities. Any simultaneous failure of our information systems and their backup systems would interrupt our business operations.

In addition, our business relies on computer and telecommunications technologies, and our ability to integrate new technologies into our business is essential to our competitive position and our success. We may not be successful in anticipating, investing in, or adopting technological changes in a timely basis. Computer and telecommunications technologies are evolving rapidly and are characterized by short product life cycles.

We continue to make significant modifications to our information systems to ensure that they continue to meet our current and foreseeable demands and continued expansion, and our future growth may require additional investment in these systems. These system modifications may exceed our cost or time estimates for completion or may be unsuccessful. If we cannot update our information systems effectively, our results of operations may be materially and adversely affected.

***We may not be able to adequately protect the intellectual property rights upon which we rely and, as a result, any lack of protection may materially diminish our competitive advantage.***

We rely on proprietary software programs and valuation and collection processes and techniques, and we believe that these assets provide us with a competitive advantage. We consider our proprietary software,

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processes, and techniques to be trade secrets, but they are not protected by patent or registered copyright. We may not be able to protect our technology and data resources adequately, which may materially diminish our competitive advantage.

### **Item 1B–Unresolved Staff Comments**

None.

### **Item 2–Properties**

Our corporate headquarters and primary operations facility are located in approximately 87,900 square feet in two separate leased locations in San Diego, California.

We lease a facility for our call center located in Phoenix, Arizona with approximately 33,000 square feet of space and a facility for our call center located in St. Cloud, Minnesota with approximately 46,000 square feet of space.

Our leased Ascension facility is located in Arlington, Texas and is approximately 28,600 square feet. This facility serves as our bankruptcy servicing center.

We also lease a facility in Gurgaon, India. The facility in India has approximately 111,500 square feet of space and can accommodate approximately 1,850 employees. Our facility in India serves as a call center, bankruptcy servicing center, and administrative offices.

In addition, we entered into a lease that became effective in January 2012 to occupy approximately 20,900 square feet of space in Costa Rica. This facility can accommodate approximately 200 employees. This facility serves as an additional call center.

We believe that our current leased facilities are generally well maintained and in good operating condition. We believe that these facilities are suitable and sufficient for our operational needs. Our policy is to improve, replace, and supplement the facilities as considered appropriate to meet the needs of the individual operations.

### **Item 3–Legal Proceedings**

We are involved in disputes and legal actions from time to time in the ordinary course of business. We, along with others in our industry, are routinely subject to legal actions based on the Fair Debt Collection Practices Act (“FDCPA”) comparable state statutes, the Telephone Consumer Protection Act (“TCPA”), state and federal unfair competition statutes, and common law causes of action. The violations of law alleged in these actions often include claims that we lack specified licenses to conduct our business, attempt to collect debts on which the statute of limitations has run, have made inaccurate assertions of fact in support of our collection actions and/or have acted improperly in connection with our efforts to contact consumers. These cases are frequently styled as supposed class actions. In addition, from time to time, we are subject to litigation and other actions by governmental bodies, including formal and informal investigations relating to our collection activities by the Federal Trade Commission, state attorneys general and other governmental bodies, with which we cooperate.

On May 19, 2008, an action captioned *Brent v. Midland Credit Management, Inc et. al* was filed in the United States District Court for the Northern District of Ohio Western Division, in which the plaintiff filed a class action counter-claim against two of our subsidiaries (the “Midland Defendants”). The complaint alleged

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that the Midland Defendants' business practices violated consumers' rights under the FDCPA and the Ohio Consumer Sales Practices Act. The plaintiff sought actual and statutory damages for the class of Ohio residents, plus attorney' s fees and costs of class notice and class administration. On August 12, 2011, the court issued an order granting final approval to the parties agreed upon settlement of this lawsuit, as well as two other pending lawsuits in the Northern District of Ohio entitled *Franklin v. Midland Funding LLC* and *Vassalle v. Midland Funding LLC*, on a national class basis, and dismissed the cases against the Midland Defendants with prejudice. That order has been appealed by certain objectors to the settlement, which appeals remain pending.

On November 2, 2010 and December 17, 2010 two national class actions entitled *Robinson v. Midland Funding LLC* and *Tovar v. Midland Credit Management*, respectively, were filed in the United States District Court for the Southern District of California. The complaints allege that our subsidiaries violated the TCPA by calling consumers' cellular phones without their prior express consent. The complaints seek monetary damages under the TCPA, injunctive relief, and other relief, including attorney fees. On May 10, 2011 and May 11, 2011 two class actions entitled *Scardina v. Midland Credit Management, Inc. Midland Funding LLC and Encore Capital Group, Inc.* and *Martin v. Midland Funding, LLC*, respectively, were filed in the United States District Court for the Northern District of Illinois. The complaints allege on behalf of a putative class of Illinois consumers that our subsidiaries violated the TCPA by calling consumers' cellular phones without their prior express consent. The complaints seek monetary damages under the TCPA, injunctive relief, and other relief, including attorney fees. On July 28, 2011, we filed a motion to transfer the *Scardina* and *Martin* cases to the United States District Court for the Southern District of California to be consolidated with the *Tovar* and *Robinson* cases. On October 11, 2011, the United States Judicial Panel on Multidistrict Litigation granted our motion to transfer.

In certain legal proceedings, we may have recourse to insurance or third party contractual indemnities to cover all or portions of our litigation expenses, judgments, or settlements. In accordance with authoritative guidance, we record loss contingencies in our financial statements only for matters in which losses are probable and can be reasonably estimated. Where a range of loss can be reasonably estimated with no best estimate in the range, we record the minimum estimated liability. We continuously assess the potential liability related to our pending litigation and revise our estimates when additional information becomes available. Our legal costs are recorded to expense as incurred.

### **Item 4—Mine Safety Disclosures**

Not applicable.

PART II

**Item 5—Market for the Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchase of Equity Securities**

Our common stock is traded on the NASDAQ Global Select Market under the symbol “ECPG.”

The high and low sales prices of our common stock, as reported by NASDAQ Global Select Market for each quarter during our two most recent fiscal years, are reported below:

	Market Price	
	High	Low
Fiscal Year 2011		
First Quarter	\$27.67	\$21.65
Second Quarter	33.16	23.85
Third Quarter	31.78	18.96
Fourth Quarter	28.50	19.40
Fiscal Year 2010		
First Quarter	18.66	14.65
Second Quarter	24.09	16.50
Third Quarter	22.92	17.50
Fourth Quarter	23.67	16.70

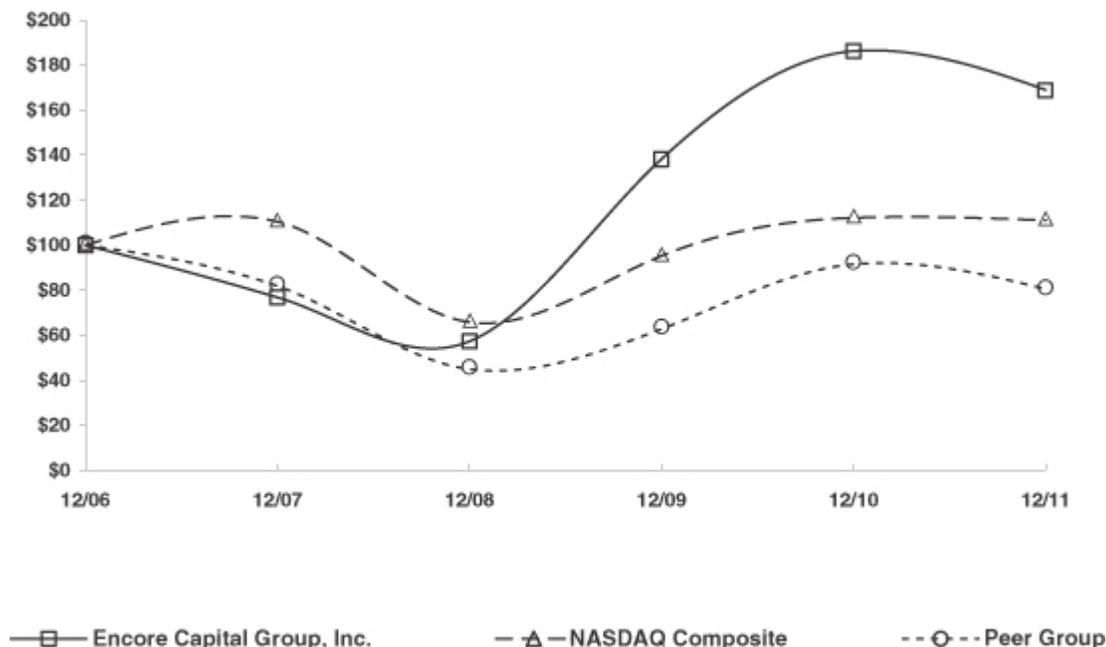
The closing price of our common stock on February 1, 2012, was \$24.27 per share and there were 15 stockholders of record. Because many of our shares of common stock are held by brokers and other institutions on behalf of stockholders, we are unable to estimate the total number of stockholders represented by these stockholders of record.

The following Performance Graph and related information shall not be deemed “soliciting material” or “filed” with the SEC, nor shall such information be incorporated by reference into any future filing under the Securities Act of 1933 or Securities Exchange Act of 1934, each as amended, except to the extent that we specifically incorporate it by reference into such filing.

The following graph compares the total cumulative stockholder return on our common stock for the period from December 29, 2006 through December 31, 2011, with the cumulative total return of (a) the NASDAQ Index and (b) Asset Acceptance Capital Corp., Asta Funding, Inc. and Portfolio Recovery Associates, Inc., which we believe are comparable companies. The comparison assumes that \$100 was invested on December 29, 2006, in our common stock and in each of the comparison indices.

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### COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN\* Among Encore Capital Group, Inc., the NASDAQ Composite Index, and a Peer Group



\*\$100 invested on 12/29/06 in stock or index, including reinvestment of dividends.  
Fiscal year ending December 31.

	12/2006	12/2007	12/2008	12/2009	12/2010	12/2011
Encore Capital Group, Inc.	\$100.00	\$76.83	\$57.14	\$138.10	\$186.11	\$168.73
NASDAQ Composite	100.00	110.26	65.65	95.19	112.10	110.81
Peer Group	100.00	81.76	44.86	62.71	91.45	80.27

### **Dividend Policy**

As a public company, we have never declared or paid dividends on our common stock. However, the declaration, payment and amount of future dividends, if any, is subject to the discretion of our board of directors, which may review our dividend policy from time to time in light of the then existing relevant facts and circumstances. Under the terms of our revolving credit facility, we are permitted to declare and pay dividends in an amount not to exceed, during any fiscal year, 20% of our audited consolidated net income for the then most recently completed fiscal year, so long as no default or unmatured default under the facility has occurred and is continuing or would arise as a result of the dividend payment. We may also be subject to additional dividend restrictions under future financing facilities.

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### Item 6—Selected Financial Data

This table presents selected historical financial data of Encore Capital Group, Inc. and its consolidated subsidiaries. This information should be carefully considered in conjunction with the consolidated financial statements and notes thereto appearing elsewhere in this report. The selected data in this section are not intended to replace the consolidated financial statements. The selected financial data (except for “Selected Operating Data”) in the table below, as of December 31, 2009, 2008, and 2007 and for the years ended December 31, 2008 and 2007, were derived from our audited consolidated financial statements not included in this Annual Report on Form 10-K. The selected financial data as of December 31, 2011, and 2010 and for the years ended December 31, 2011, 2010, and 2009, were derived from our audited consolidated financial statements included elsewhere in this Annual Report on Form 10-K. The Selected Operating Data were derived from our books and records (*in thousands, except per share and personnel data*):

	As of and For The Year Ended December 31,				
	2011	2010	2009	2008	2007
<b>Revenues</b>					
Revenue from receivable portfolios, net <sup>(1)</sup>	\$448,714	\$364,294	\$299,732	\$240,802	\$241,402
Servicing fees and related revenue <sup>(2)</sup>	18,657	17,014	16,687	15,087	12,609
Total revenues	467,371	381,308	316,419	255,889	254,011
<b>Operating expenses</b>					
Salaries and employee benefits	81,509	65,767	58,025	58,120	64,153
Stock-based compensation expense	7,709	6,010	4,384	3,564	4,287
Cost of legal collections	157,050	121,085	112,570	96,187	78,636
Other operating expenses	39,776	36,387	26,013	23,652	21,533
Collection agency commissions	14,162	20,385	19,278	13,118	12,411
General and administrative expenses	41,730	31,444	26,920	19,445	17,478
Depreciation and amortization	4,661	3,199	2,592	2,814	3,351
Total operating expenses	346,597	284,277	249,782	216,900	201,849
Income from operations	120,774	97,031	66,637	38,989	52,162
<b>Other (expense) income</b>					
Interest expense	(21,116)	(19,349)	(16,160)	(20,572)	(34,504)
Other (expense) income	(394)	316	3,266	5,129	1,071
Total other expense	(21,510)	(19,033)	(12,894)	(15,443)	(33,433)
Income before income taxes	99,264	77,998	53,743	23,546	18,729
Provision for income taxes	(38,306)	(28,946)	(20,696)	(9,700)	(6,498)
Net income	<u>\$60,958</u>	<u>\$49,052</u>	<u>\$33,047</u>	<u>\$13,846</u>	<u>\$12,231</u>
<b>Earnings per share:</b>					
Basic	\$2.48	\$2.05	\$1.42	\$0.60	\$0.53
Diluted	\$2.37	\$1.95	\$1.37	\$0.59	\$0.52
<b>Weighted-average shares outstanding:</b>					
Basic	24,572	23,897	23,215	23,046	22,876
Diluted	25,690	25,091	24,082	23,577	23,386

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	As of and For The Year Ended December 31,				
	2011	2010	2009	2008	2007
Cash flow data:					
Cash flows provided by (used in):					
Operating activities	\$84,579	\$75,475	\$76,519	\$63,071	\$19,610
Investing activities	(88,088)	(142,807)	(79,171)	(107,252)	(95,059)
Financing activities	651	69,849	699	45,846	73,334
Selected operating data:					
Purchases of receivable portfolios, at cost <sup>(3)</sup>	\$386,850	\$361,957	\$256,632	\$230,278	\$208,953
Gross collections for the period	761,158	604,609	487,792	398,633	355,193
Consolidated statements of financial condition data:					
Cash and cash equivalents	\$8,047	\$10,905	\$8,388	\$10,341	\$8,676
Investment in receivable portfolios, net	716,454	644,753	526,877	461,346	392,209
Total assets	812,483	736,468	595,159	549,079	483,011
Total debt	388,950	385,264	303,075	303,655	256,223
Total liabilities	440,948	433,771	352,068	345,653	295,576
Total stockholders' equity	371,535	302,697	243,091	203,426	187,435

(1) Includes net allowance charges of \$10.8 million, \$22.2 million, \$19.3 million, \$41.4 million and \$11.2 million for the years ended December 31, 2011, 2010, 2009, 2008, and 2007, respectively.

(2) Includes \$18.6 million, \$16.9 million, \$16.7 million, \$15.0 million and \$12.5 million in revenue from Ascension for the years ended December 31, 2011, 2010, 2009, 2008, and 2007, respectively.

(3) Purchase price includes a \$10.3 million, \$5.6 million and \$11.7 million allocation of our forward flow asset for 2009, 2008 and 2007, respectively. In July 2008, we ceased forward flow purchases from Jefferson Capital Systems, LLC ("Jefferson Capital") due to an alleged breach by Jefferson Capital and its parent, CompuCredit Corporation, of certain agreements. In September 2009, we settled our dispute with Jefferson Capital. As part of the settlement, we purchased a receivable portfolio and applied the remaining forward flow asset to that purchase.

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### **Item 7—Management’s Discussion and Analysis of Financial Condition and Results of Operations**

*This Annual Report on Form 10-K contains “forward-looking statements” within the meaning of the securities laws. The words “believe,” “expect,” “anticipate,” “estimate,” “project,” “intend,” “plan,” “will,” “may” and similar expressions often characterize forward-looking statements. These statements may include, but are not limited to, projections of collections, revenues, income or loss, estimates of capital expenditures, plans for future operations, products or services and financing needs or plans, as well as assumptions relating to these matters. Although we believe that the expectations reflected in these forward-looking statements are reasonable, we caution that these expectations or predictions may not prove to be correct or we may not achieve the financial results, savings or other benefits anticipated in the forward-looking statements. These forward-looking statements are necessarily estimates reflecting the best judgment of our senior management and involve a number of risks and uncertainties, some of which may be beyond our control or cannot be predicted or quantified, that could cause actual results to differ materially from those suggested by the forward-looking statements. Many factors, including but not limited to those set forth in this Annual Report on Form 10-K under “Part I, Item 1A. Risk Factors,” could cause our actual results, performance, achievements or industry results to be very different from the results, performance or achievements expressed or implied by these forward-looking statements. Our business, financial condition or results of operations could also be materially and adversely affected by other factors besides those listed. Forward-looking statements speak only as of the date the statements were made. We do not undertake any obligation to update or revise any forward-looking statements to reflect new information or future events, or for any other reason, even if experience or future events make it clear that any expected results expressed or implied by these forward-looking statements will not be realized. In addition, it is generally our policy not to make any specific projections as to future earnings, and we do not endorse projections regarding future performance that may be made by third parties.*

#### **Introduction**

We are a leader in consumer debt buying and recovery. We purchase portfolios of defaulted consumer receivables at deep discounts to face value based on robust, account-level valuation methods, and employ a suite of proprietary statistical and behavioral models when building account collection strategies. We use a variety of operational channels to maximize our collections from the portfolios that we purchase, including seeking to partner with individuals as they repay their obligations and work toward financial recovery. In addition, we provide bankruptcy support services to some of the largest companies in the financial services industry through our wholly owned subsidiary, Ascension Capital Group, Inc. (“Ascension”).

While seasonality does not have a material impact on our business, collections are generally strongest in our first calendar quarter, slower in the second and third calendar quarters, and slowest in the fourth calendar quarter. Relatively higher collections in the first quarter could result in a lower cost-to-collect ratio compared to the other quarters, as our fixed costs would be constant and applied against a larger collection base. The seasonal impact on our business may be influenced by our purchasing levels, the types of portfolios we purchase, and our operating strategies.

Collection seasonality can also impact our revenue recognition rate. Generally, revenue for each pool group declines steadily over time, whereas collections can fluctuate from quarter to quarter based on seasonality, as described above. In quarters with lower collections (like the fourth calendar quarter), revenue as a percentage of collections can be higher than in quarters with higher collections (like the first calendar quarter).

In addition, seasonality could have an impact on the relative level of quarterly earnings. In quarters with stronger collections, total costs are higher, as a result of the additional efforts required to generate those collections. Since revenue for each pool group declines steadily over time, in quarters with stronger collections and higher costs (like the first calendar quarter), all else being equal, earnings could be lower than in quarters with slower collections and lower costs (like the fourth calendar quarter). Additionally, in quarters where a greater percentage of collections come from our legal and agency outsourcing channels, cost to collect will be higher than if there were more collections from our internal collection sites.

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### **Market Overview**

While there has been improvement in macroeconomic indicators during the last twelve months, a broad economic recovery has yet to fully materialize for the U.S. consumer. Minimal job growth, uncertainty over state and federal taxes, and limited credit availability continue to challenge U.S. consumers, as demonstrated by weak consumer spending and volatile but rising consumer confidence levels. Within the credit card space, delinquency levels have improved at a rate that may indicate a fundamental improvement in consumer financial strength. However, related measures, like personal bankruptcies and home foreclosures, remain elevated and indicate continued near-term pressure on the average consumer.

Despite this macroeconomic uncertainty through the fourth quarter of 2011, most of our internal collection metrics were consistent with, or better than, what we observed during the same periods in 2009 and 2010. To illustrate, payer rates and average payment size, adjusted for changes in the mix of settlements-in-full versus payment plans, remained consistent. As compared to prior years, more of our consumers continue to opt to settle their debt obligations through payment plans as opposed to one-time settlements. Settlements made through payment plans impact our recoveries in two ways. First, the delay in cash flows from payments received over extended time periods may result in a provision for portfolio allowance. When a long-term payment stream (as compared to a one-time payment of the same amount) is discounted using a pool group's internal rate of return, or IRR, the net present value is lower. In other words, despite the absolute value of total cash received being identical in both scenarios, accounting for the timing of cash flows in a payment plan yields a lower net present value which, in turn, can result in a provision for portfolio allowance. Second, payment plans inherently contain the possibility of consumers failing to complete all scheduled payments, which we term a "broken payer."

The rate at which consumers are honoring their obligations and completing their payment plans has continued to increase over the last 12 months. We believe this is the result of two factors: our commitment to partner effectively with consumers during their recovery process and the strength of our analytic platform, which allows us to make accurate and timely decisions about how best to maximize our portfolio returns. Nevertheless, payment plans may still produce broken payers that fail to fulfill all scheduled payments. When this happens, we are often successful in getting the consumer back on plan, but this is not always the case, and in those instances where we are unable to do so, we may experience a shortfall in recoveries as compared to our initial forecasts. Please refer to "Management's Discussion and Analysis - Revenue" below for a more detailed explanation of the provision for portfolio allowances.

Throughout the credit crisis, we strategically invested in receivable portfolios as credit card charge-offs increased to historic levels and we believe that some of our competitors were (i) caught owning receivables with low yields as a result of purchasing certain portfolios at elevated pricing levels between 2005 and 2008 and (ii) faced with constrained access to capital to fund portfolio purchases due to depressed capital markets. These dynamics resulted in a supply-demand gap that dramatically reduced pricing of available portfolios, beginning in early 2009. For example, prices for freshly charged-off assets (i.e., receivables sold within thirty days of charge-off by the credit issuers) declined from a range of 8% - 13% in 2008 to a range of 5% - 9% in 2009 and early 2010. Similar price reductions were apparent across a broad range of defaulted consumer receivable asset classes (including credit cards and other consumer loans), balance ranges, and ages. After such a dramatic decline, pricing increased beginning in mid-2010 and has continued to increase throughout 2011. We continue to exercise discipline in portfolio acquisitions, only purchasing those portfolios which meet our internal rate of return hurdle rates. In response to the price declines in 2009 and early 2010, some issuers opted not to sell all of their receivable portfolios and instead, pursued internal liquidation strategies or partnered with third party agencies. We believe that as pricing increases, these issuers will sell a greater percentage of their charged-off portfolios.

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### **Purchases and Collections**

#### ***Purchases by Type***

The following table summarizes the types of charged-off consumer receivable portfolios we purchased during the periods presented (*in thousands*):

	Year Ended December 31,		
	2011	2010	2009
Credit card	\$346,324	\$341,910	\$256,632
Telecom	38,882	7,842	–
Consumer bankruptcy receivables <sup>(1)</sup>	1,644	12,205	–
	<u>\$386,850</u>	<u>\$361,957</u>	<u>\$256,632</u>

<sup>(1)</sup> Represents portfolio receivables subject to Chapter 13 and Chapter 7 bankruptcy proceedings acquired from issuers.

During the year ended December 31, 2011, we invested \$386.9 million for portfolios, primarily for charged-off credit card, telecom, and bankruptcy portfolios, with face values aggregating \$11.7 billion for an average purchase price of 3.3% of face value. This is a \$24.9 million increase, or 6.9%, in the amount invested, compared with the \$362.0 million invested during the year ended December 31, 2010, to acquire portfolios, primarily consisting of charged-off credit card, bankruptcy, and telecom portfolios, with a face value aggregating \$10.9 billion for an average purchase price of 3.3% of face value. Included in our 2010 purchases was a \$45.6 million, one-time, large portfolio purchase from one seller in December 2010.

During the year ended December 31, 2010, we invested \$362.0 million for portfolios, primarily for charged-off credit card, bankruptcy and telecom portfolios, with face values aggregating \$10.9 billion for an average purchase price of 3.3% of face value. This is a \$105.4 million increase, or 41.0%, in the amount invested, compared with the \$256.6 million invested during the year ended December 31, 2009, to acquire portfolios, primarily consisting of charged-off credit card portfolios, with a face value aggregating \$6.5 billion for an average purchase price of 4.0% of face value. Included in our 2010 purchases was a \$45.6 million, one-time, large portfolio purchase from one seller in December 2010.

Average purchase price, as a percentage of face value, varies from period to period depending on, among other things, the quality of the accounts purchased and the length of time from charge-off to the time we purchase the portfolios.

#### ***Collections by Channel***

During 2011, 2010 and 2009, we utilized numerous business channels for the collection of charged-off credit card receivables and other charged-off receivables. The following table summarizes gross collections by collection channel (*in thousands*):

	Year Ended December 31,		
	2011	2010	2009
Legal collections	\$377,455	\$266,762	\$232,667
Collection sites	335,992	268,205	185,789
Collection agencies	47,657	68,042	62,653
Other	54	1,600	6,683
	<u>\$761,158</u>	<u>\$604,609</u>	<u>\$487,792</u>

Gross collections increased \$156.6 million, or 25.9%, to \$761.2 million during the year ended December 31, 2011, from \$604.6 million during the year ended December 31, 2010, primarily due to increased portfolio purchases in the current and prior years.

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Gross collections increased \$116.8 million, or 23.9%, to \$604.6 million during the year ended December 31, 2010, from \$487.8 million during the year ended December 31, 2009, primarily due to increased portfolio purchases in the current and prior years.

### Results of Operations

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

	Year Ended December 31,					
	2011		2010		2009	
<b>Revenues</b>						
Revenue from receivable portfolios, net	\$448,714	96.0 %	\$364,294	95.5 %	\$299,732	94.7 %
Servicing fees and related revenue	18,657	4.0 %	17,014	4.5 %	16,687	5.3 %
Total revenues	467,371	100.0%	381,308	100.0%	316,419	100.0%
<b>Operating expenses</b>						
Salaries and employee benefits	81,509	17.5 %	65,767	17.2 %	58,025	18.4 %
Stock-based compensation expense	7,709	1.7 %	6,010	1.6 %	4,384	1.4 %
Cost of legal collections	157,050	33.6 %	121,085	31.8 %	112,570	35.6 %
Other operating expenses	39,776	8.5 %	36,387	9.5 %	26,013	8.2 %
Collection agency commissions	14,162	3.0 %	20,385	5.4 %	19,278	6.1 %
General and administrative expenses	41,730	8.9 %	31,444	8.2 %	26,920	8.5 %
Depreciation and amortization	4,661	1.0 %	3,199	0.8 %	2,592	0.8 %
Total operating expenses	346,597	74.2 %	284,277	74.5 %	249,782	79.0 %
Income from operations	120,774	25.8 %	97,031	25.5 %	66,637	21.0 %
<b>Other (expense) income</b>						
Interest expense	(21,116)	(4.5 )%	(19,349)	(5.1 )%	(16,160)	(5.1 )%
Other (expense) income	(394 )	(0.1 )%	316	0.1 %	3,266	1.0 %
Total other expense	(21,510)	(4.6 )%	(19,033)	(5.0 )%	(12,894)	(4.1 )%
Income before income taxes	99,264	21.2 %	77,998	20.5 %	53,743	16.9 %
Provision for income taxes	(38,306)	(8.2 )%	(28,946)	(7.6 )%	(20,696)	(6.5 )%
Net income	\$60,958	13.0 %	\$49,052	12.9 %	\$33,047	10.4 %

### Comparison of Results of Operations

#### Year Ended December 31, 2011 Compared to Year Ended December 31, 2010

##### Revenues

Our revenues consist primarily of portfolio revenue and bankruptcy servicing revenue. Portfolio revenue consists of accretion revenue and zero basis revenue. Accretion revenue represents revenue derived from pools (quarterly groupings of purchased receivable portfolios) with a cost basis that has not been fully amortized. Revenue from pools with a remaining unamortized cost basis is accrued based on each pool's effective interest rate applied to each pool's remaining unamortized cost basis. The cost basis of each pool is increased by revenue earned and decreased by gross collections and portfolio allowances. The effective interest rate is the internal rate of return derived from the timing and amounts of actual cash received and anticipated future cash flow projections for each pool. All collections realized after the net book value of a portfolio has been fully recovered, or zero basis portfolios, are recorded as revenue, or zero basis revenue or allowance reversal if applicable. We account for our investment in receivable portfolios utilizing the interest method in accordance with the authoritative guidance for loans and debt securities acquired with deteriorated credit quality. Servicing fee

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revenue is revenue primarily associated with bankruptcy servicing fees earned from our Ascension subsidiary, a provider of bankruptcy services to the finance industry.

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

	Year Ended December 31, 2011					As of December 31, 2011			
	Collections <sup>(1)</sup>	Gross Revenue <sup>(2)</sup>	Revenue Recognition Rate <sup>(3)</sup>	Revenue	Net Reversal (Portfolio Allowance)	Revenue % of Total Revenue	Unamortized Balances	Monthly IRR	
ZBA	\$20,609	\$16,171	78.5 %		\$4,448	3.5 %	\$-	-	
2004	1,462	196	13.4 %		102	0.0 %	-	-	
2005	18,276	8,492	46.5 %		771	1.9 %	8,304	5.7 %	
2006	18,294	13,958	76.3 %		(7,160 )	3.0 %	17,394	5.1 %	
2007	38,654	23,578	61.0 %		(4,564 )	5.1 %	18,483	5.1 %	
2008	87,083	49,985	57.4 %		(4,420 )	10.9 %	58,249	5.4 %	
2009	164,358	105,080	63.9 %		-	22.9 %	88,436	8.0 %	
2010	288,679	169,588	58.7 %		-	36.9 %	190,948	6.5 %	
2011	123,596	72,489	58.6 %		-	15.8 %	334,640	4.2 %	
Total	<u>\$761,011</u>	<u>\$459,537</u>	<u>60.4 %</u>		<u>\$(10,823 )</u>	<u>100.0 %</u>	<u>\$716,454</u>	<u>5.5 %</u>	

	Year Ended December 31, 2010					As of December 31, 2010			
	Collections <sup>(1)</sup>	Gross Revenue <sup>(2)</sup>	Revenue Recognition Rate <sup>(3)</sup>	Revenue	Net Reversal (Portfolio Allowance)	Revenue % of Total Revenue	Unamortized Balances	Monthly IRR	
ZBA	\$10,590	\$9,689	91.5 %		\$901	2.5 %	\$-	-	
2002	417	-	0.0 %		417	0.0 %	-	-	
2003	3,215	759	23.6 %		1,829	0.2 %	-	-	
2004	7,799	2,822	36.2 %		1,553	0.7 %	1,166	6.6 %	
2005	27,034	16,301	60.3 %		(2,750 )	4.2 %	17,315	5.6 %	
2006	26,185	21,592	82.5 %		(9,605 )	5.6 %	28,890	5.1 %	
2007	70,569	44,689	63.3 %		(4,527 )	11.6 %	38,302	7.5 %	
2008	126,496	78,579	62.1 %		(10,027 )	20.3 %	99,802	5.1 %	
2009	206,360	135,096	65.5 %		-	35.0 %	147,830	6.4 %	
2010	125,729	76,976	61.2 %		-	19.9 %	311,448	4.2 %	
Total	<u>\$604,394</u>	<u>\$386,503</u>	<u>63.9 %</u>		<u>\$(22,209 )</u>	<u>100.0 %</u>	<u>\$644,753</u>	<u>5.1 %</u>	

(1) Does not include amounts collected on behalf of others.

(2) Gross revenue excludes the effects of net portfolio allowance or net portfolio allowance reversals.

(3) Revenue recognition rate excludes the effects of net portfolio allowance or net portfolio allowance reversals.

Total revenues were \$467.4 million for the year ended December 31, 2011, an increase of \$86.1 million, or 22.6%, compared to total revenues of \$381.3 million for the year ended December 31, 2010. Portfolio revenue was \$448.7 million for the year ended December 31, 2011, an increase of \$84.4 million, or 23.2%, compared to portfolio revenue of \$364.3 million for the year ended December 31, 2010. The increase in portfolio revenue for the year ended December 31, 2011 was primarily the result of additional

accretion revenue associated with a higher portfolio balance and lower net portfolio allowance provision during the year ended December 31, 2011, compared to the year ended December 31, 2010. During the year ended December 31, 2011, we recorded a net portfolio allowance provision of \$10.8 million, compared to a net portfolio allowance provision of \$22.2 million in the prior year. The portfolio allowances for the years ended December 31, 2011 and 2010 were largely due to a

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shortfall in collections in certain pool groups against our forecast. While our total collections exceeded our forecast, there is often variability at the pool group level between our actual collections and our forecasted collections, primarily our 2006 through 2008 vintage portfolios. This is the result of several factors, including pressures on our consumers due to a weakened economy, changes in internal operating strategies, shifts in consumer payment patterns, and the inherent challenge of forecasting collections at the pool group level.

Revenue associated with bankruptcy servicing fees was \$18.6 million for the year ended December 31, 2011, an increase of \$1.7 million, or 9.9%, compared to revenue of \$16.9 million for the year ended December 31, 2010.

### **Operating Expenses**

Total operating expenses were \$346.6 million for the year ended December 31, 2011, an increase of \$62.3 million, or 21.9%, compared to total operating expenses of \$284.3 million for the year ended December 31, 2010.

Operating expenses are explained in more detail as follows:

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

Total salaries and employee benefits increased \$15.7 million, or 23.9%, to \$81.5 million during the year ended December 31, 2011, from \$65.8 million during the year ended December 31, 2010. The increase was primarily the result of increased headcount to support our growth. Salaries and employee benefits related to our internal legal channel were approximately \$2.6 million and \$0.1 million for the years ended December 31, 2011 and 2010, respectively.

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

Stock-based compensation increased \$1.7 million, or 28.3%, to \$7.7 million during the year ended December 31, 2011, from \$6.0 million during the year ended December 31, 2010. This increase was primarily attributable to the higher fair value of equity awards granted in recent periods due to an increase in our stock price.

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

The cost of legal collections increased \$36.0 million, or 29.7%, to \$157.1 million during year ended December 31, 2011, compared to \$121.1 million during the year ended December 31, 2010. These costs represent contingent fees paid to our nationwide network of attorneys and costs of litigation. The increase in the cost of legal collections was primarily the result of an increase of \$26.8 million in contingent fees paid to our network of attorneys related to an increase of \$110.7 million, or 41.5%, in gross collections through our legal channel, in addition to an increase of \$9.5 million in upfront litigation costs expensed during the period. Gross legal collections amounted to \$377.5 million during the year ended December 31, 2011, up from \$266.8 million collected during the year ended December 31, 2010. The cost of legal collections decreased as a percent of gross collections through this channel to 41.6% during the year ended December 31, 2011, from 45.4% during the year ended December 31, 2010, as a result of improvements in our ability to more accurately and consistently identify those consumers with the financial means to repay their obligations.

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

	Year Ended December 31,			
	2011		2010	
Collections <sup>(1)</sup>	<u>\$377,455</u>	<u>100.0%</u>	<u>\$266,762</u>	<u>100.0%</u>
Court costs advanced	\$95,672	25.4 %	\$74,758	28.0 %
Court costs deferred	<u>(43,664)</u>	<u>(11.6)%</u>	<u>(32,247)</u>	<u>(12.1)%</u>
Court cost expense <sup>(2)</sup>	52,008	13.8 %	42,511	15.9 %
Other <sup>(3)</sup>	2,029	0.5 %	2,403	0.9 %
Commissions	<u>103,013</u>	<u>27.3 %</u>	<u>76,171</u>	<u>28.6 %</u>
Total Costs	<u>\$157,050</u>	<u>41.6 %</u>	<u>\$121,085</u>	<u>45.4 %</u>

(1) Collections include approximately \$2.3 million from our internal legal channel for the year ended December 31, 2011. We had no collections through our internal legal channel during the year ended December 31, 2010.

(2) In connection with our agreement with contracted attorneys, we advance certain out-of-pocket court costs. We capitalize these costs in our consolidated financial statements and provide a reserve and corresponding court cost expense for the costs that we believe will be ultimately uncollectible. This amount includes changes in our anticipated recovery rate of court costs expensed. This amount also includes court costs expensed through our internal legal channel of approximately \$1.7 million for the year ended December 31, 2011. We did not incur court costs through our internal legal channel during the year ended December 31, 2010.

(3) Other costs consist of costs related to counter claims and legal network subscription fees.

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

Other operating expenses increased \$3.4 million, or 9.3%, to \$39.8 million during the year ended December 31, 2011, from \$36.4 million during the year ended December 31, 2010. The increase was primarily the result of an increase of \$1.0 million in direct mail campaign expenses, an increase of \$0.8 million in telephone expenses, an increase of \$0.5 million in recruiting expenses, and a net increase in various other operating expenses of \$1.1 million, all to support our growth.

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

During the year ended December 31, 2011, we incurred \$14.2 million in commissions to third party collection agencies, or 29.7% of the related gross collections of \$47.7 million, compared to \$20.4 million in commissions, or 30.0% of the related gross collections of \$68.0 million during the year ended December 31, 2010. The decline in commissions and collections in this channel is part of our strategy to place more accounts internally to reduce our overall cost to collect. The decrease in the net commission rate as a percentage of the related gross collections was primarily due to the mix of accounts placed with the agencies. Commissions, as a percentage of collections through this channel, vary from period to period depending on, among other things, the time from charge-off of the accounts placed with an agency. Generally, freshly charged-off accounts have a lower commission rate than accounts that have been charged off for a longer period of time.

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

General and administrative expenses increased \$10.3 million, or 32.7%, to \$41.7 million during the year ended December 31, 2011, from \$31.4 million during the year ended December 31, 2010. The increase was primarily the result of an increase of \$3.8 million in litigation and corporate legal expenses associated with governmental investigations or inquiries and litigation, an increase of \$1.3 million in building rent, an increase of \$0.9 million in consulting fees, an increase of \$0.9 million in system maintenance costs and a net increase in other general and administrative expenses of \$3.4 million, primarily to support our growth.

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### ***Depreciation and amortization***

Depreciation and amortization expense increased \$1.5 million, or 45.7%, to \$4.7 million during the year ended December 31, 2011, from \$3.2 million during the year ended December 31, 2010. The increase was primarily due to increased depreciation expenses resulted from our acquisition of fixed assets in the current and prior years.

### **Cost per Dollar Collected**

The following table summarizes our cost per dollar collected (*in thousands, except percentages*):

	Year Ended December 31,							
	2011				2010			
	Collections	Cost	Cost Per Channel Dollar Collected	Cost Per Total Dollar Collected	Collections	Cost	Cost Per Channel Dollar Collected	Cost Per Total Dollar Collected
Legal networks <sup>(1)</sup>	\$377,455	\$157,050 <sup>(1)</sup>	41.6 %	20.6 %	\$266,762	\$121,085 <sup>(1)</sup>	45.4 %	20.0 %
Collection sites <sup>(2)</sup>	335,992	25,112	7.5 %	3.3 %	268,205	24,312	9.1 %	4.0 %
Collection agencies	47,657	14,162	29.7 %	1.9 %	68,042	20,385	30.0 %	3.4 %
Other	54	–	–	–	1,600	–	–	–
Other indirect costs <sup>(3)</sup>	–	124,533	–	16.4 %	–	98,157	–	16.3 %
<b>Total</b>	<b>\$761,158</b>	<b>\$320,857<sup>(4)</sup></b>		<b>42.2 %</b>	<b>\$604,609</b>	<b>\$263,939<sup>(4)</sup></b>		<b>43.7 %</b>

(1) Collections include approximately \$2.3 million from our internal legal channel for the year ended December 31, 2011. Court costs expensed through our internal legal channel were approximately \$1.7 million for the year ended December 31, 2011. We had no collections and did not incur any court costs through our internal legal channel during the year ended December 31, 2010.

(2) Cost in collection sites represents only account managers and their supervisors' salaries, variable compensation, and employee benefits.

(3) Other indirect costs represent non-collection site salaries and employee benefits, general and administrative expenses, other operating expenses and depreciation and amortization. Included in other indirect costs were costs related to our internal legal channel of approximately \$3.8 million and \$0.3 million for the years ended December 31, 2011 and 2010, respectively.

(4) Represents all operating expenses, excluding stock-based compensation expense and bankruptcy servicing operating expenses. We include this information in order to facilitate a comparison of approximate cash costs to cash collections for the debt purchasing business in the periods presented. Refer to the items for reconciliation of operating expenses, excluding stock-based compensation expense and bankruptcy servicing operating expenses, to generally accepted accounting practices ("GAAP") total operating expenses in the table below.

During the year ended December 31, 2011, cost per dollar collected decreased by 150 basis points to 42.2% of gross collections from 43.7% of gross collections during the year ended December 31, 2010. This decrease was primarily due to several factors, including:

The costs from our collection sites, including account managers and their supervisors' salaries, variable compensation and employee benefits, as a percentage of total collections, decreased to 3.3% during the year ended December 31, 2011, from 4.0% during the year ended December 31, 2010 and, as a percentage of our site collections, decreased to 7.5% during the year ended December 31, 2011, from 9.1% during the year ended December 31, 2010. The decrease was primarily due to the continued growth of our collection workforce in India.

Collection agency commissions, as a percentage of total collections, decreased to 1.9% during the year ended December 31, 2011, from 3.4% during the year ended December 31, 2010. The decrease in the percentage of commissions to total collections was due to our strategy to place more accounts internally, resulting in a significant decline in collections through this channel. Commissions as a percentage of channel collections declined to 29.7% during the year ended December 31, 2011, as compared to 30.0% during the prior year due to the mix of accounts placed in this channel.



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The decrease was slightly offset by:

An increase in cost of legal collections, as a percent of total collections, to 20.6% during the year ended December 31, 2011, from 20.0% during the year ended December 31, 2010. The increase in the cost of legal collections to total collections was due to collections in our legal channel growing at a rate faster than total collections. Cost per dollar collected in this channel declined to 41.6% during the year ended December 31, 2011, from 45.4% during the prior year. This decrease was primarily the result of improvements in our ability to more accurately and consistently identify those consumers with the financial means to repay their obligations (see “Cost of legal collections” section above for details).

The following table presents the items for reconciliation of operating expenses, excluding stock-based compensation expense and bankruptcy servicing operating expenses to GAAP total operating expenses (*in thousands*):

	Years Ended December 31,	
	2011	2010
GAAP total operating expenses, as reported	\$346,597	\$284,277
Stock-based compensation expense	(7,709 )	(6,010 )
Bankruptcy servicing operating expenses	(18,031 )	(14,328 )

### Expansion in offshore operations

To support our growth and improve our operations, we continue to make investments offshore. In January 2012, we opened our first near-shore operations center in Costa Rica. Our operations in Costa Rica will allow us to better serve our Spanish-speaking consumers and will add important strategic capacity and strength to our worldwide operations. Until we are fully operational in our Costa Rica site, we expect that our overall variable cost to collect will increase and our overall account manager productivity will decline. However, once we are staffed to optimal levels, we expect that this expansion will have a positive long-term impact on both our overall cost to collect and our productivity.

### Interest expense

The following table summarizes our interest expense (*in thousands, except percentages*):

	Year Ended December 31,			
	2011	2010	\$ Change	% Change
Stated interest on debt obligations	\$19,283	\$15,667	\$3,616	23.1 %
Amortization of loan fees and other loan costs	1,833	1,669	164	9.7 %
Amortization of debt discount—convertible notes	—	2,013	(2,013)	(100.0 )%
Total interest expense	<u>\$21,116</u>	<u>\$19,349</u>	<u>\$1,767</u>	9.1 %

Stated interest on debt obligations increased \$3.6 million to \$19.3 million during the year ended December 31, 2011, compared to the prior year. This increase was primarily due to higher interest rates on our senior secured notes, offset by lower outstanding loan balances under our revolving credit facility.

### Other income and expense

During the year ended December 31, 2011, we incurred other expense of \$0.4 million. This expense was primarily attributable to our revaluation of foreign currency monetary assets and liabilities held by our India subsidiary. During the year ended December 31, 2010, total other income was \$0.3 million. This was primarily the result of a \$0.3 million gain recognized in connection with the early termination of a contract.

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### Provision for income taxes

During the year ended December 31, 2011, we recorded an income tax provision of \$38.3 million, reflecting an effective rate of 38.6% of pretax income. The effective tax rate for the year ended December 31, 2011 primarily consisted of a provision for federal income taxes of 32.7% (which is net of a benefit for state taxes of 2.3%), a blended provision for state taxes of 6.5%, and a benefit for the effect of permanent book versus tax differences of 0.6%.

During the year ended December 31, 2010, we recorded an income tax provision of \$28.9 million, reflecting an effective rate of 37.1% of pretax income. The effective tax rate for the year ended December 31, 2010 primarily consisted of a provision for federal income taxes of 32.7% (which is net of a benefit for state taxes of 2.3%), a blended provision for state taxes of 6.7%, a 0.6% beneficial adjustment to federal taxes payable as a result of state tax true ups, and a benefit for the effect of permanent book versus tax differences of 1.7%.

### Year Ended December 31, 2010 Compared to Year Ended December 31, 2009

#### Revenues

Our revenues consist primarily of portfolio revenue and bankruptcy servicing revenue. Portfolio revenue consists of accretion revenue and zero basis revenue. Accretion revenue represents revenue derived from pools (quarterly groupings of purchased receivable portfolios) with a cost basis that has not been fully amortized. Revenue from pools with a remaining unamortized cost basis is accrued based on each pool's effective interest rate applied to each pool's remaining unamortized cost basis. The cost basis of each pool is increased by revenue earned and decreased by gross collections and portfolio allowances. The effective interest rate is the internal rate of return derived from the timing and amounts of actual cash received and anticipated future cash flow projections for each pool. All collections realized after the net book value of a portfolio has been fully recovered, or zero basis portfolios, are recorded as revenue, or zero basis revenue or allowance reversal if applicable. We account for our investment in receivable portfolios utilizing the interest method in accordance with the authoritative guidance for loans and debt securities acquired with deteriorated credit quality. Servicing fee revenue is revenue primarily associated with bankruptcy servicing fees earned from our Ascension subsidiary, a provider of bankruptcy services to the finance industry.

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

	Year Ended December 31, 2010						As of December 31, 2010		
	Collections <sup>(1)</sup>	Gross Revenue <sup>(2)</sup>	Revenue Recognition		Reversal (Portfolio Allowance)	Revenue % of Total		Unamortized Balances	Monthly IRR
			Rate <sup>(3)</sup>			Revenue			
ZBA	\$ 10,590	\$9,689	91.5	%	\$901	2.5	%	\$-	-
2002	417	-	0.0	%	417	0.0	%	-	-
2003	3,215	759	23.6	%	1,829	0.2	%	-	-
2004	7,799	2,822	36.2	%	1,553	0.7	%	1,166	6.6 %
2005	27,034	16,301	60.3	%	(2,750 )	4.2	%	17,315	5.6 %
2006	26,185	21,592	82.5	%	(9,605 )	5.6	%	28,890	5.1 %
2007	70,569	44,689	63.3	%	(4,527 )	11.6	%	38,302	7.5 %
2008	126,496	78,579	62.1	%	(10,027 )	20.3	%	99,802	5.1 %
2009	206,360	135,096	65.5	%	-	35.0	%	147,830	6.4 %
2010	125,729	76,976	61.2	%	-	19.9	%	311,448	4.2 %
<b>Total</b>	<b>\$604,394</b>	<b>\$386,503</b>	<b>63.9</b>	<b>%</b>	<b>\$(22,209 )</b>	<b>100.0</b>	<b>%</b>	<b>\$644,753</b>	<b>5.1 %</b>



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	Year Ended December 31, 2009					As of December 31, 2009			
	Collections <sup>(1)</sup>	Gross Revenue <sup>(2)</sup>	Revenue Recognition Rate <sup>(3)</sup>	Net Reversal (Portfolio Allowance)	Revenue % of Total Revenue	Unamortized Balances	Monthly IRR		
ZBA	\$8,927	\$8,927	100.0 %	\$-	2.8 %	\$-	-		
2002	2,831	903	31.9 %	1,254	0.3 %	-	-		
2003	8,021	5,932	74.0 %	59	1.9 %	629	31.4 %		
2004	11,363	6,922	60.9 %	(629 )	2.1 %	4,600	8.1 %		
2005	41,948	26,332	62.8 %	(2,192 )	8.2 %	30,804	5.6 %		
2006	44,554	31,864	71.5 %	(4,622 )	10.0 %	44,030	5.1 %		
2007	111,116	64,045	57.6 %	(6,357 )	20.1 %	68,739	5.8 %		
2008	162,846	112,657	69.2 %	(6,823 )	35.3 %	157,807	5.0 %		
2009	95,852	61,460	64.1 %	-	19.3 %	220,268	4.4 %		
Total	\$487,458	\$319,042	65.5 %	\$(19,310)	100.0 %	\$526,877	5.0 %		

(1) Does not include amounts collected on behalf of others.

(2) Gross revenue excludes the effects of net portfolio allowance or net portfolio allowance reversals.

(3) Revenue recognition rate excludes the effects of net portfolio allowance or net portfolio allowance reversals.

Total revenues were \$381.3 million for the year ended December 31, 2010, an increase of \$64.9 million, or 20.5%, compared to total revenues of \$316.4 million for the year ended December 31, 2009. Portfolio revenue was \$364.3 million for the year ended December 31, 2010, an increase of \$64.6 million, or 21.5%, compared to portfolio revenue of \$299.7 million for the year ended December 31, 2009. The increase in portfolio revenue for the year ended December 31, 2010, was primarily the result of additional accretion revenue associated with a higher portfolio balance during the year ended December 31, 2010 compared to the year ended December 31, 2009. During the year ended December 31, 2010, we recorded a net portfolio allowance provision of \$22.2 million, compared to a net portfolio allowance provision of \$19.3 million in the prior year. The portfolio allowances for the years ended December 31, 2010 and 2009 were largely due to a shortfall in collections in certain pool groups against our forecast. While our total collections exceeded our forecast, there is often variability at the pool group level between our actual collections and our forecasted collections, primarily our 2006 through 2008 vintage portfolios. This is the result of several factors, including pressures on our consumers due to a weakened economy, changes in internal operating strategies, shifts in consumer payment patterns, and the inherent challenge of forecasting collections at the pool group level.

Revenue associated with bankruptcy servicing fees was \$16.9 million for the year ended December 31, 2010, an increase of \$0.2 million, or 1.9%, compared to revenue of \$16.7 million for the year ended December 31, 2009.

### Operating Expenses

Total operating expenses were \$284.3 million for the year ended December 31, 2010, an increase of \$34.5 million, or 13.8%, compared to total operating expenses of \$249.8 million for the year ended December 31, 2009.

Operating expenses are explained in more detail as follows:

### *Salaries and employee benefits*

Total salaries and employee benefits increased \$7.8 million, or 13.3%, to \$65.8 million during the year ended December 31, 2010, from \$58.0 million during the year ended December 31, 2009. The increase was primarily the result of an additional \$9.4 million in payroll related expenses due to increased headcount to support our growth, offset by a \$1.6 million decrease in our self-insured health care costs due to our successful wellness programs and to fewer catastrophic claims compared to the prior year.



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

Stock-based compensation increased \$1.6 million, or 37.1%, to \$6.0 million during the year ended December 31, 2010, from \$4.4 million during the year ended December 31, 2009. This increase was primarily attributable to awards granted to our senior management team in the year ended December 31, 2010 and the higher fair value of equity awards granted in recent periods due to an increase in our stock price.

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

The cost of legal collections increased \$8.5 million, or 7.6%, to \$121.1 million during the year ended December 31, 2010, compared to \$112.6 million during the year ended December 31, 2009. These costs represent contingent fees paid to our nationwide network of attorneys and costs of litigation. The increase in the cost of legal collections was primarily the result of an increase in commissions paid on increased collections through our legal channel, partially offset by a decrease in court cost expense. For the year ended December 31, 2010, we paid commissions of \$76.2 million, or 28.6%, on legal collections of \$266.8 million, compared to commissions of \$66.5 million, or 28.6%, on legal collections of \$232.7 million for the year ended December 31, 2009. Court cost expense decreased to \$42.5 million for the year ended December 31, 2010, compared to \$43.6 million for the year ended December 31, 2009. This decrease was due to the effect of our change in accounting estimate of deferred court costs effective October 1, 2010, which reduced our court cost expense by \$2.8 million. This decrease was offset by additional expense related to the increase of \$10.7 million in court costs advanced in the year ended December 31, 2010, compared to the year ended December 31, 2009. Accordingly, court cost expense decreased to 15.9% as a percent of legal collections for the year ended December 31, 2010, compared to 18.7% of legal collections for the year ended December 31, 2009. As a result, the cost of legal collections, as a percent of gross collections through this channel, decreased to 45.4% for the year ended December 31, 2010 from 48.4% for the year ended December 31, 2009.

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

	Year Ended December 31,			
	2010		2009	
Collections	\$266,762	100.0%	\$232,667	100.0%
Court costs advanced	\$74,758	28.0 %	\$64,047	27.5 %
Court costs deferred	(32,247)	(12.1)%	(22,169)	(9.5)%
Deferred court costs reversal <sup>(1)</sup>	—	0.0 %	1,714	0.7 %
Court cost expense <sup>(2)</sup>	42,511	15.9 %	43,592	18.7 %
Other <sup>(3)</sup>	2,403	0.9 %	2,444	1.1 %
Commissions	76,171	28.6 %	66,534	28.6 %
Total Costs	\$121,085	45.4 %	\$112,570	48.4 %

(1) Primarily related to our settled arbitration with Jefferson Capital Systems, LLC ("Jefferson Capital") in September 2009. As part of the settlement with Jefferson Capital, we returned accounts that were subject to Jefferson Capital's settlement with the Federal Trade Commission. A portion of those accounts were in our legal channel and, when these were returned, resulted in the reversal of court costs previously deferred.

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

(3) Other costs consist of costs related to counter claims and legal network subscription fees.

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

Other operating expenses increased \$10.4 million, or 39.9%, to \$36.4 million during the year ended December 31, 2010, from \$26.0 million during the year ended December 31, 2009. The increase was primarily the result of an increase of \$2.6 million in direct mail campaign expenses, an increase of \$1.7 million in media-

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related expenses, an increase of \$1.9 million in telephone expenses, an increase of \$1.1 million in telephone number tracing expenses and a net increase in various other operating expenses of \$3.1 million, all to support our growth.

### *Collection agency commissions*

During the year ended December 31, 2010, we incurred \$20.4 million in commissions to third party collection agencies, or 30.0% of the related gross collections of \$68.0 million, compared to \$19.3 million in commissions, or 30.8% of the related gross collections of \$62.7 million during the year ended December 31, 2009. The decrease in the net commission rate as a percentage of the related gross collections was primarily due to the mix of accounts placed with the agencies. Commissions, as a percentage of collections through this channel, vary from period to period depending on, among other things, the time from charge-off of the accounts placed with an agency. Generally, freshly charged-off accounts have a lower commission rate than accounts that have been charged off for a longer period of time. During the year ended December 31, 2010, we collected more freshly charged-off accounts with our agencies as compared to the prior year.

### *General and administrative expenses*

General and administrative expenses increased \$4.5 million, or 16.8%, to \$31.4 million during the year ended December 31, 2010, from \$26.9 million during the year ended December 31, 2009. The increase was primarily the result of an increase of \$4.1 million in legal settlements, an increase of \$1.4 million in system maintenance costs, an increase of \$0.4 million in consulting fees, and a net increase in other general and administrative expenses of \$3.8 million. The increase was offset by a decrease of \$5.2 million in corporate legal expenses due to incurring significant legal expenses in 2009 in connection with our settled arbitration with Jefferson Capital.

### *Depreciation and amortization*

Depreciation and amortization expense increased \$0.6 million, or 23.4%, to \$3.2 million during the year ended December 31, 2010, from \$2.6 million during the year ended December 31, 2009. The increase was primarily due to increased depreciation expenses resulted from our acquisition of fixed assets in the current and prior years.

### **Cost per Dollar Collected**

The following table summarizes our cost per dollar collected (*in thousands, except percentages*):

	Year Ended December 31,									
	2010					2009				
	Collections	Cost	Cost Per Channel Dollar Collected	Cost Per Total Dollar Collected		Collections	Cost	Cost Per Channel Dollar Collected	Cost Per Total Dollar Collected	
Collection sites	\$268,205	\$24,312 <sup>(1)</sup>	9.1 %	4.0 %		\$185,789	\$22,536 <sup>(1)</sup>	12.1 %	4.6 %	
Legal networks	266,762	121,085	45.4 %	20.0 %		232,667	112,570	48.4 %	23.1 %	
Collection agencies	68,042	20,385	30.0 %	3.4 %		62,653	19,278	30.8 %	4.0 %	
Other	1,600	–	–	–		6,683	–	–	–	
Other indirect costs <sup>(2)</sup>	–	98,157	–	16.3 %		–	77,796	–	15.9 %	
<b>Total</b>	<b>\$604,609</b>	<b>\$263,939<sup>(3)</sup></b>		<b>43.7 %</b>		<b>\$487,792</b>	<b>\$232,180<sup>(3)</sup></b>		<b>47.6 %</b>	

<sup>(1)</sup> Represents only account managers and their supervisors' salaries, variable compensation and employee benefits.

<sup>(2)</sup> Other indirect costs represent non-collection site salaries and employee benefits, general and administrative expenses, other operating expenses, and depreciation and amortization.

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(3) Represents all operating expenses excluding stock-based compensation expense and bankruptcy servicing operating expenses. We include this information in order to facilitate a comparison of approximate cash costs to cash collections for the debt purchasing business in the periods presented. Refer to the items for reconciliation of operating expenses, excluding stock-based compensation expense and bankruptcy servicing operating expenses to GAAP total operating expenses in the table below.

During the year ended December 31, 2010, cost per dollar collected decreased by 390 basis points to 43.7% of gross collections from 47.6% of gross collections during the year ended December 31, 2009. This decrease was primarily due to several factors, including:

The cost from our collection sites, which includes account manager salaries, variable compensation and employee benefits, as a percentage of total collections, decreased to 4.0% for the year ended December 31, 2010, from 4.6% for the year ended December 31, 2009 and, as a percentage of our site collections, decreased to 9.1% for the year ended December 31, 2010, from 12.1% for the year ended December 31, 2009. The decrease was primarily due to the growth of our collection workforce in India.

The cost of legal collections as a percent of total collections decreased to 20.0% for the year ended December 31, 2010, from 23.1% for the year ended December 31, 2009 and, as a percentage of legal collections, decreased to 45.4% in the year ended December 31, 2010, from 48.4% for the year ended December 31, 2009. The decreases were primarily due to the effect of our change in accounting estimate of deferred court costs effective October 1, 2010, which reduced our court cost expense by \$2.8 million. Additionally, as we refine our analytics and increase our ability to model consumer behavior, we have been able to be more precise about where to use the legal channel, which has enabled us to reduce our cost expenditure without negatively impacting collections.

The cost of collection agency commissions, as a percentage of total collections, decreased to 3.4% for the year ended December 31, 2010, from 4.0% for the year ended December 30, 2009. The cost in collection agency commissions, as a percentage of channel collections, decreased to 30.0% for the year ended December 31, 2010, from 30.8% for the year ended December 31, 2009. This decrease was the result of a change in the mix of accounts placed into this channel. Freshly charged-off accounts have a lower commission rate than accounts that have been charged-off for a longer period of time. During the year ended December 31, 2010, we collected more freshly charged-off accounts with our agencies as compared to the prior year.

The decrease in cost per dollar collected was partially offset by an increase in other costs not directly attributable to specific channel collections (other indirect costs), as a percentage of total collections, from 15.9% for the year ended December 31, 2009, to 16.3% for the year ended December 31, 2010. These costs include non-collection site salaries and employee benefits, general and administrative expenses, other operating expenses and depreciation and amortization. The dollar increase and the increase in cost per dollar collected were due to several factors, including increases in corporate settlements and increases in headcount and general and administrative expenses to support our growth.

The following table presents the items for reconciliation of operating expenses, excluding stock-based compensation expense and bankruptcy servicing operating expenses to GAAP total operating expenses (*in thousands*):

	Years Ended December 31,	
	2010	2009
GAAP total operating expenses, as reported	\$284,277	\$249,782
Stock-based compensation expense	(6,010 )	(4,384 )
Bankruptcy servicing operating expenses	(14,328 )	(13,218 )

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### **Interest expense**

The following table summarizes our interest expense (*in thousands, except percentages*):

	Year Ended December 31,			
	2010	2009	\$ Change	% Change
Stated interest on debt obligations	\$15,667	\$12,080	\$3,587	29.7 %
Amortization of loan fees and other loan costs	1,669	1,179	490	41.6 %
Amortization of debt discount—convertible notes	2,013	2,901	(888 )	(30.6 )%
Total interest expense	<u>\$19,349</u>	<u>\$16,160</u>	<u>\$3,189</u>	19.7 %

Stated interest on debt obligations increased \$3.6 million during the year ended December 31, 2010, compared to the prior year, primarily due to higher interest rates and increases in amounts borrowed under our revolving credit facility to fund our purchases of receivable portfolios and for general working capital needs.

### **Other income and expense**

During the year ended December 31, 2010, total other income was \$0.3 million, compared to a total other expense of less than \$0.1 million for the year ended December 31, 2009. The other income of \$0.3 million during the year ended December 31, 2010 was primarily attributable to a \$0.3 million gain recognized in connection with the early termination of a contract.

### **Provision for income taxes**

During the year ended December 31, 2010, we recorded an income tax provision of \$28.9 million, reflecting an effective rate of 37.1% of pretax income. The effective tax rate for the year ended December 31, 2010 primarily consisted of a provision for federal income taxes of 32.7% (which is net of a benefit for state taxes of 2.3%), a blended provision for state taxes of 6.7%, a 0.6% beneficial adjustment to federal taxes payable as a result of state tax true ups and a benefit for the effect of permanent book versus tax differences of 1.7%.

During the year ended December 31, 2009, we recorded an income tax provision of \$20.7 million, reflecting an effective rate of 38.5% of pretax income. The effective tax rate for the year ended December 31, 2009 primarily consisted of a provision for federal income taxes of 32.4% (which is net of a benefit for state taxes of 2.6%), a blended provision for state taxes of 7.3%, a 1.0% beneficial adjustment to federal taxes payable as a result of state tax rate changes and a benefit for the effect of permanent book versus tax differences of 0.2%.

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### Supplemental Performance Data

#### *Cumulative Collections to Purchase Price Multiple*

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

Year of Purchase	Purchase Price <sup>(1)</sup>	Cumulative Collections through December 31, 2011									
		<2005	2005	2006	2007	2008	2009	2010	2011	Total <sup>(2)</sup>	CCM <sup>(3)</sup>
<2005	\$385,471 <sup>(4)</sup>	\$749,791	\$224,620	\$164,211	\$85,333	\$45,893	\$27,708	\$19,986	\$15,180	\$1,332,722	3.5
2005	192,585	–	66,491	129,809	109,078	67,346	42,387	27,210	18,651	460,972	2.4
2006	141,027	–	–	42,354	92,265	70,743	44,553	26,201	18,306	294,422	2.1
2007	204,098	–	–	–	68,048	145,272	111,117	70,572	44,035	439,044	2.2
2008	227,863	–	–	–	–	69,049	165,164	127,799	87,850	449,862	2.0
2009	253,368	–	–	–	–	–	96,529	206,773	164,605	467,907	1.8
2010	358,800	–	–	–	–	–	–	125,853	288,788	414,641	1.2
2011	385,748	–	–	–	–	–	–	–	123,596	123,596	0.3
<b>Total</b>	<b>\$2,148,960</b>	<b>\$749,791</b>	<b>\$291,111</b>	<b>\$336,374</b>	<b>\$354,724</b>	<b>\$398,303</b>	<b>\$487,458</b>	<b>\$604,394</b>	<b>\$761,011</b>	<b>\$3,983,166</b>	<b>1.9</b>

(1) Adjusted for put-backs, account recalls, and purchase price rescissions. Put-backs represent accounts that are returned to the seller in accordance with the respective purchase agreement (“Put-Backs”). Recalls represents accounts that are recalled by the seller in accordance with the respective purchase agreement (“Recalls”).

(2) Cumulative collections from inception through December 31, 2011, excluding collections on behalf of others.

(3) Cumulative Collections Multiple (“CCM”) through December 31, 2011- collections as a multiple of purchase price.

(4) From inception through December 31, 2004.

#### *Total Estimated Collections to Purchase Price Multiple*

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

	Purchase Price <sup>(1)</sup>	Historical Collections <sup>(2)</sup>	Estimated	Total Estimated Gross Collections to Purchase Price	
			Remaining Collections		
			Total Estimated Gross Collections		
<2005	\$385,471 <sup>(3)</sup>	\$1,332,722	\$2,857	\$ 1,335,579	3.5
2005	192,585	460,972	12,715	473,687	2.5
2006	141,027	294,422	30,124	324,546	2.3
2007	204,098	439,044	60,355	499,399	2.4
2008	227,863	449,862	119,308	569,170	2.5
2009	253,368	467,907	224,749	692,656	2.7
2010	358,800	414,641	467,057	881,698	2.5
2011	385,748	123,596	653,492	777,088	2.0
<b>Total</b>	<b>\$2,148,960</b>	<b>\$3,983,166</b>	<b>\$1,570,657</b>	<b>\$ 5,553,823</b>	<b>2.6</b>

(1) Adjusted for Put-Backs, Recalls, and purchase price rescissions.

(2) Cumulative collections from inception through December 31, 2011, excluding collections on behalf of others.

(3) From inception through December 31, 2004.

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### ***Estimated Remaining Gross Collections by Year of Purchase***

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

	Estimated Remaining Gross Collections by Year of Purchase							
	2012	2013	2014	2015	2016	2017	2018	Total
<2005 <sup>(1)</sup>	\$1,328	\$1,002	\$527	\$-	\$-	\$-	\$-	\$2,857
2005	10,503	2,212	-	-	-	-	-	12,715
2006	16,496	11,323	2,305	-	-	-	-	30,124
2007	28,237	17,169	8,534	2,753	1,955	1,707	-	60,355
2008	54,215	32,966	18,565	10,258	3,304	-	-	119,308
2009	104,886	61,041	34,244	16,704	7,867	7	-	224,749
2010	192,176	122,039	74,628	43,817	24,351	10,033	13	467,057
2011	223,286	186,761	107,651	65,777	38,917	22,008	9,092	653,492
<b>Total</b>	<b>\$631,127</b>	<b>\$434,513</b>	<b>\$246,454</b>	<b>\$139,309</b>	<b>\$76,394</b>	<b>\$33,755</b>	<b>\$9,105</b>	<b>\$1,570,657</b>

<sup>(1)</sup> Estimated remaining collections for Zero Basis Portfolios can extend beyond our collection forecasts.

### ***Unamortized Balances of Portfolios***

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

	Unamortized Balance as of December 31, 2011	Purchase Price <sup>(1)</sup>	Unamortized Balance as a Percentage of Purchase Price		Unamortized Balance as a Percentage of Total	
2005	\$ 8,304	\$192,585	4.3	%	1.2	%
2006	17,394	141,027	12.3	%	2.4	%
2007	18,483	204,098	9.1	%	2.6	%
2008	58,249	227,863	25.6	%	8.1	%
2009	88,436	253,368	34.9	%	12.3	%
2010	190,948	358,800	53.2	%	26.7	%
2011	334,640	385,748	86.8	%	46.7	%
<b>Total</b>	<b>\$ 716,454</b>	<b>\$1,763,489</b>	<b>40.6</b>	<b>%</b>	<b>100.0</b>	<b>%</b>

<sup>(1)</sup> Purchase price refers to the cash paid to a seller to acquire a portfolio less Put-Backs, plus an allocation of our forward flow asset (if applicable), and less the purchase price for accounts that were sold at the time of purchase to another debt purchaser.

### ***Changes in the Investment in Receivable Portfolios***

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

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

	Year Ended December 31, 2011			
	Accrual Basis	Cost Recovery	Zero Basis	Total
	Portfolios	Portfolios	Portfolios	
Balance, beginning of period	\$644,753	\$ –	\$–	\$644,753
Purchases of receivable portfolios	386,850	–	–	386,850
Gross collections <sup>(1)</sup>	(740,402 )	–	(20,609)	(761,011)
Put-backs and recalls	(2,843 )	–	(9 )	(2,852 )
Revenue recognized	443,367	–	16,170	459,537
(Portfolio allowances) portfolio allowance reversals, net	(15,271 )	–	4,448	(10,823 )
Balance, end of period	\$716,454	\$ –	\$–	\$716,454
Revenue as a percentage of collections <sup>(2)</sup>	59.9 %	0.0 %	78.5 %	60.4 %

	Year Ended December 31, 2010			
	Accrual Basis	Cost Recovery	Zero Basis	Total
	Portfolios	Portfolios	Portfolios	
Balance, beginning of period	\$526,366	\$ 511	\$–	\$526,877
Purchases of receivable portfolios	361,957	–	–	361,957
Gross collections <sup>(1)</sup>	(593,749 )	(55 )	(10,590)	(604,394)
Put-backs and recalls	(3,981 )	–	–	(3,981 )
Revenue recognized	376,814	–	9,689	386,503
(Portfolio allowances) portfolio allowance reversals, net	(22,654 )	(456 )	901	(22,209 )
Balance, end of period	\$644,753	\$ –	\$–	\$644,753
Revenue as a percentage of collections <sup>(2)</sup>	63.5 %	0.0 %	91.5 %	63.9 %

	Year Ended December 31, 2009			
	Accrual Basis	Cost Recovery	Zero Basis	Total
	Portfolios	Portfolios	Portfolios	
Balance, beginning of period	\$460,598	\$ 748	\$–	\$461,346
Purchases of receivable portfolios	256,632	–	–	256,632
Gross collections <sup>(1)</sup>	(478,253 )	(237 )	(8,968 )	(487,458)
Put-backs and recalls	(3,371 )	–	(4 )	(3,375 )
Revenue recognized	310,116	–	8,926	319,042
(Portfolio allowances) portfolio allowance reversals, net	(19,356 )	–	46	(19,310 )
Balance, end of period	\$526,366	\$ 511	\$–	\$526,877
Revenue as a percentage of collections <sup>(2)</sup>	64.8 %	0.0 %	99.5 %	65.4 %

(1) Does not include amounts collected on behalf of others.

(2) Revenue as a percentage of collections excludes the effects of net portfolio allowance or net portfolio allowance reversals.

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As of December 31, 2011, we had \$716.5 million in investment in receivable portfolios. This balance will be amortized based upon current projections of cash collections in excess of revenue applied to the principal balance. The estimated amortization of the investment in receivable portfolio balance is as follows (*in thousands*):

	<u>Year Ended December 31,</u>	<u>Amortization</u>
2012		\$246,105
2013		205,498
2014		117,750
2015		72,901
2016		43,415
2017		22,951
2018		7,834
Total		<u>\$716,454</u>

### *Collections by Channel*

We utilize numerous business channels for the collection of charged-off credit cards and other receivables. The following table summarizes the gross collections by collection channel (*in thousands*):

	<u>Year Ended December 31,</u>		
	<u>2011</u>	<u>2010</u>	<u>2009</u>
Legal collections	\$377,455	\$266,762	\$232,667
Collection sites	335,992	268,205	185,789
Collection agencies	47,657	68,042	62,653
Other	54	1,600	6,683
	<u>\$761,158</u>	<u>\$604,609</u>	<u>\$487,792</u>

### *Legal Outsourcing Costs as a Percentage of Gross Collections by Year of Collection*

The following table summarizes our legal outsourcing court cost expense and commissions as a percentage of gross collections by year of collection:

<u>Placement Year</u>	<u>Collection Year</u>									<u>Cumulative</u>	
	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>Average</u>	
2003	41.7%	39.2%	35.2%	33.4%	31.0%	32.0%	32.9%	33.2%	31.3%	36.7	%
2004	–	41.7%	39.8%	35.7%	32.4%	32.8%	33.2%	34.6%	32.2%	37.7	%
2005	–	–	46.1%	40.6%	32.6%	32.1%	32.3%	34.0%	32.5%	38.2	%
2006	–	–	–	54.9%	41.0%	32.8%	30.5%	33.5%	32.7%	39.9	%
2007	–	–	–	–	64.8%	43.5%	31.3%	32.2%	32.5%	43.1	%
2008	–	–	–	–	–	69.7%	43.0%	33.1%	31.4%	43.6	%
2009	–	–	–	–	–	–	69.7%	41.4%	31.1%	44.2	%
2010	–	–	–	–	–	–	–	72.5%	39.1%	48.1	%
2011	–	–	–	–	–	–	–	–	64.5%	64.5	%

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### ***Headcount by Function by Site***

The following table summarizes our headcount by function by site:

	Headcount as of December 31,					
	2011		2010		2009	
	U.S.	India	U.S.	India	U.S.	India
General & Administrative	468	334	378	233	345	170
Account Manager	223	1,005	217	909	223	665
Bankruptcy Specialist	104	87	83	71	64	56
	<u>795</u>	<u>1,426</u>	<u>678</u>	<u>1,213</u>	<u>632</u>	<u>891</u>

### ***Gross Collections by Account Manager***

The following table summarizes our collection performance by account manager (*in thousands, except headcount*):

	Year Ended December 31,		
	2011	2010	2009
Gross collections—collection sites	\$335,992	\$268,205	\$185,789
Average active account managers	1,186	1,040	678
Collections per average active account manager	\$283.3	\$257.9	\$274.0

### ***Gross Collections per Hour Paid***

The following table summarizes our gross collections per hour paid to account managers (*in thousands, except gross collections per hour paid*):

	Year Ended December 31,		
	2011	2010	2009
Gross collections—collection sites	\$335,992	\$268,205	\$185,789
Total hours paid	2,243	1,960	1,242
Collections per hour paid	\$149.8	\$136.8	\$149.6

### ***Collection Sites Direct Cost per Dollar Collected***

The following table summarizes our gross collections in collection sites and the related direct cost (*in thousands, except percentages*):

	Year Ended December 31,					
	2011		2010		2009	
Gross collections—collection sites	\$335,992		\$268,205		\$185,789	
Direct costs <sup>(1)</sup>	\$25,112		\$24,312		\$22,536	
Cost per dollar collected	7.5	%	9.1	%	12.1	%

<sup>(1)</sup> Represent account managers and their supervisors' salaries, variable compensation, and employee benefits.

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### **Salaries and Employee Benefits by Function**

The following table summarizes our salaries and employee benefits by function (excluding stock-based compensation) (*in thousands*):

	Year Ended December 31,		
	2011	2010	2009
Portfolio purchasing and recovery activities			
Collection site salaries and employee benefits <sup>(1)</sup>	\$25,112	\$24,312	\$22,536
Non-collection site salaries and employee benefits	44,984	33,755	27,667
Subtotal	70,096	58,067	50,203
Bankruptcy services	11,413	7,700	7,822
	<u>\$81,509</u>	<u>\$65,767</u>	<u>\$58,025</u>

<sup>(1)</sup> Represent account managers and their supervisors' salaries, variable compensation, and employee benefits.

### **Purchases by Quarter**

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

Quarter	# of Accounts	Face Value	Purchase Price	Forward
				Flow Allocation <sup>(1)</sup>
Q1 2008	647	\$1,199,703	\$47,902	\$ 2,926
Q2 2008	676	1,801,902	52,492	2,635
Q3 2008	795	1,830,292	66,107	–
Q4 2008	1,084	1,729,568	63,777	–
Q1 2009	505	1,341,660	55,913	–
Q2 2009	719	1,944,158	82,033	–
Q3 2009	1,515	2,173,562	77,734	10,302
Q4 2009	519	1,017,998	40,952	–
Q1 2010	839	2,112,332	81,632	–
Q2 2010	1,002	2,245,713	83,336	–
Q3 2010	1,101	2,616,678	77,889	–
Q4 2010	1,206	3,882,646	119,100	–
Q1 2011	1,243	2,895,805	90,675	–
Q2 2011	1,477	2,998,564	93,701	–
Q3 2011	1,633	2,025,024	65,731	–
Q4 2011	2,776	3,782,595	136,743	–

<sup>(1)</sup> Allocation of the forward flow asset to the cost basis of receivable portfolio purchases. In July 2008, we ceased forward flow purchases from Jefferson Capital due to an alleged breach by Jefferson Capital and its parent, CompuCredit Corporation, of certain agreements. In September 2009, we settled our dispute with Jefferson Capital.

## **Liquidity and Capital Resources**

### **Overview**

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



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

	Year Ended December 31,		
	2011	2010	2009
Net cash provided by operating activities	\$84,579	\$75,475	\$76,519
Net cash used in investing activities	(88,088)	(142,807)	(79,171)
Net cash provided by financing activities	651	69,849	699

On February 11, 2011, we increased the amount available for borrowing under our revolving credit facility from \$360.5 million to \$410.5 million by exercising \$50.0 million of our \$100.0 million accordion feature. As of December 31, 2011, the aggregate revolving loan commitment and borrowing base availability under our revolving credit facility were \$105.5 million and \$91.2 million, respectively.

On February 10, 2011, we issued an additional \$25.0 million in senior secured notes to certain affiliates of Prudential Capital Group through an amended and restated note purchase agreement. The notes bear an annual interest rate of 7.375% and mature in 2018 with principal amortization beginning in May 2013. The proceeds from the notes were primarily used to reduce aggregate outstanding borrowings under our revolving credit facility. See Note 8 "Debt" to our consolidated financial statements for a further discussion of our debt.

Currently, all of our portfolio purchases are funded with cash from operations and borrowings under our revolving credit facility.

### ***Operating Cash Flows***

Net cash provided by operating activities was \$84.6 million, \$75.5 million and \$76.5 million for the years ended December 31, 2011, 2010, and 2009, respectively.

Cash provided by operating activities for the year ended December 31, 2011, is primarily related to net income of \$61.0 million and \$10.8 million in a non-cash add back related to the net portfolio allowance provision of our receivable portfolios. Cash provided by operating activities for the year ended December 31, 2010, is primarily related to net income of \$49.1 million and \$22.2 million in a non-cash add back related to the net portfolio allowance provision of our receivable portfolios. Cash provided by operating activities for the year ended December 31, 2009, is primarily related to net income of \$33.0 million, \$19.3 million in a non-cash add back related to the net portfolio allowance provision of our receivable portfolios and an \$11.2 million increase in income taxes payable.

### ***Investing Cash Flows***

Net cash used in investing activities was \$88.1 million, \$142.8 million, and \$79.2 million for the years ended December 31, 2011, 2010, and 2009, respectively.

The cash flows used in investing activities for the year ended December 31, 2011, are primarily related to receivable portfolio purchases of \$386.9 million, offset by gross collection proceeds applied to the principal of our receivable portfolios in the amount of \$301.5 million. The cash flows used in investing activities for the year ended December 31, 2010, are primarily related to receivable portfolio purchases of \$362.0 million, offset by gross collection proceeds applied to the principal of our receivable portfolios in the amount of \$217.9 million. The cash flows used in investing activities for the year ended December 31, 2009, are primarily related to receivable portfolio purchases of \$246.3 million (\$256.6 million of gross purchases less our forward flow allocation of \$10.3 million), offset by gross collection proceeds applied to the principal of our receivable portfolios in the amount of \$168.4 million.

Capital expenditures for fixed assets acquired with internal cash flow were \$5.6 million, \$2.7 million, and \$4.6 million for the years ended December 31, 2011, 2010 and 2009, respectively.

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### ***Financing Cash Flows***

Net cash provided by financing activities was \$0.7 million, \$69.8 million and \$0.7 million for the years ended December 31, 2011, 2010, and 2009, respectively.

The cash provided by financing activities during the year ended December 31, 2011, reflects \$121.0 million in borrowings under our revolving credit facility and \$25.0 million in proceeds from the issuance of our senior secured notes, offset by \$143.0 million in repayments of amounts outstanding under our revolving credit facility. The cash provided by financing activities during the year ended December 31, 2010, reflects \$125.5 million in borrowings under our revolving credit facility and \$50.0 million in proceeds from the issuance of our senior secured notes, offset by \$58.5 million in repayments of amounts outstanding under our revolving credit facility and \$42.9 million in repayments of the remaining balance of our convertible notes that matured on September 20, 2010. The cash provided by financing activities during the year ended December 31, 2009, reflects \$68.5 million in repayments of amounts outstanding under our revolving credit facility and \$22.3 million in repurchase of our outstanding convertible notes, offset by \$90.5 million in borrowings under our revolving credit facility.

### **Future Contractual Cash Obligations**

The following table summarizes our future contractual cash obligations as of December 31, 2011 (*in thousands*):

<u>Contractual Obligations</u>	<u>Payment Due By Period</u>				
	<u>Total</u>	<u>Less Than 1 Year</u>	<u>1 - 3 Years</u>	<u>3 - 5 Years</u>	<u>More Than 5 Years</u>
Revolving credit facility	\$305,000	\$-	\$305,000	\$-	\$-
Senior secured notes	75,000	2,500	28,750	30,000	13,750
Estimated interest payments <sup>(1)</sup>	61,956	26,454	31,041	4,086	375
Purchase commitments on receivable portfolios	151,043	151,043	-	-	-
Lease obligations	44,763	11,246	15,092	10,244	8,181
Employee agreements	331	331	-	-	-
<b>Total contractual cash obligations</b>	<b>\$638,093</b>	<b>\$191,574</b>	<b>\$379,883</b>	<b>\$44,330</b>	<b>\$22,306</b>

(1) We calculated estimated interest payments for long-term debt as follows: for the senior secured notes, we calculated interest based on the applicable rates and payment dates. For our revolving credit facility, we calculated the interest for the hedged portion using fixed interest rates plus the required spread. For the remaining balance, which is subject to a variable interest rate, we estimated the debt balance and interest rates based on our determination of the most likely scenario. We expect to settle such interest payments with cash flows from operating activities.

We are in compliance with all covenants under our financing arrangements and, excluding the effects of the one-time payment of \$16.9 million to eliminate all future contingent interest payments in the second quarter of 2007 (this payment, less amounts accrued on our balance sheet, resulted in a charge in our statement of operations of \$6.9 million after the effect of income taxes) and the effects of the adoption of a new accounting principal related to our convertible notes, we have achieved 40 consecutive quarters of positive net income. We believe that we have sufficient liquidity to fund our operations for at least the next twelve months, given our expectation of continued positive cash flows from operations, our cash and cash equivalents of \$8.0 million as of December 31, 2011, our access to the capital markets and availability under our revolving credit facility, which expires in December 2013.

### **Off-Balance Sheet Arrangements**

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

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### **Critical Accounting Policies**

*Investment in Receivable Portfolios and Related Revenue.* As permitted by the authoritative guidance for loans and debt securities acquired with deteriorated credit quality, static pools are established on a quarterly basis with accounts purchased during the quarter that have common risk characteristics. Discrete receivable portfolio purchases during a quarter are aggregated into pools based on these common risk characteristics. Once a static pool is established, the portfolios are permanently assigned to the pool. The discount (*i.e.*, the difference between the cost of each static pool and the related aggregate contractual receivable balance) is not recorded because we expect to collect a relatively small percentage of each static pool's contractual receivable balance. As a result, receivable portfolios are recorded at cost at the time of acquisition. The purchase cost of the portfolios includes certain fees paid to third parties incurred in connection with the direct acquisition of the receivable portfolios.

In compliance with the authoritative guidance, we account for our investments in consumer receivable portfolios using either the interest method or the cost recovery method. The interest method applies an internal rate of return ("IRR"), to the cost basis of the pool, which remains unchanged throughout the life of the pool, unless there is an increase in subsequent expected cash flows. Subsequent increases in expected cash flows are generally recognized prospectively through an upward adjustment of the pool's IRR over its remaining life. Subsequent decreases in expected cash flows do not change the IRR, but are recognized as an allowance to the cost basis of the pool, and are reflected in the consolidated statements of income as a reduction in revenue, with a corresponding valuation allowance, offsetting the investment in receivable portfolios in the consolidated statements of financial condition.

We account for each static pool as a unit for the economic life of the pool (similar to one loan) for recognition of revenue from receivable portfolios, for collections applied to the cost basis of receivable portfolios and for provision for loss or allowance. Revenue from receivable portfolios is accrued based on each pool's IRR applied to each pool's adjusted cost basis. The cost basis of each pool is increased by revenue earned and decreased by gross collections and portfolio allowances.

If the amount and timing of future cash collections on a pool of receivables are not reasonably estimable, we account for such portfolios on the cost recovery method as cost recovery portfolios. The accounts in these portfolios have different risk characteristics than those included in other portfolios acquired during the same quarter, or the necessary information was not available to estimate future cash flows and, accordingly, they were not aggregated with other portfolios. Under the cost recovery method of accounting, no income is recognized until the purchase price of a cost recovery portfolio has been fully recovered.

*Deferred Revenue.* We provide bankruptcy administration services primarily to holders of motor vehicle and real estate secured loans, on which the consumer has filed for Chapter 7 or 13 bankruptcy protection. These services are provided subject to the terms of long-term contracts. Such contracts generally have initial terms of one or two years and automatically renew annually. Fees for the bankruptcy administration services are charged on a 'per referred' account basis and generally consist of an upfront fee at the time of account referral. This upfront fee is typically coupled with either an ongoing monthly service fee per referred account or service specific fees based on a predetermined fee schedule. The servicing deliverable for Chapter 7 accounts is focused on the completion of the entire bankruptcy process resulting in the most favorable possible conclusion for the customer. As a result, revenue is deferred and not recognized until the bankruptcy case is closed (dismissal/discharge). Due to practical limitations and constraints, a historical average life of eight months is used rather than actual closure dates. Therefore, the total financial consideration (less efforts applied to litigation for client contracts without a separate litigation fee schedule) is recognized seven months after a referred account is activated. Chapter 13 bankruptcy proceedings, also known as reorganizations, are generally designed to restructure an individual's debts and allow him or her to propose a repayment plan detailing how he or she is going to pay back his or her debts over the plan period. The responsibility of Ascension is to ensure that the client's claim is recognized by the court to the maximum benefit of the client, and to monitor and/or collect the consumer payments throughout the confirmed bankruptcy plan term. The average duration period for Chapter 13 bankruptcy placements is 33 months. Given the nature and duration of a Chapter 13 proceeding, the monthly servicing deliverable provided relative to a Chapter 13 referred account is

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considered “delivered” each month and revenue is recognized ratably, including any upfront fees we received over time as the services are provided. The litigation deliverable is an as incurred event, with revenue recognized based on the historical percentage of accounts litigated over the average duration of an account. Any billings in excess of the ratable revenue will be deferred. The average duration period for Chapter 7 and 13 bankruptcy placements is reviewed periodically for changes. We include deferred revenue in “Other liabilities” in our Consolidated Statements of Financial Condition.

*Deferred Court Costs.* We contract with a nationwide network of attorneys that specialize in collection matters. We generally refer charged-off accounts to our contracted attorneys when we believe the related consumer has sufficient assets to repay the indebtedness and has, to date, been unwilling to pay. In connection with our agreements with our contracted attorneys, we advance certain out-of-pocket court costs, or Deferred Court Costs. We capitalize these costs in the consolidated financial statements and provide a reserve for those costs that we believe will ultimately be uncollectible. We determine the reserve based on our analysis of court costs that have been advanced and recovered, or that we anticipate recovering. Deferred Court Costs not recovered within three years of placement are fully written off.

*Derivative Instruments and Hedging Activities.* We use derivative instruments to manage risks related to interest rates and foreign currency. Our interest rate swap contracts and foreign currency exchange contracts qualify for hedge accounting treatment under the authoritative guidance for derivatives and hedging.

The authoritative guidance for derivatives and hedging requires that qualifying derivative instruments be recorded on the balance sheet as either an asset or liability measured at its fair value. The effective portion of the change in fair value of the derivative is recorded in other comprehensive income. The ineffective portion of the change in fair value of the derivatives, if any, is recognized in earnings in the period of change. See Note 3 “Derivatives and Hedging Instruments” to our consolidated financial statements for further discussion of our derivative instruments.

*Goodwill and Other Intangible Assets.* In accordance with authoritative guidance on goodwill and other intangible assets, we perform annual impairment analyses to assess the recoverability of the goodwill at each reporting unit. Application of the goodwill impairment test requires judgment, including the identification of reporting units, assigning assets and liabilities to reporting units, assigning goodwill to reporting units, and determining the fair value of each reporting unit. Effective July 1, 2011, we adopted the amended standard for goodwill impairment testing. The amended standard allows companies to first assess qualitative factors to determine whether it is necessary to perform the two-step quantitative goodwill impairment test. The qualitative factors include economic environment, business climate, market capitalization, operating performance, competition, and other factors.

If quantitative analyses are required, we apply various valuation techniques to measure the fair value of each reporting unit. Significant judgments are required to estimate the fair value of reporting units including estimating future cash flows, and determining appropriate discount rates, growth rates, and other assumptions. We will perform additional impairment testing if events occur or circumstances change between annual tests, that would more likely than not, reduce the fair value of the reporting unit below its carrying value.

Intangible assets with estimable useful lives are required to be amortized over their respective estimated useful lives and reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. An impairment evaluation is based on an undiscounted cash flow analysis. We assess potential impairments to intangible assets when there is evidence that events or changes in circumstances indicate that the carrying amount of an asset or asset group may not be recovered. Our judgments regarding the existence of impairment indicators and future cash flows related to intangible assets are based on operational performance of our businesses, market conditions and other factors.

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*Stock-Based Compensation.* We record compensation costs related to our stock-based awards which include stock options, restricted stock awards and restricted stock units. We measure stock-based compensation cost at the grant date based on the fair value of the award. Compensation cost for service-based awards is recognized ratably over the applicable vesting period. Compensation cost for performance-based awards is reassessed each period and recognized based upon the probability that the performance targets will be achieved. The amount of stock-based compensation expense recognized during a period is based on the portion of the awards that are ultimately expected to vest. The total expense recognized over the vesting period will only be for those awards that ultimately vest.

*Income Taxes.* We use the liability method of accounting for income taxes. When we prepare the consolidated financial statements, we estimate our income taxes based on the various jurisdictions where we conduct business. This requires us to estimate our current tax exposure and to assess temporary differences that result from differing treatments of certain items for tax and accounting purposes. Deferred income taxes are recognized based on the differences between the financial statement and income tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. We then assess the likelihood that our deferred tax assets will be realized. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized. When we establish a valuation allowance or increase this allowance in an accounting period, we record a corresponding tax expense in our statement of income. When we reduce our valuation allowance in an accounting period, we record a corresponding tax benefit in our statement of income. We include interest and penalties related to income taxes within our provision for income taxes. See Note 10 “Income Taxes” to our consolidated financial statements for further discussion of income taxes.

*Use of Estimates.* We have made significant estimates with respect to the rate of return established to recognize accretion revenue on our receivable portfolios and with respect to the provision for allowances of receivable portfolios. In connection with these estimates, we have made significant estimates with respect to the timing and amount of collections of future cash flows from receivable portfolios owned.

Significant estimates have also been made with respect to Ascension’s service revenue, the ability to realize our net deferred court costs, intangible assets, net deferred tax assets and tax reserve, stock-based compensation, and the potential liabilities with respect to our health benefit plans.

### **Item 7A—Quantitative and Qualitative Disclosures About Market Risk**

We are exposed to economic risks from foreign currency exchange rates and interest rates. A portion of these risks is hedged, but the risks may impact our financial statements.

*Foreign Currency.* We have operations in India, which expose us to foreign currency exchange rate fluctuations due to transactions denominated in Indian rupees, such as employee salaries and rent expenditures. We continuously evaluate and manage our foreign currency risk through the use of derivative financial instruments, including foreign currency forward contracts with financial counterparties where practicable. Such derivative instruments are viewed as risk management tools and are not used for speculative or trading purposes. As of December 31, 2011, we had 44 outstanding foreign currency forward contracts that hedge our risk of foreign currency exchange against the Indian rupee. Each contract settles monthly with a notional amount ranging from an United States dollar equivalent of \$0.2 million to \$1.4 million. The contracts hedge the forecasted monthly cash settlements resulting from the expenses incurred by our operations in India. We have not experienced any hedge ineffectiveness since the inception of the hedging program; a hypothetical change in the foreign exchange rate against the Indian rupee would not have a material impact on our consolidated statement of income.

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In addition, we are exposed to foreign currency risk that arises from the revaluation of monetary assets and liabilities held by our subsidiary in India that are not denominated in our functional currency. We may hedge currency exposures associated with certain assets and liabilities denominated in nonfunctional currencies and certain anticipated nonfunctional currency transactions. We could experience unanticipated gains or losses on anticipated foreign currency cash flows.

*Interest Rate.* As of December 31, 2011, we had total variable-interest-bearing borrowings of \$305.0 million outstanding under our revolving credit facility, thus subjecting us to interest rate risk. We manage our interest rate risk through the use of derivative financial instruments, including interest rate swap contracts with financial counterparties. Such derivative instruments are viewed as risk management tools and are not used for speculative or trading purposes. We entered into several receive-floating pay-fixed interest rate swaps to hedge against potential changes in cash flows on our outstanding variable-interest-bearing debt. The receive variable leg of the swaps and the variable rate paid on the underlying debt bear the same rate of interest, excluding the credit spread, and reset and pay interest on the same dates. As of December 31, 2011, we have six interest rate swap contracts with financial counterparties with a total notional amount of \$150.0 million. The contracts bear fixed annual interest rates ranging from 0.765% to 1.00%.

From the inception of the hedging program, the swaps have been determined to be highly effective. A hypothetical change in the interest rates would not have an impact on our interest expense on the \$150.0 million hedged portion of our variable-interest-bearing debt. The remaining \$150.5 million of our revolving credit facility is subject to the risk of interest rate fluctuations. If the market interest rates for our variable rate agreements increase 10%, interest expense on such outstanding debt would increase by approximately \$0.7 million, on an annualized basis. Conversely, if the market interest rates decreased an average of 10%, our interest expense on such outstanding debt would decrease by \$0.7 million.

Our analysis and methods used to assess and mitigate the risks discussed above should not be considered projections of future risks.

### **Item 8—Financial Statements and Supplementary Data**

Our consolidated financial statements, the notes thereto and the Report of BDO USA, LLP, our Independent Registered Public Accounting Firm, are included in this Annual Report on Form 10-K on pages F-1 through F-28.

### **Item 9—Changes in and Disagreements With Accountants on Accounting and Financial Disclosure**

None.

### **Item 9A—Controls and Procedures**

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

As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Exchange Act Rule 13a-15(e) and 15d-15(e). Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of the end of the period covered by this Annual Report on Form 10-K, our disclosure controls and procedures are effective in enabling us to record, process, summarize and report information required to be included in our periodic SEC filings within the required time period.

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### ***Management's Report on Internal Control over Financial Reporting***

The Company's management, including our Chief Executive Officer and Chief Financial Officer, is responsible for establishing and maintaining adequate internal control over financial reporting (as such term is defined in Exchange Act Rule 13a-15(f) and 15d-15(f)) for Encore Capital Group, Inc. and its subsidiaries (the "Company"). The Company's internal control system was designed to provide reasonable assurance to the Company's management and Board of Directors regarding the preparation and fair presentation of published consolidated financial statements in accordance with accounting principles generally accepted in the United States of America.

Because of its inherent limitations, a system of internal control over financial reporting can provide only reasonable assurance and may not prevent or detect misstatements. Further, because of changing conditions, effectiveness of internal control over financial reporting may vary over time. The Company's processes contain self-monitoring mechanisms and actions are taken to correct deficiencies as they are identified.

Management has assessed the effectiveness of Encore's internal control over financial reporting as of December 31, 2011, based on the criteria for effective internal control described in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on its assessment, management concluded that the Company's internal control over financial reporting was effective as of December 31, 2011.

BDO USA, LLP, the independent registered public accounting firm that audited the consolidated financial statements included in this Annual Report on Form 10-K, was engaged to attest to and report on the effectiveness of Encore's internal control over financial reporting as of December 31, 2011, as stated in its report below.

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### **Report of Independent Registered Public Accounting Firm**

Board of Directors and Stockholders  
Encore Capital Group, Inc.  
San Diego, California

We have audited Encore Capital Group, Inc.' s internal control over financial reporting as of December 31, 2011, based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Encore Capital Group, Inc.' s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management' s Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the company' s internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company' s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company' s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company' s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Encore Capital Group, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2011, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated statements of financial condition of Encore Capital Group, Inc. as of December 31, 2011 and 2010, and the related consolidated statements of income, stockholders' equity and comprehensive income, and cash flows for each of the three years in the period ended December 31, 2011 and our report dated February 9, 2012, expressed an unqualified opinion thereon.

/s/ BDO USA, LLP

San Diego, California  
February 9, 2012

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

There was no change in internal control over financial reporting (as such term is defined in Exchange Act Rules 13a-15(f) and 15d-15(f)), during our fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

### **Item 9B–Other Information**

None.

## **PART III**

### **Item 10–Directors, Executive Officers and Corporate Governance**

The information under the captions “Election of Directors,” “Executive Officers” and “Section 16(a) Beneficial Ownership Reporting Compliance,” appearing in the 2012 Proxy Statement to be filed no later than April 29, 2012, is hereby incorporated by reference.

### **Item 11–Executive Compensation**

The information under the caption “Executive Compensation and Other Information,” appearing in the 2012 Proxy Statement to be filed no later than April 29, 2012, is hereby incorporated by reference.

### **Item 12–Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

The information under the captions “Security Ownership of Principal Stockholders and Management” and “Equity Compensation Plan Information,” appearing in the 2012 Proxy Statement to be filed no later than April 29, 2012, is hereby incorporated by reference.

### **Item 13–Certain Relationships and Related Transactions, and Director Independence**

The information under the captions “Certain Relationships and Related Transactions” and “Election of Directors–Corporate Governance–Director Independence,” appearing in the 2012 Proxy Statement to be filed no later than April 29, 2012, is hereby incorporated by reference.

### **Item 14–Principal Accounting Fees and Services**

The information under the caption “Independent Registered Public Accounting Firm,” appearing in the 2012 Proxy Statement to be filed no later than April 29, 2012, is hereby incorporated by reference.

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### PART IV

#### Item 15—Exhibits and Financial Statement Schedules

##### (a) Financial Statements.

The following consolidated financial statements of Encore Capital Group, Inc. are filed as part of this annual report on Form 10-K:

Report of Independent Registered Public Accounting Firm	F-1
Consolidated Statements of Financial Condition at December 31, 2011 and 2010	F-2
Consolidated Statements of Income for the years ended December 31, 2011, 2010 and 2009	F-3
Consolidated Statements of Stockholders' Equity and Comprehensive Income for the years ended December 31, 2011, 2010 and 2009	F-4
Consolidated Statements of Cash Flows for the years ended December 31, 2011, 2010 and 2009	F-5
Notes to Consolidated Financial Statements	F-6

##### (b) Exhibits.

<u>Number</u>	<u>Description</u>
3.1	Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to Amendment No. 2 to the Company' s Registration Statement on Form S-1/A filed on June 14, 1999, File No. 333-77483)
3.2	Certificate of Amendment to the Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Company' s Current Report on Form 8-K filed on April 4, 2002, File No. 000-26489)
3.3	Bylaws, as amended through February 8, 2011 (incorporated by reference to Exhibit 3.3 to the Company' s Annual Report on Form 10-K filed on February 14, 2011)
4.1	Registration Rights Agreement, dated as of February 21, 2002, between the Company and the several Purchasers listed on Schedule A thereto (incorporated by reference to Exhibit 4.3 to the Company' s Current Report on Form 8-K filed on February 25, 2002, File No. 000-26489)
4.2	Amended and Restated Registration Rights Agreement, dated as of October 31, 2000, between the Company and the several stockholders listed therein (incorporated by reference to Exhibit 4.2 to the Company' s Current Report on Form 8-K filed on August 22, 2003, File No. 000-26489)
4.3	Registration Rights Agreement, dated as of September 19, 2005, by and among Encore Capital Group, Inc. and Morgan Stanley & Co. Incorporated and J.P. Morgan Securities Inc. (incorporated by reference to Exhibit 10.5 to the Company' s Current Report on Form 8-K filed on September 22, 2005)
4.4	First Amendment, dated as of March 13, 2001, to Amended and Restated Registration Rights Agreement, dated as of October 31, 2000, between the Company and the several stockholders listed therein (incorporated by reference to Exhibit 4.3 to the Company' s Current Report on Form 8-K filed on August 22, 2003, File No. 000-26489)
4.5	Indenture, dated September 19, 2005, by and between Encore Capital Group, Inc. and JP Morgan Chase Bank, N.A. (incorporated by reference to Exhibit 4.1 to the Company' s Current Report on Form 8-K filed on September 22, 2005)
4.6	Instrument of Resignation, Appointment and Acceptance, dated September 21, 2006, by and among Encore Capital Group, Inc., JPMorgan Chase Bank, N.A., and The Bank of New York (now known as The Bank of New York Mellon Trust Company, N.A.) as successor trustee (incorporated by reference to Exhibit 4.1 to the Company' s Quarterly Report on Form 10-Q filed on July 30, 2009)

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<u>Number</u>	<u>Description</u>
4.7	Form of 3.375% Convertible Senior Notes due 2010 (incorporated by reference to Exhibit 4.2 to the Company' s Current Report on Form 8-K filed on September 22, 2005)
4.8	Form of Common Stock Certificate (incorporated by reference to Exhibit 4.7 to the Company' s Registration Statement on Form S-3 filed on December 21, 2009, File No. 333-163876)
4.9*	Senior Secured Note Purchase Agreement, dated September 20, 2010, by and among the Company, The Prudential Insurance Company of America, Pruco Life Insurance Company, Prudential Retirement Insurance and Annuity Company and Prudential Annuities Life Assurance Corporation (incorporated by reference to Exhibit 4.1 to the Company' s Current Report on Form 8-K/A filed on October 25, 2010)
4.10*	Form of Note (incorporated by reference to Exhibit 4.2 to the Company' s Current Report on Form 8-K/A filed on October 25, 2010)
4.11*	Amended and Restated Senior Secured Note Purchase Agreement, dated February 10, 2011, by and among the Company, The Prudential Insurance Company of America, Pruco Life Insurance Company, Prudential Retirement Insurance and Annuity Company and Prudential Annuities Life Assurance Corporation (incorporated by reference to Exhibit 4.1 to the Company' s Quarterly Report on Form 10-Q filed on April 27, 2011)
4.12	Form of 7.75% Senior Secured Note due 2017 (incorporated by reference to Exhibit 4.2 to the Company' s Quarterly Report on Form 10-Q filed on April 27, 2011)
4.13	Form of 7.375% Senior Secured Note due 2018 (incorporated by reference to Exhibit 4.3 to the Company' s Quarterly Report on Form 10-Q filed on April 27, 2011)
10.1	Multi-Tenant Office Lease dated as of April 8, 2004 between LBA Realty Fund-Holding Co. I, LLC and Midland Credit Management, Inc. (the "Midland Lease") (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on May 4, 2004, File No. 000-26489)
10.2	Lease Guaranty dated as of April 8, 2004 by the Company in favor of LBA Realty Fund-Holding Co. I, LLC in connection with the Midland Lease (incorporated by reference to Exhibit 10.2 to the Company' s Current Report on Form 8-K filed on May 4, 2004, File No. 000-26489)
10.3+	1999 Equity Participation Plan, as amended (incorporated by reference to Appendix I to the Company' s proxy statement filed on April 1, 2004, File No. 000-26489)
10.4+	Form of Indemnification Agreement (incorporated by reference to Exhibit 10.1 of the Company' s Current Report on Form 8-K filed on May 4, 2006)
10.5+	Form of Option Amendment (incorporated by reference to Exhibit 10.2 of the Company' s Current Report on Form 8-K filed on May 4, 2006)
10.6+	Executive Non-Qualified Excess Plan (incorporated by reference to Exhibit 10.6 of the Company' s Annual Report on Form 10-K filed on February 11, 2009)
10.7+	Encore Capital Group, Inc. 2005 Stock Incentive Plan, as amended and restated (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on June 15, 2009)
10.8+	Amended Form of Stock Option Agreement for awards under the 2005 Stock Incentive Plan (incorporated by reference to Exhibit 10.3 to the Company' s Quarterly Report on Form 10-Q filed on July 30, 2009)
10.9+	Amended Form of Restricted Stock Unit Grant Notice and Agreement (incorporated by reference to Exhibit 10.2 to the Company' s Quarterly Report on Form 10-Q filed on July 30, 2009)
10.10+	Form of Split-Dollar Agreement (incorporated by reference to Exhibit 10.3 to the Company' s Current Report on Form 8-K filed on May 4, 2006)



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<u>Number</u>	<u>Description</u>
10.11	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") (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed on June 8, 2005)
10.12	Amendment No. 1 to the Credit Agreement, dated as of August 1, 2005 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on August 1, 2005)
10.13	Amendment No. 2, to the Credit Agreement, dated as of May 3, 2006 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on May 9, 2006)
10.14	Amendment No. 3, to the Credit Agreement, dated as of February 27, 2007 (incorporated by reference to Exhibit 10.29 to the Company's Annual Report on Form 10-K filed on February 28, 2007)
10.15	Consent and Amendment No. 4 to the Credit Agreement, dated as of May 7, 2007 (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q filed on May 8, 2007)
10.16	Amendment No. 5 to the Credit Agreement, dated as of October 19, 2007 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on October 22, 2007)
10.17	Amendment No. 6 to the Credit Agreement, dated as of December 27, 2007 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on December 27, 2007)
10.18	Amendment No. 7 to the Credit Agreement, dated as of May 9, 2008 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed July 7, 2008)
10.19	Amendment No. 8 to the Credit Agreement, dated as of July 3, 2008 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed July 7, 2008)
10.20	Pledge and Security Agreement dated as of June 7, 2005, with respect to the Credit Agreement (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed on June 8, 2005)
10.21	Guaranty dated as of June 7, 2005, with respect to the Credit Agreement (incorporated by reference to Exhibit 10.5 to the Company's Current Report on Form 8-K filed on June 8, 2005)
10.22+	Severance protection letter agreement dated as of March 11, 2009 between the Company and J. Brandon Black (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on March 13, 2009)
10.23+	Severance protection letter agreement dated as of March 11, 2009 between the Company and Paul Grinberg (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on March 13, 2009)
10.24	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. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on June 8, 2005)
10.25	Acknowledgement Agreement dated as of June 7, 2005 between CompuCredit Corporation and Midland Funding LLC (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on June 8, 2005)
10.26	Asset Purchase Agreement dated as of August 30, 2005 among Ascension Capital Group, Ltd., Ascension Capital Management, L.L.C., The Erich M. Ramsey Trust, Erich M. Ramsey, Leonard R. Oszustowicz, Jeffrey J. Walter, Ascension Acquisition, LP, and Encore Capital Group, Inc. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on September 2, 2005)

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<u>Number</u>	<u>Description</u>
10.27	Convertible Note Hedge Confirmation, dated as of September 13, 2005, by and between Encore Capital Group, Inc. and JPMorgan Chase Bank, National Association, an affiliate of J.P. Morgan Securities Inc. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on September 22, 2005)
10.28	Convertible Note Hedge Confirmation, dated as of September 13, 2005, by and between Encore Capital Group, Inc. and Morgan Stanley International Limited, an affiliate of Morgan Stanley & Co. Incorporated. (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed on September 22, 2005)
10.29	Convertible Note Hedge Confirmation, dated as of September 30, 2005, by and between Encore Capital Group, Inc. and JPMorgan Chase Bank, National Association, an affiliate of J.P. Morgan Securities Inc. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on October 6, 2005)
10.30	Convertible Note Hedge Confirmation, dated as of September 30, 2005, by and between Encore Capital Group, Inc. and Morgan Stanley International Limited, an affiliate of Morgan Stanley & Co. Incorporated. (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed on October 6, 2005)
10.31	Warrant Confirmation, dated as of September 13, 2005, by and between Encore Capital Group, Inc. and JPMorgan Chase Bank, National Association, an affiliate of J.P. Morgan Securities Inc. (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on September 22, 2005)
10.32	Warrant Confirmation, dated as of September 13, 2005, by and between Encore Capital Group, Inc. and Morgan Stanley International Limited, an affiliate of Morgan Stanley & Co. Incorporated. (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed on September 22, 2005)
10.33	Warrant Confirmation, dated as of September 30, 2005, by and between Encore Capital Group, Inc. and JPMorgan Chase Bank, National Association, an affiliate of J.P. Morgan Securities Inc. (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on October 6, 2005)
10.34	Warrant Confirmation, dated as of September 30, 2005, by and between Encore Capital Group, Inc. and Morgan Stanley International Limited, an affiliate of Morgan Stanley & Co. Incorporated. (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed on October 6, 2005)
10.35	Lease Agreement, dated as of March 24, 2009, between Midland Credit Management India Private Limited, Dinesh Kumar and Manmohan Gaiind, for real property located in Gurgaon, India (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q filed on April 29, 2009)
10.36	Lease Deed, dated as of April 22, 2009, between Midland Credit Management India Private Limited and R.S. Technologies Private Limited, for real property located in Gurgaon, India (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q filed on April 29, 2009)
10.37	Sublease, dated as of March 31, 2008, by and between Encore Capital Group, Inc. and FMT Services, Inc., for real property located in St. Cloud, Minnesota (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed on August 4, 2008)
10.38	Multi-Tenant Net Commercial Lease, dated as of February 20, 2008, by and between Encore Capital Group, Inc. and Pranjivan R. Lodhia and Lolita Lodhia, for real property located in Phoenix, Arizona (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q filed on August 4, 2008)

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<u>Number</u>	<u>Description</u>
10.39	Sublease, dated as of February 12, 2004, by and between Southwestern Bell Telephone, L.P. and Ascension Capital Group, Inc., as successor in interest to Ascension Capital Group, Ltd., for real property located in Arlington, Texas (incorporated by reference to Exhibit 10.39 to the Company' s Annual Report on Form 10-K filed on February 8, 2010)
10.40	Assignment and Consent to Assignment of Sublease, dated as of August 18, 2005, by and between DBSI Housing, Inc., Ascension Capital Group, Ltd., Encore Capital Group, Inc., Ascension Acquisition, L.P., now known as Ascension Capital Group, Inc., and Southwestern Bell Telephone, L.P. (incorporated by reference to Exhibit 10.40 to the Company' s Annual Report on Form 10-K filed on February 8, 2010)
10.41	Credit Agreement dated as of February 8, 2010 by and among Encore Capital Group, Inc., the Lenders from time to time parties thereto, and JPMorgan Chase Bank, N.A., as administrative agent (the "2010 Credit Agreement") (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on February 8, 2010)
10.42	Pledge and Security Agreement dated as of February 8, 2010 with respect to the 2010 Credit Agreement (incorporated by reference to Exhibit 10.2 to the Company' s Current Report on Form 8-K filed on February 8, 2010)
10.43	Guaranty dated as of February 8, 2010 with respect to the 2010 Credit Agreement (incorporated by reference to Exhibit 10.3 to the Company' s Current Report on Form 8-K filed on February 8, 2010)
10.44	Form of Restricted Stock Agreement by and between George Lund and Encore Capital Group, Inc. (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on June 17, 2010)
10.45	Amendment No. 1 to the Credit Agreement, dated September 20, 2010, by and among the Company, the financial institutions listed on the signatures pages thereto and JPMorgan Chase Bank N.A. as collateral agent and administrative agent (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on September 23, 2010)
10.46	Amendment No. 2 to the Credit Agreement, dated September 21, 2010, by and among the Company, the financial institutions listed on the signatures pages thereto and JPMorgan Chase Bank N.A. as collateral agent and administrative agent (incorporated by reference to Exhibit 10.2 to the Company' s Current Report on Form 8-K filed on September 23, 2010)
10.47	Amendment No. 3 to the Credit Agreement, dated as of March 25, 2011, by and among the Company, the financial institutions listed on the signatures pages thereto and JPMorgan Chase Bank N.A. as collateral agent, lender and administrative agent (incorporated by reference to Exhibit 10.1 to the Company' s Quarterly Report on Form 10-Q filed on April 27, 2011)
10.48	Lease Deed, dated as of October 26, 2010, between Midland Credit Management India Private Limited and R.S. Technologies Private Limited, for real property located in Gurgaon, India (incorporated by reference to Exhibit 10.47 to the Company' s Annual Report on Form 10-K filed on February 14, 2011)
10.49	Lease Deed, dated as of March 4, 2011, between Midland Credit Management, Inc., a Kansas corporation ("Tenant") and Teachers Insurance and Annuity Association of America for the Benefit of its Separate Real Estate Account, a New York corporation ("Landlord") for real property located in San Diego, California (the "San Diego Lease") (filed herewith)
10.50	Lease Guaranty dated as of March 4, 2011 by Encore Capital Group, Inc. in favor of Teachers Insurance and Annuity Association of America for the Benefit of its Separate Real Estate Account in connection with the San Diego Lease (filed herewith)

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<u>Number</u>	<u>Description</u>
10.51	Lease Deed, dated as of September 27, 2011, between TRES - CIENTO DOS - SEISCIENTOS TREINTA Y CUATRO MIL DOSCIENTOS CUARENTA Y TRES, SOCIEDAD DE RESPONSABILIDAD LIMITADA (“Lessee”) and B.T. Consulting and Services, S.A. (“Lessor”), for real property located in Lagunilla de Heredia, Costa Rica, as amended on October 20, 2011 to reflect the name change of Lessee to MCM Midland Management Costa Rica, S.r.L. (filed herewith)
21	List of Subsidiaries (filed herewith)
23	Consent of Independent Registered Public Accounting Firm, BDO USA, LLP, dated February 9, 2012 (filed herewith)
24	Power of Attorney (filed herewith)
31.1	Certification of the Principal Executive Officer pursuant to Rule 13a-14(a) or 15d-14(a) under the Securities Exchange Act of 1934 (filed herewith)
31.2	Certification of the Principal Financial Officer pursuant to Rule 13a-14(a) or 15d-14(a) under the Securities Exchange Act of 1934 (filed herewith)
32.1	Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (furnished herewith)
101	The following financial information from the Encore Capital Group, Inc. Annual Report on Form 10-K for the year ended December 31, 2011 formatted in eXtensible Business Reporting Language (XBRL): (i) Consolidated Statements of Financial Condition; (ii) Consolidated Statements of Income; (iii) Consolidated Statements of Stockholders’ Equity and Comprehensive Income; (iv) Consolidated Statements of Cash Flows; and (v) the Notes to Consolidated Financial Statements, tagged as blocks of text. **

\* The asterisk denotes that confidential portions of this exhibit have been omitted in reliance on Rule 24b-2 of the Securities Exchange Act of 1934. The confidential portions have been submitted separately to the Securities and Exchange Commission.

+ Management contract or compensatory plan or arrangement.

\*\* Pursuant to Rule 406T of Regulation S-T, the Interactive Data Files on Exhibit 101 hereto are deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, are deemed not filed for purposes of Section 18 of the Securities and Exchange Act of 1934, as amended, and otherwise are not subject to liability under those sections.

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## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ENCORE CAPITAL GROUP, INC.,  
a Delaware corporation

By:           /s/ J. BRANDON BLACK            
**J. Brandon Black**  
**President and Chief Executive Officer**

Date: February 9, 2012

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Name and Signature</u>	<u>Title</u>	<u>Date</u>
<u>          /s/ J. BRANDON BLACK          </u> <b>J. Brandon Black</b>	President and Chief Executive Officer and Director (Principal Executive Officer)	February 9, 2012
<u>          /s/ PAUL GRINBERG          </u> <b>Paul Grinberg</b>	Executive Vice President, Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer)	February 9, 2012
<u>          /s/ GEORGE LUND*          </u> <b>George Lund</b>	Executive Chairman and Director	February 9, 2012
<u>          /s/ RICHARD A. MANDELL *          </u> <b>Richard A. Mandell</b>	Director	February 9, 2012
<u>          /s/ WILLEM MESDAG*          </u> <b>Willem Mesdag</b>	Director	February 9, 2012
<u>          /s/ FRANCIS E. QUINLAN*          </u> <b>Francis E. Quinlan</b>	Director	February 9, 2012
<u>          /s/ NORMAN R. SORENSEN*          </u> <b>Norman R. Sorensen</b>	Director	February 9, 2012
<u>          /s/ J. CHRISTOPHER TEETS*          </u> <b>J. Christopher Teets</b>	Director	February 9, 2012
<u>          /s/ H RONALD WEISSMAN*          </u> <b>H Ronald Weissman</b>	Director	February 9, 2012
<u>          /s/ WARREN WILCOX*          </u> <b>Warren Wilcox</b>	Director	February 9, 2012

\*           /s/ J. BRANDON BLACK          

As attorney-in-fact pursuant to powers of attorney dated on February 7, 2012

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### ENCORE CAPITAL GROUP, INC.

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### **Report of Independent Registered Public Accounting Firm**

Board of Directors and Stockholders  
Encore Capital Group, Inc.  
San Diego, California

We have audited the accompanying consolidated statements of financial condition of Encore Capital Group, Inc. as of December 31, 2011 and 2010 and the related consolidated statements of income, stockholders' equity and comprehensive income, and cash flows for each of the three years in the period ended December 31, 2011. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Encore Capital Group, Inc. at December 31, 2011 and 2010, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2011, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Encore Capital Group, Inc.'s internal control over financial reporting as of December 31, 2011, based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and our report dated February 9, 2012, expressed an unqualified opinion thereon.

/s/ BDO USA, LLP

San Diego, California  
February 9, 2012

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### ENCORE CAPITAL GROUP, INC.

#### Consolidated Statements of Financial Condition

(In Thousands, Except Par Value Amounts)

	December 31, 2011	December 31, 2010
<b>Assets</b>		
Cash and cash equivalents	\$ 8,047	\$ 10,905
Accounts receivable, net	3,265	3,331
Investment in receivable portfolios, net	716,454	644,753
Deferred court costs, net	38,506	32,158
Property and equipment, net	17,796	13,658
Other assets	11,968	14,930
Goodwill	15,985	15,985
Identifiable intangible assets, net	462	748
Total assets	<u>\$ 812,483</u>	<u>\$ 736,468</u>
<b>Liabilities and stockholders' equity</b>		
Liabilities:		
Accounts payable and accrued liabilities	\$ 29,628	\$ 26,539
Deferred tax liabilities, net	15,709	17,626
Debt	388,950	385,264
Other liabilities	6,661	4,342
Total liabilities	<u>440,948</u>	<u>433,771</u>
Commitments and contingencies		
Stockholders' equity:		
Convertible preferred stock, \$.01 par value, 5,000 shares authorized, no shares issued and outstanding	-	-
Common stock, \$.01 par value, 50,000 shares authorized, 24,520 shares and 24,011 shares issued and outstanding as of December 31, 2011 and 2010, respectively	245	240
Additional paid-in capital	123,406	113,412
Accumulated earnings	249,852	188,894
Accumulated other comprehensive (loss) income	(1,968 )	151
Total stockholders' equity	<u>371,535</u>	<u>302,697</u>
Total liabilities and stockholders' equity	<u>\$ 812,483</u>	<u>\$ 736,468</u>

*See accompanying notes to consolidated financial statements*

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

	Year Ended December 31,		
	2011	2010	2009
<b>Revenues</b>			
Revenue from receivable portfolios, net	\$448,714	\$364,294	\$299,732
Servicing fees and other related revenue	18,657	17,014	16,687
Total revenues	<u>467,371</u>	<u>381,308</u>	<u>316,419</u>
<b>Operating expenses</b>			
Salaries and employee benefits (excluding stock-based compensation expense)	81,509	65,767	58,025
Stock-based compensation expense	7,709	6,010	4,384
Cost of legal collections	157,050	121,085	112,570
Other operating expenses	39,776	36,387	26,013
Collection agency commissions	14,162	20,385	19,278
General and administrative expenses	41,730	31,444	26,920
Depreciation and amortization	4,661	3,199	2,592
Total operating expenses	<u>346,597</u>	<u>284,277</u>	<u>249,782</u>
Income from operations	<u>120,774</u>	<u>97,031</u>	<u>66,637</u>
<b>Other (expense) income</b>			
Interest expense	(21,116)	(19,349)	(16,160)
Other (expense) income	(394)	316	3,266
Total other expense	<u>(21,510)</u>	<u>(19,033)</u>	<u>(12,894)</u>
Income before income taxes	99,264	77,998	53,743
Provision for income taxes	(38,306)	(28,946)	(20,696)
Net income	<u>\$60,958</u>	<u>\$49,052</u>	<u>\$33,047</u>
<b>Weighted average shares outstanding:</b>			
Basic	24,572	23,897	23,215
Diluted	25,690	25,091	24,082
<b>Earnings per share:</b>			
Basic	\$2.48	\$2.05	\$1.42
Diluted	\$2.37	\$1.95	\$1.37

*See accompanying notes to consolidated financial statements*

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### ENCORE CAPITAL GROUP, INC.

#### Consolidated Statements of Stockholders' Equity and Comprehensive Income

(In Thousands)

	<u>Common Stock</u>		Additional Paid-In Capital	Accumulated Earnings	Accumulated Other Comprehensive (Loss) Income	Total Equity	Comprehensive Income (Loss)
	Shares	Par					
<b>Balance at December 31, 2008</b>	23,053	\$231	\$98,521	\$ 106,795	\$ (2,121 )	\$203,426	\$ 12,720
Net income	-	-	-	33,047	-	33,047	\$ 33,047
Other comprehensive gain:							
Unrealized gain on cash flow hedge, net of tax	-	-	-	-	875	875	875
Exercise of stock options and issuance of share-based awards	306	3	769	-	-	772	-
Stock-based compensation	-	-	4,384	-	-	4,384	-
Tax benefit from convertible notes interest expense	-	-	95	-	-	95	-
Tax benefit related to stock-based compensation	-	-	468	-	-	468	-
Tax benefit from repurchase of convertible notes	-	-	24	-	-	24	-
<b>Balance at December 31, 2009</b>	23,359	\$234	\$104,261	\$ 139,842	\$ (1,246 )	\$243,091	\$ 33,922
Net income	-	-	-	49,052	-	49,052	\$ 49,052
Other comprehensive gain:							
Unrealized gain on cash flow hedge, net of tax	-	-	-	-	1,397	1,397	1,397
Exercise of stock options and issuance of share-based awards, net of shares withheld for employee taxes	652	6	(41 )	-	-	(35 )	-
Stock-based compensation	-	-	6,010	-	-	6,010	-
Settlement of call options and warrants associated with convertible notes, net	-	-	524	-	-	524	-
Reversal of previously established tax benefit related to convertible notes	-	-	(115 )	-	-	(115 )	-
Tax benefit related to stock-based compensation	-	-	2,773	-	-	2,773	-
<b>Balance at December 31, 2010</b>	24,011	\$240	\$113,412	\$ 188,894	\$ 151	\$302,697	\$ 50,449
Net income	-	-	-	60,958	-	60,958	\$ 60,958
Other comprehensive loss:							
Unrealized loss on cash flow hedge, net of tax	-	-	-	-	(2,119 )	(2,119 )	(2,119 )
Exercise of stock options and issuance of share-based awards, net of shares withheld for employee taxes	509	5	(2,405 )	-	-	(2,400 )	-
Stock-based compensation	-	-	7,709	-	-	7,709	-

Tax benefit related to stock-based compensation	<u>-</u>	<u>-</u>	<u>4,690</u>	<u>-</u>	<u>-</u>	<u>4,690</u>	<u>-</u>
<b>Balance at December 31, 2011</b>	<u>24,520</u>	<u>\$245</u>	<u>\$123,406</u>	<u>\$249,852</u>	<u>\$ (1,968 )</u>	<u>\$371,535</u>	<u>\$ 58,839</u>

*See accompanying notes to consolidated financial statements*

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

	Year Ended December 31,		
	2011	2010	2009
<b>Operating activities:</b>			
Net income	\$60,958	\$49,052	\$33,047
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	4,661	3,199	2,592
Amortization of loan costs and debt discount	1,833	3,682	4,080
Stock-based compensation expense	7,709	6,010	4,384
Gain on repurchase of convertible notes, net	-	-	(3,268 )
Deferred income tax (benefit) expense	(1,917 )	646	1,872
Excess tax benefit from stock-based payment arrangements	(5,101 )	(3,249 )	(729 )
Provision for allowances on receivable portfolios, net	10,823	22,209	19,310
Changes in operating assets and liabilities			
Other assets	2,179	(1,390 )	(1,668 )
Deferred court costs	(6,348 )	(6,201 )	2,379
Prepaid income tax and income taxes payable	6,495	(1,782 )	11,204
Accounts payable, accrued liabilities and other liabilities	3,287	3,299	3,316
Net cash provided by operating activities	<u>84,579</u>	<u>75,475</u>	<u>76,519</u>
<b>Investing activities:</b>			
Purchases of receivable portfolios, net of forward flow allocation	(386,850)	(361,957)	(246,330)
Collections applied to investment in receivable portfolios, net	301,474	217,891	168,416
Proceeds from put-backs of receivable portfolios	2,852	3,981	3,375
Purchases of property and equipment	(5,564 )	(2,722 )	(4,632 )
Net cash used in investing activities	<u>(88,088 )</u>	<u>(142,807)</u>	<u>(79,171 )</u>
<b>Financing activities:</b>			
Payment of loan costs	(840 )	(6,248 )	-
Proceeds from senior secured notes	25,000	50,000	-
Proceeds from revolving credit facility	121,000	125,500	90,500
Repayment of revolving credit facility	(143,000)	(58,500 )	(68,500 )
Repayment of convertible notes	-	(42,920 )	(22,262 )
Proceeds from net settlement of certain call options	-	524	-
Proceeds from exercise of stock options	1,263	2,118	1,175
Taxes paid related to net share settlement of equity awards	(3,891 )	(2,024 )	(403 )
Excess tax benefit from stock-based payment arrangements	5,101	3,249	729
Repayment of capital lease obligations	(3,982 )	(1,850 )	(540 )
Net cash provided by financing activities	<u>651</u>	<u>69,849</u>	<u>699</u>
Net (decrease) increase in cash	(2,858 )	2,517	(1,953 )
Cash and cash equivalents, beginning of period	10,905	8,388	10,341
Cash and cash equivalents, end of period	<u>\$8,047</u>	<u>\$10,905</u>	<u>\$8,388</u>
Supplemental disclosures of cash flow information:			
Cash paid for interest	\$19,038	\$15,652	\$12,521
Cash paid for income taxes	32,125	30,125	8,243
Supplemental schedule of non-cash investing and financing activities:			

Fixed assets acquired through capital lease	\$2,949	\$4,317	\$516
Allocation of forward flow asset to acquired receivable portfolios	–	–	10,302

*See accompanying notes to consolidated financial statements*

**ENCORE CAPITAL GROUP, INC.**

**Notes to Consolidated Financial Statements**

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

Encore Capital Group, Inc. (“Encore”), through its subsidiaries (collectively, the “Company”), is a leader in consumer debt buying and recovery. The Company purchases portfolios of defaulted consumer receivables and manages them by partnering with individuals as they repay their obligations and work toward financial recovery. Defaulted receivables are consumers’ unpaid financial commitments to credit originators, including banks, credit unions, consumer finance companies, commercial retailers, auto finance companies and telecommunication companies, which the Company purchases at deep discounts. Defaulted receivables also include receivables subject to bankruptcy proceedings or consumer bankruptcy receivables.

The Company purchases receivables based on robust, account-level valuation methods and employs a suite of proprietary statistical and behavioral models across the full extent of its operations. These investments allow the Company to value portfolios accurately (and limit the risk of overpaying), avoid buying portfolios that are incompatible with its methods or goals and precisely align the accounts it purchases with its operational channels to maximize future collections. As a result, the Company has been able to realize significant returns from the receivables it acquires. The Company maintains strong relationships with many of the largest credit providers in the United States, and possesses one of the industry’ s best collection staff retention rates.

The Company expands upon the insights created during its purchasing process when building account collection strategies. The Company’ s proprietary consumer-level collectability analysis is the primary determinant of whether an account is actively serviced post-purchase. Throughout the Company’ s ownership period, it continuously refines this analysis to determine the most effective collection strategy to pursue for each account. After the Company’ s preliminary analysis, it seeks to collect on only a fraction of the accounts it purchases, through one or more of its collection channels. The channel identification process is analogous to a funneling system where the Company first differentiates those consumers who are not able to pay from those who are able to pay. Consumers who the Company believes are financially incapable of making any payments, are facing extenuating circumstances or hardships (such as medical issues), are serving in the military, or are currently receiving social security as their only means of financial sustenance are excluded from the next step of its collection process and are designated as inactive. The remaining pool of accounts in the funnel then receives further evaluation. At that point, the Company analyzes and determines a consumer’ s willingness to pay. Based on that analysis, the Company will pursue collections through letters and/or phone calls to its consumers. Despite its efforts to reach consumers and work out a settlement option, only a small number of consumers who are contacted choose to engage with the Company. Those who do are often offered deep discounts on their obligations, or are presented with payment plans which are better suited to meet their daily cash flow needs. The majority of contacted consumers, however, ignore both the Company’ s calls and letters, and therefore the Company must then make the difficult decision to pursue collections through legal means.

In addition, the Company provides bankruptcy support services to some of the largest companies in the financial services industry through its wholly owned subsidiary, Ascension Capital Group, Inc. (“Ascension”). Leveraging a proprietary software platform dedicated to bankruptcy servicing, Ascension’ s operational platform integrates lenders, trustees, and consumers across the bankruptcy lifecycle.

***Basis of Consolidation***

Encore is a Delaware holding company whose principal assets are its investments in various wholly owned subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation.

***Reclassification***

Certain reclassifications have been made to the consolidated financial statements to conform to the current year’ s presentation.

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### ***Recent Accounting Pronouncements***

In September 2011, the Financial Accounting Standards Board (“FASB”) issued updated authoritative guidance to amend the standard for the goodwill impairment test. The amendments will allow companies to first assess qualitative factors to determine whether it is necessary to perform the two-step quantitative goodwill impairment test. Companies no longer will be required to calculate the fair value of a reporting unit unless the entity determines, based on a qualitative assessment, that it is more likely than not that its fair value is less than its carrying amount. The updated authoritative guidance will be effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011. Early adoption is permitted, including for annual and interim goodwill impairment tests performed as of a date before September 15, 2011. The Company adopted this standard in the third quarter of 2011.

### ***Use of Estimates***

The preparation of financial statements, in conformity with U.S. generally accepted accounting principles, requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could materially differ from those estimates.

Management has made significant estimates with respect to the rate of return established to recognize accretion revenue on its receivable portfolios and with respect to the provision for valuation allowances on its receivable portfolios. In connection with these estimates, management has made significant estimates with respect to the timing and amount of collections of future cash flows from receivable portfolios owned. Every quarter, since the fourth quarter of 2003, the Company has updated its collection forecasts of the remaining cash flows of its receivable portfolios utilizing its internally developed Unified Collection Score (“UCS”) and Behavioral Liquidation Score (“BLS”) forecasting models.

The Company utilizes its UCS and BLS models to project the remaining cash flows from its receivable portfolios, considering known data about its consumers’ accounts. This data includes, among other things, the Company’ s collection experience and changes in external consumer factors, in addition to all data known when it acquired the accounts. The Company routinely evaluates and implements enhancements to its UCS and BLS models.

Significant estimates have also been made with respect to the Company’ s ability to realize its net deferred court costs (see Note 5 “Deferred Court Costs”), intangible assets (see “Goodwill and Other Intangible Assets” below), net deferred tax assets and tax reserves (see Note 10 “Income Taxes”), stock-based compensation (see Note 9 “Stock-Based Compensation”) and the its potential liabilities with respect to its health benefit plans (see Note 12 “Commitments and Contingencies”). Actual results could materially differ from these estimates, making it possible that a material change in these estimates could occur within one year.

### ***Segment Reporting***

The authoritative guidance for segment reporting establishes standards in reporting information about a public business enterprise’ s operating segments. Operating segments are components of an enterprise about which separate financial information is available, that is evaluated regularly by the chief operating decision maker in deciding how to allocate resources and in assessing performance. For the year ended December 31, 2011, the Company has determined it operates in two segments: portfolio purchasing and recovery and bankruptcy servicing. However, based on the requirements of the authoritative guidance, the smaller operating segment does not meet the minimum requirement of 10% of combined revenues, reported profit or loss, or combined assets and accordingly, no segment disclosures have been made for the year ended December 31, 2011.

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### ***Cash and Cash Equivalents***

Cash and cash equivalents consist of highly liquid investments with maturities of three months or less at the date of purchase. The Company invests its excess cash in bank deposits and money market instruments, which are afforded the highest ratings by nationally recognized rating firms. The carrying amounts reported in the consolidated statements of financial condition for cash and cash equivalents approximates its fair value.

### ***Investment in Receivable Portfolios***

In accordance with the authoritative guidance for loans and debt securities acquired with deteriorated credit quality, discrete receivable portfolio purchases during a quarter are aggregated into pools based on common risk characteristics. Once a static pool is established, the portfolios are permanently assigned to the pool. The discount (*i.e.*, the difference between the cost of each static pool and the related aggregate contractual receivable balance) is not recorded because the Company expects to collect a relatively small percentage of each static pool's contractual receivable balance. As a result, receivable portfolios are recorded at cost at the time of acquisition. The purchase cost of the portfolios includes certain fees paid to third parties incurred in connection with the direct acquisition of the receivable portfolios.

In compliance with the authoritative guidance, the Company accounts for its investments in consumer receivable portfolios using either the interest method or the cost recovery method. The interest method applies an internal rate of return ("IRR") to the cost basis of the pool, which remains unchanged throughout the life of the pool, unless there is an increase in subsequent expected cash flows. Subsequent increases in expected cash flows are generally recognized prospectively through an upward adjustment of the pool's IRR over its remaining life. Subsequent decreases in expected cash flows do not change the IRR, but are recognized as an allowance to the cost basis of the pool, and are reflected in the consolidated statements of income as a reduction in revenue, with a corresponding valuation allowance, offsetting the investment in receivable portfolios in the consolidated statements of financial condition.

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

If the amount and timing of future cash collections on a pool of receivables are not reasonably estimable, the Company accounts for such portfolios on the cost recovery method ("Cost Recovery Portfolios"). The accounts in these portfolios have different risk characteristics than those included in other portfolios acquired during the same quarter, or the necessary information was not available to estimate future cash flows and, accordingly, they were not aggregated with other portfolios. See Note 4 "Investment in Receivable Portfolios, Net" for further discussion of investment in receivable portfolios.

### ***Deferred Revenue***

Ascension's services include, among others, negotiating bankruptcy plans, monitoring and managing the consumer's compliance with bankruptcy plans, and recommending courses of action to clients when there is a deviation from a bankruptcy plan. The Company accounts for post-acquisition revenue related to the bankruptcy account services provided by Ascension in accordance with the authoritative guidance for revenue recognition. Revenue for a given account is allocated between the servicing and litigation deliverables based on their relative fair values and recognized according to whether the referred account is the subject of a Chapter 7 or a Chapter 13 bankruptcy proceeding.

The servicing deliverable for Chapter 7 accounts is focused on the completion of the bankruptcy process as a whole, to the most favorable possible conclusion for the customer. As a result, revenue is deferred and not recognized until the bankruptcy case is closed (dismissal/discharge). The litigation deliverable is recorded as an

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“as incurred” event, with revenue recognized based on the historical percentage of accounts litigated over the average duration of an account. The average duration period used for Chapter 7 accounts is eight months. This estimate is periodically reviewed for changes.

Chapter 13 bankruptcy proceedings, also known as reorganizations, are generally designed to restructure an individual’s debts and allow the consumer to propose a repayment plan detailing how his or her debts will be repaid over the plan period. The responsibility of Ascension is to ensure that its client’s claim is recognized by the court to the maximum benefit of the client and to monitor and/or collect the consumer payments throughout the confirmed bankruptcy plan term. The average duration period used for Chapter 13 accounts is 33 months. Given the nature and duration of a Chapter 13 proceeding, the monthly servicing deliverable provided is considered “delivered” each month and revenue is recognized ratably, including any upfront fees received by the Company, over the time the services are provided. The litigation deliverable is recorded as an “as incurred” event with revenue recognized based on the historical percentage of accounts litigated over the average duration of an account. The average duration period for Chapter 13 accounts is periodically reviewed for changes. Deferred revenue is included in “Other liabilities” in the Consolidated Statements of Financial Condition.

Ascension’s bankruptcy services are provided under contract with its clients. The contracts for these services have initial terms of one or two years and either renew automatically or have options to renew annually. There are two types of fee arrangements for bankruptcy administration services. One is based on commissions; the other one consists of an upfront fee at the time of account referral, combined with either an ongoing monthly service fee or service specific fees based on a predetermined fee schedule. Some contracts utilize a combination of these two types.

### ***Goodwill and Other Intangible Assets***

In accordance with authoritative guidance on goodwill and other intangible assets, goodwill and other indefinite-lived intangible assets are tested at the reporting unit level annually for impairment and in interim periods if certain events occur indicating the fair value of a reporting unit may be below its carrying value.

Effective July 1, 2011, the Company adopted the amended standard for goodwill impairment testing. The amended standard allows companies to first assess qualitative factors to determine whether it is necessary to perform the two-step quantitative goodwill impairment test. The qualitative factors include economic environment, business climate, market capitalization, operating performance, competition and other factors.

The Company has two reporting units that carry goodwill: portfolio purchasing and recovery reporting unit and bankruptcy servicing reporting unit. Annual testing is performed on October 1<sup>st</sup> for the portfolio purchasing and recovery reporting unit and on August 31<sup>st</sup> for the bankruptcy servicing reporting unit. As of December 31, 2011, goodwill for the portfolio purchasing and recovery reporting unit and bankruptcy servicing reporting unit was approximately \$6.1 million and \$9.9 million, respectively. No goodwill impairment has been identified during the year ended December 31, 2011 for each reporting unit.

During the Company’s annual goodwill impairment testing for its bankruptcy servicing reporting unit, the Company determined, after assessing various qualitative factors, that it was necessary to perform the quantitative two-step goodwill impairment testing. The Company completed the first step of its goodwill impairment testing using a discounted cash flow methodology and determined that the fair value of this reporting unit was higher than its respective carrying value, and therefore, no goodwill impairment was identified. The valuation technique involved significant judgments, including the estimation of future cash flows, which was dependent on internal forecasts, estimation of the long-term rate of growth, estimation of the useful life over which cash flows will occur, and determination of the proper weighted average cost of capital. The Company’s bankruptcy servicing reporting unit experiences client turnover in the normal course of business. In the event that it loses clients that are not replaced, the goodwill assigned to this reporting unit may become impaired.

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The Company applied qualitative analysis in testing its goodwill impairment at the portfolio purchasing and recovery reporting unit on October 1, 2011 and no impairment was identified at this reporting unit.

Future events could cause the Company to conclude that impairment indicators exist and that goodwill or other intangible assets are impaired.

The Company's identifiable intangible assets are recorded at cost and are amortized using an accelerated method, based on discounted cash flows over their estimated useful lives, which range from four to nine years. Acquired identifiable intangible assets are presented net of accumulated amortization of \$5.5 million and \$5.3 million as of December 31, 2011 and 2010, respectively. The estimated annual aggregate amortization of intangibles assets is \$0.2 million, \$0.1 million and \$0.1 million for the years ended December 31, 2012, 2013, and 2014, respectively. The Company's identifiable intangibles assets are summarized as follows (*in thousands*):

	December 31, 2011	December 31, 2010
Customer relationships	\$ 5,500	\$ 5,500
Other	500	500
Gross carrying amount	6,000	6,000
Less: accumulated amortization	(5,538 )	(5,252 )
Total identifiable intangible assets	<u>\$ 462</u>	<u>\$ 748</u>

### ***Property and Equipment***

Property and equipment are recorded at cost, less accumulated depreciation and amortization. The provision for depreciation and amortization is computed using the straight-line method over the estimated useful lives of the assets as follows:

<u>Fixed Asset Category</u>	<u>Estimated Useful Life</u>
Leasehold improvements	Lesser of lease term, including periods covered by renewal options, or useful life
Furniture and fixtures	5 to 7 years
Computer hardware and software	3 to 5 years

Maintenance and repairs are charged to expense in the year incurred. Expenditures for major renewals that extend the useful lives of fixed assets are capitalized and depreciated over the useful lives of such assets.

### ***Deferred Court Costs***

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

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### ***Income Taxes***

The Company uses the liability method of accounting for income taxes in accordance with the authoritative guidance for Income Taxes. When the Company prepares its consolidated financial statements, it estimates income taxes based on the various jurisdictions where it conducts business. This requires the Company to estimate current tax exposure and to assess temporary differences that result from differing treatments of certain items for tax and accounting purposes. Deferred income taxes are recognized based on the differences between the financial statement and income tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. The Company then assesses the likelihood that deferred tax assets will be realized. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized. When the Company establishes a valuation allowance or increases this allowance in an accounting period, it records a corresponding tax expense in the consolidated statement of operations. The Company includes interest and penalties related to income taxes within its provision for income taxes. See Note 10 "Income Taxes" for further discussion of income taxes.

Management must make significant judgments to determine the provision for income taxes, deferred tax assets and liabilities and any valuation allowance to be recorded against the net deferred tax asset.

### ***Stock-Based Compensation***

The Company measures stock-based compensation cost at the grant date, based on the estimated fair value of the award, and is recognized as expense over the employee's requisite service period. See Note 9 "Stock-Based Compensation" for further discussion of the Company's stock-based compensation.

### ***Derivative Instruments and Hedging Activities***

The Company recognizes all derivative financial instruments in its consolidated financial statements at fair value. Changes in the fair value of derivative instruments are recorded in earnings unless hedge accounting criteria are met. The Company's interest rate swap and foreign currency contracts outstanding as of December 31, 2011 are designated as cash flow hedges. The effective portion of the changes in fair value of these cash flow hedges is recorded each period, net of tax, in accumulated other comprehensive income (loss) until the related hedged transaction occurs. Any ineffective portion of the changes in fair value of these cash flow hedges is recorded in earnings. In the event the hedged cash flow does not occur, or it becomes probable that it will not occur, the Company would reclassify the amount of any gain or loss on the related cash flow hedge to income (expense) at that time.

### ***Earnings Per Share***

Basic earnings per share is calculated by dividing net earnings available to common stockholders by the weighted average number of shares of common stock outstanding during the period. Diluted earnings per share is calculated on the basis of the weighted average number of shares of common stock plus the effect of dilutive potential common shares outstanding during the period using the treasury stock method. Dilutive potential common shares include outstanding stock options and restricted stock units. The components of basic and diluted earnings per share are as follows (*in thousands, except earnings per share*):

	Year Ended December 31,		
	2011	2010	2009
Net income available for common shareholders (A)	\$60,958	\$49,052	\$33,047
Weighted average outstanding shares of common stock (B)	24,572	23,897	23,215
Dilutive effect of stock-based awards	1,118	1,194	867
Common stock and common stock equivalents (C)	25,690	25,091	24,082
Earnings per share:			
Basic (A/B)	\$2.48	\$2.05	\$1.42
Diluted (A/C)	\$2.37	\$1.95	\$1.37



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Employee stock options to purchase approximately 167,000, 229,000, and 1,177,000 shares of common stock as of December 31, 2011, 2010 and 2009, respectively, were outstanding but not included in the computation of diluted earnings per common share because the effect on diluted earnings per share would be anti-dilutive.

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

The Company accounts for certain assets and liabilities at fair value. The authoritative guidance for fair value measurements defines fair value as the price that would be received upon sale of an asset or the price paid to transfer a liability, in an orderly transaction between market participants at the measurement date (*i.e.* the “exit price”). The guidance utilizes a fair value hierarchy that prioritizes the inputs used in valuation techniques to measure fair value into three broad levels. The following is a brief description of each level:

Level 1: Observable inputs such as quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2: Inputs other than quoted prices that are observable for the asset or liability, either directly or indirectly. These include quoted prices for similar assets or liabilities in active markets and quoted prices for identical or similar assets or liabilities in markets that are not active.

Level 3: Unobservable inputs that reflect the reporting entity’s own assumptions.

The Company’s assets and liabilities measured at fair value on a recurring basis are summarized below (*in thousands*):

	Fair Value Measurements as of			
	December 31, 2011			
	Level 1	Level 2	Level 3	Total
<b>Assets</b>				
Foreign currency exchange contracts	\$ –	\$168	\$ –	\$168
<b>Liabilities</b>				
Interest rate swap agreements	–	(1,014)	–	(1,014)
Foreign currency exchange contracts	–	(2,371)	–	(2,371)

	Fair Value Measurements as of			
	December 31, 2010			
	Level 1	Level 2	Level 3	Total
<b>Assets</b>				
Interest rate swap agreements	\$ –	\$542	\$ –	\$542
Foreign currency exchange contracts	–	209	–	209
<b>Liabilities</b>				
Interest rate swap agreements	–	(485)	–	(485)

Fair values of derivative instruments included in Level 2 are estimated using industry standard valuation models. These models project future cash flows and discount the future amounts to a present value using market-based observable inputs including interest rate curves, foreign exchange rates, and forward and spot prices for currencies. As of December 31, 2011, the Company did not have any financial instruments carried at fair value that required Level 3 measurement.

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

Borrowings under the Company’s revolving credit facility are carried at historical cost, adjusted for additional borrowings less principal repayments, which approximates fair value. For investment in receivable portfolios, there is no active market or observable inputs for the fair value estimation. The Company does not

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consider it practical to attempt to estimate the fair value of such financial instruments due to the excessive costs that would be incurred in doing so.

### **Note 3: Derivatives and Hedging Instruments**

The Company uses derivative instruments to manage risks related to interest rates and foreign currency. The Company's outstanding interest rate swap contracts and foreign currency exchange contracts qualify for hedge accounting treatment under the authoritative guidance for derivatives and hedging.

#### ***Interest Rate Swaps***

The Company may periodically enter into derivative financial instruments, typically interest rate swap agreements, to reduce its exposure to fluctuations in interest rates on variable interest rate debt and their impact on earnings and cash flows. As of December 31, 2011, the Company had six interest rate swap agreements outstanding with a total notional amount of \$150.0 million. Under the swap agreements, the Company receives floating interest rate payments based on one-month reserve-adjusted LIBOR and makes interest payments based on fixed interest rates. The Company intends to continue electing the one-month reserve-adjusted LIBOR as the benchmark interest rate on the debt being hedged through its term. No credit spread was hedged. The Company designates its interest rate swap instruments as cash flow hedges.

The authoritative accounting guidance requires companies to recognize derivative instruments as either an asset or liability measured at fair value in the statement of financial position. The effective portion of the change in fair value of the derivative instrument is recorded in other comprehensive income ("OCI"). The ineffective portion of the change in fair value of the derivative instrument, if any, is recognized in interest expense in the period of change. From the inception of the hedging program, the Company has determined that the hedging instruments are highly effective.

#### ***Foreign Currency Exchange Contracts***

The Company has operations in India, which exposes the Company to foreign currency exchange rate fluctuations due to transactions denominated in Indian rupees, such as employee salaries and rent expenditures. To mitigate this risk, the Company enters into derivative financial instruments, principally forward contracts, which are designated as cash flow hedges, to mitigate fluctuations in the cash payments of future forecasted transactions in Indian rupees for up to 36 months. The Company adjusts the level and use of derivatives as soon as practicable after learning that an exposure has changed and the Company reviews all exposures and derivative positions on an ongoing basis.

Gains and losses on cash flow hedges are recorded in accumulated other comprehensive income (loss) until the hedged transaction is recorded in the consolidated financial statements. Once the underlying transaction is recorded in the consolidated financial statements, the Company reclassifies the accumulated other comprehensive income or loss on the derivative into earnings. If all or a portion of the forecasted transaction was cancelled, this would render all or a portion of the cash flow hedge ineffective and the Company would reclassify the ineffective portion of the hedge into earnings. The Company generally does not experience ineffectiveness of the hedge relationship and the accompanying consolidated financial statements do not include any such gains or losses.

As of December 31, 2011, the total notional amount of the forward contracts to buy Indian rupees in exchange for U.S. dollars was \$36.4 million. All outstanding contracts qualified for hedge accounting treatment as of December 31, 2011. The Company estimates that approximately \$1.7 million of net derivative loss included in OCI will be reclassified into earnings within the next 12 months. No gains or losses were reclassified from OCI into earnings as a result of forecasted transactions that failed to occur during the years ended December 31, 2011 and 2010.

The Company does not enter into derivative instruments for trading or speculative purposes.

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The following table summarizes the fair value of derivative instruments as recorded in the Company's consolidated statements of financial position (*in thousands*):

	December 31, 2011		December 31, 2010	
	Balance Sheet		Balance Sheet	
	Location	Fair Value	Location	Fair Value
Derivatives designated as hedging instruments:				
Interest rate swaps	Other assets	\$-	Other assets	\$ 542
Interest rate swaps	Other liabilities	(1,014 )	Other liabilities	(485 )
Foreign currency exchange contracts	Other assets	168	Other assets	209
Foreign currency exchange contracts	Other liabilities	(2,371 )	Other liabilities	-

The following table summarizes the effects of derivatives in cash flow hedging relationships on the Company's statements of income for the years ended December 31, 2011 and 2010 (*in thousands*):

	Gain or (Loss)		Location of Gain or (Loss) Reclassified from OCI into Income - Effective Portion	Gain or (Loss)		Location of Gain or (Loss) Recognized - Ineffective Portion and Amount Excluded from Effectiveness Testing	Amount of Gain or (Loss) Recognized - Ineffective Portion and Amount Excluded from Effectiveness Testing	
	Recognized in OCI-Effective Portion			Reclassified from OCI into Income - Effective Portion			Recognized - Ineffective Portion and Amount Excluded from Effectiveness Testing	
	2011	2010		2011	2010		2011	2010
	Interest rate swaps	\$(1,071)		\$1,848	Interest expense		\$ -	\$ -
Foreign currency exchange contracts	(1,974)	448	Salaries and employee benefits	6	86	Other (expense) income	-	-
Foreign currency exchange contracts	(426 )	111	General and administrative expenses	6	19	Other (expense) income	-	-

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

In accordance with the authoritative guidance for loans and debt securities acquired with deteriorated credit quality, discrete receivable portfolio purchases during a quarter are aggregated into pools based on common risk characteristics. Once a static pool is established, the portfolios are permanently assigned to the pool. The discount (*i.e.*, the difference between the cost of each static pool and the related aggregate contractual receivable balance) is not recorded because the Company expects to collect a relatively small percentage of each static pool's contractual receivable balance. As a result, receivable portfolios are recorded at cost at the time of acquisition. The purchase cost of the portfolios includes certain fees paid to third parties incurred in connection with the direct acquisition of the receivable portfolios.

In compliance with the authoritative guidance, the Company accounts for its investments in consumer receivable portfolios using either the interest method or the cost recovery method. The interest method applies an internal rate of return ("IRR") to the cost basis of the pool, which remains unchanged throughout the life of the pool, unless there is an increase in subsequent expected cash flows. Subsequent increases in expected cash flows are generally recognized prospectively through an upward adjustment of the pool's IRR over its remaining life. Subsequent decreases in expected cash flows do not change the IRR, but are recognized as an allowance to the

cost basis of the pool, and are reflected in the consolidated statements of income as a reduction in revenue, with a corresponding valuation allowance, offsetting the investment in receivable portfolios in the consolidated statements of financial condition.

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The Company utilizes its proprietary forecasting models to continuously evaluate the economic life of each pool. The collection forecast of each pool is generally estimated to be between 84 to 96 months based on the expected collection period of each pool.

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

If the amount and timing of future cash collections on a pool of receivables are not reasonably estimable, the Company accounts for such portfolios on the cost recovery method as Cost Recovery Portfolios. The accounts in these portfolios have different risk characteristics than those included in other portfolios acquired during the same quarter, or the necessary information was not available to estimate future cash flows and, accordingly, they were not aggregated with other portfolios. Under the cost recovery method of accounting, no income is recognized until the purchase price of a Cost Recovery Portfolio has been fully recovered.

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

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

	Accretable Yield	Estimate of Zero Basis Cash Flows	Total
Balance at December 31, 2009	\$628,439	\$4,695	\$633,134
Revenue recognized, net	(353,704)	(10,590 )	(364,294)
Additions on existing portfolios	39,332	10,169	49,501
Additions for current purchases	425,718	-	425,718
Balance at December 31, 2010	\$739,785	\$4,274	\$744,059
Revenue recognized, net	(428,096)	(20,618 )	(448,714)
Additions on existing portfolios	119,600	49,020	168,620
Additions for current purchases	390,238	-	390,238
Balance at December 31, 2011	\$821,527	\$32,676	\$854,203

During the year ended December 31, 2011, the Company purchased receivable portfolios with a face value of \$11.7 billion for \$386.9 million, or a purchase cost of 3.3% of face value. The estimated future collections at acquisition for these portfolios amounted to \$733.6 million. During the year ended December 31, 2010, the Company purchased receivable portfolios with a face value of \$10.9 billion for \$362.0 million, or a purchase cost of 3.3% of face value. The estimated future collections at acquisition for these portfolios amounted to \$750.4 million.

All collections realized after the net book value of a portfolio has been fully recovered ("Zero Basis Portfolios") are recorded as revenue ("Zero Basis Revenue"). During the years ended December 31, 2011, 2010, and 2009, approximately \$20.6 million, \$10.6 million, and \$9.0 million, respectively, were recognized as revenue on portfolios for which the related cost basis has been fully recovered.

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The following tables summarize the changes in the balance of the investment in receivable portfolios during the following periods (in thousands, except percentages):

	Year Ended December 31, 2011			
	Accrual Basis	Cost Recovery	Zero Basis	Total
	Portfolios	Portfolios	Portfolios	
Balance, beginning of period	\$644,753	\$ -	\$-	\$644,753
Purchases of receivable portfolios	386,850	-	-	386,850
Gross collections <sup>(1)</sup>	(740,402 )	-	(20,609)	(761,011)
Put-backs and recalls <sup>(2)</sup>	(2,843 )	-	(9 )	(2,852 )
Revenue recognized	443,367	-	16,170	459,537
(Portfolio allowances) portfolio allowance reversals, net	(15,271 )	-	4,448	(10,823 )
Balance, end of period	\$716,454	\$ -	\$-	\$716,454
Revenue as a percentage of collections <sup>(3)</sup>	59.9 %	0.0 %	78.5 %	60.4 %

	Year Ended December 31, 2010			
	Accrual Basis	Cost Recovery	Zero Basis	Total
	Portfolios	Portfolios	Portfolios	
Balance, beginning of period	\$526,366	\$ 511	\$-	\$526,877
Purchases of receivable portfolios	361,957	-	-	361,957
Gross collections <sup>(1)</sup>	(593,749 )	(55 )	(10,590)	(604,394)
Put-backs and recalls <sup>(2)</sup>	(3,981 )	-	-	(3,981 )
Revenue recognized	376,814	-	9,689	386,503
(Portfolio allowances) portfolio allowance reversals, net	(22,654 )	(456 )	901	(22,209 )
Balance, end of period	\$644,753	\$ -	\$-	\$644,753
Revenue as a percentage of collections <sup>(3)</sup>	63.5 %	0.0 %	91.5 %	63.9 %

	Year Ended December 31, 2009			
	Accrual Basis	Cost Recovery	Zero Basis	Total
	Portfolios	Portfolios	Portfolios	
Balance, beginning of period	\$460,598	\$ 748	\$-	\$461,346
Purchases of receivable portfolios	256,632	-	-	256,632
Gross collections <sup>(1)</sup>	(478,253 )	(237 )	(8,968 )	(487,458)
Put-backs and recalls <sup>(2)</sup>	(3,371 )	-	(4 )	(3,375 )
Revenue recognized	310,116	-	8,926	319,042
(Portfolio allowances) portfolio allowance reversals, net	(19,356 )	-	46	(19,310 )
Balance, end of period	\$526,366	\$ 511	\$-	\$526,877
Revenue as a percentage of collections <sup>(3)</sup>	64.8 %	0.0 %	99.5 %	65.4 %

(1) Does not include amounts collected on behalf of others.

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

(3) Revenue as a percentage of collections excludes the effects of net portfolio allowances or net portfolio allowance reversals.



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The following table summarizes the change in the valuation allowance for investment in receivable portfolios during the periods presented (*in thousands*):

	<b>Valuation Allowance</b>
Balance at December 31, 2008	\$57,152
Provision for portfolio allowances	21,329
Reversal of prior allowances	(2,019 )
Balance at December 31, 2009	\$76,462
Provision for portfolio allowances	28,259
Reversal of prior allowances	(6,050 )
Balance at December 31, 2010	\$98,671
Provision for portfolio allowances	17,707
Reversal of prior allowances	(6,884 )
Balance at December 31, 2011	<u>\$109,494</u>

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

	<u>Year Ended December 31,</u>		
	<u>2011</u>	<u>2010</u>	<u>2009</u>
Legal collections	\$377,455	\$266,762	\$232,667
Collection sites	335,992	268,205	185,789
Collection agencies	47,657	68,042	62,653
Other	54	1,600	6,683
	<u>\$761,158</u>	<u>\$604,609</u>	<u>\$487,792</u>

### **Note 5: Deferred Court Costs, Net**

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

Deferred Court Costs for the three-year deferral period consist of the following as of the dates presented (*in thousands*):

	<u>December 31, 2011</u>	<u>December 31, 2010</u>
Court costs advanced	\$228,977	\$194,612
Court costs recovered	(60,017 )	(49,215 )
Court costs reserve	(130,454 )	(113,239 )
	<u>\$38,506</u>	<u>\$32,158</u>

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### Note 6: Property and Equipment, Net

Property and equipment consist of the following, as of the dates presented (*in thousands*):

	December 31, 2011	December 31, 2010
Furniture, fixtures and equipment	\$ 6,211	\$ 3,963
Computer equipment and software	27,328	23,067
Telecommunications equipment	4,321	3,520
Leasehold improvements	6,044	4,841
	<u>43,904</u>	<u>35,391</u>
Less: accumulated depreciation and amortization	(26,108 )	(21,733 )
	<u>\$ 17,796</u>	<u>\$ 13,658</u>

Depreciation expense was \$4.4 million and \$2.8 million for the years ended December 31, 2011 and 2010, respectively.

### Note 7: Other Assets

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

	December 31, 2011	December 31, 2010
Debt issuance costs, net of amortization	\$ 4,293	\$ 5,286
Prepaid expenses	5,232	5,052
Security deposit—India building lease	1,482	1,370
Deferred compensation assets	722	776
Prepaid income tax	53	1,629
Other	186	817
	<u>\$ 11,968</u>	<u>\$ 14,930</u>

Deferred compensation assets represent monies held in a trust associated with the Company's deferred compensation plan.

### Note 8: Debt

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

	December 31, 2011	December 31, 2010
Revolving credit facility	\$ 305,000	\$ 327,000
Senior secured notes	75,000	50,000
Capital lease obligations	8,950	8,264
	<u>\$ 388,950</u>	<u>\$ 385,264</u>

### Senior Secured Notes

On February 10, 2011, Encore issued \$25.0 million in senior secured notes (the "2011 Senior Secured Notes") to certain affiliates of Prudential Capital Group through an amended and restated note purchase agreement. These 2011 Senior Secured Notes bear an annual interest rate of 7.375% and mature in 2018. These notes require quarterly interest only payments through May 2013. Beginning in May 2013, the notes require a quarterly payment of interest plus \$1.25 million of principal.



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On September 20, 2010, Encore issued \$50.0 million in senior secured notes (the “2010 Senior Secured Notes” and together with the 2011 Senior Secured Notes, the “Senior Secured Notes” ) to certain affiliates of Prudential Capital Group through a private placement transaction. The 2010 Senior Secured Notes bear an annual interest rate of 7.75% and mature in 2017 with principal amortization beginning in December 2012. These notes require quarterly interest only payments through December 2012. Beginning in December 2012, the notes require a quarterly payment of interest plus \$2.5 million of principal.

The proceeds from the Senior Secured Notes were used to reduce aggregate outstanding borrowings under the Company’s existing revolving credit facility, including borrowings incurred to repay the remaining \$42.9 million of convertible notes that matured on September 20, 2010. Loan fees and other loan costs associated with the above transactions amounted to approximately \$0.4 million and \$0.7 million during the years ended December 31, 2011 and December 31, 2010. These costs are included in other assets in the Company’s consolidated statements of financial condition and are being amortized over the term of the agreements.

The Senior Secured Notes are guaranteed in full by certain of Encore’s subsidiaries and are collateralized by all assets of the Company. The Senior Secured Notes may be accelerated and become automatically and immediately due and payable upon certain events of default, including certain events related to insolvency, bankruptcy or liquidation. Additionally, the Senior Secured Notes may be accelerated at the election of the holder or holders of a majority in principal amount of the Senior Secured Notes upon certain events of default by the Company, including breach of affirmative covenants regarding guarantors, collateral, most favored lender treatment or minimum revolving credit facility commitment or the breach of any negative covenant. If the Company prepays the Senior Secured Notes at any time for any reason, payment will be at the higher of par or the present value of the remaining scheduled payments of principal and interest on the portion being prepaid. The discount rate used to determine the present value shall be 50 basis points over the then current Treasury Rate corresponding to the remaining average life. The covenants are substantially similar to those in the revolving credit facility. Prudential Capital Group and the administrative agent for the lenders of the revolving credit facility have an intercreditor agreement related to collateral, actionable default, powers and duties and remedies, among other topics.

Pursuant to Securities and Exchange Commission rules, the Company has concluded that separate financial statements or condensed consolidating financial information are not required as the guarantees related to the Senior Secured Notes are full and unconditional and joint and severable, and the subsidiary of the parent company other than the subsidiary guarantors are minor.

### ***Revolving Credit Facility***

On February 11, 2011, the Company obtained an additional \$50.0 million in commitments from lenders and exercised a portion of its \$100.0 million accordion feature, thereby increasing its revolving credit facility to \$410.5 million from \$360.5 million.

Loan fees and other loan costs associated with the above transactions amounted to approximately \$0.5 million and \$5.7 million during the year ended December 31, 2011 and 2010, respectively. These costs are included in other assets in the Company’s consolidated statements of financial condition and are being amortized over the term of the agreement.

Provisions of the revolving credit facility include:

Interest at a floating rate equal to, at the Company’s option, either: (1) reserve adjusted LIBOR, plus a spread that ranges from 350 to 400 basis points, depending on the Company’s leverage; or (2) Alternate Base Rate (“ABR”), plus a spread that ranges from 250 to 300 basis points, depending on the Company’s leverage. ABR, as defined in the agreement, means the highest of (i) the rate of interest publicly announced by JPMorgan Chase Bank as its prime rate in effect at its principal office in New York City, (ii) the federal funds effective rate from time to time, plus 0.5% and (iii) reserved adjusted LIBOR for a one month interest period on the applicable date, plus 1.0%;

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\$10.0 million sub-limits for swingline loans and letters of credit;

A borrowing base equal to (1) the lesser of (i) 30% of eligible estimated remaining collections and (ii) the product of the net book value of all receivable portfolios acquired on or after January 1, 2005 multiplied by 95%, minus (2) the aggregate principal amount outstanding of the senior secured notes;

Restrictions and covenants, which limit, among other things, the payment of dividends and the incurrence of additional indebtedness and liens;

Repurchases of up to \$50.0 million of Encore' s common stock, subject to compliance with certain covenants and available borrowing capacity;

A change of control definition, which excludes acquisitions of stock by Red Mountain Capital Partners LLC, JCF FPK I LP and their respective affiliates of up to 50% of the outstanding shares of Encore' s voting stock;

Events of default which, upon occurrence, may permit the lenders to terminate the revolving credit facility and declare all amounts outstanding to be immediately due and payable;

An annual capital expenditure maximum of \$12.5 million;

An annual rental expense maximum of \$12.5 million;

An outstanding capital lease maximum of \$12.5 million;

An acquisition limit of \$100.0 million; and

Collateralization by all assets of the Company.

At December 31, 2011, of the \$410.5 million borrowing capacity, the outstanding balance on the revolving credit facility was \$305.0 million, which bore a weighted average interest rate of 4.42% for the year ended December 31, 2011. The aggregate borrowing base was \$396.2 million, of which \$91.2 million was available for future borrowings.

Subject to compliance with the revolving credit facility, Encore is authorized by its Board of Directors to repurchase up to \$50.0 million of its common stock.

### ***Capital Lease Obligations***

The Company has capital lease obligations primarily for certain computer equipment. As of December 31, 2011, the Company' s combined obligations for these computer equipment leases were approximately \$7.5 million. These lease obligations require monthly or quarterly payments through July 2016 and have implicit interest rates that range from zero to approximately 7.7%.

### ***Five-Year Maturity Schedule***

The following table summarizes the five-year maturity of the Company' s debt and capital lease obligations (*in thousands*):

	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>Total</u>
Revolving credit facility	\$-	\$305,000	\$-	\$-	\$-	\$305,000
Senior secured notes	2,500	13,750	15,000	15,000	15,000	61,250
Capital lease obligations	5,586	2,731	716	302	139	9,474
Less: interest portion of capital lease	(339 )	(125 )	(41 )	(17 )	(2 )	(524 )
	<u>\$7,747</u>	<u>\$321,356</u>	<u>\$15,675</u>	<u>\$15,285</u>	<u>\$15,137</u>	<u>\$375,200</u>

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### **Note 9: Stock-Based Compensation**

On March 9, 2009, the Board of Directors approved an amendment and restatement of the 2005 Stock Incentive Plan (“2005 Plan”), which was originally adopted on March 30, 2005, for Board members, employees, officers, and executives of, and consultants and advisors to, the Company. The amendment and restatement of the 2005 Plan increased by 2,000,000 shares the maximum number of shares of Encore’s common stock that may be issued or be subject to awards under the plan, established a new 10-year term for the plan and made certain other amendments. The 2005 Plan amendment was approved by Encore’s stockholders on June 9, 2009. The 2005 Plan provides for the granting of incentive stock options, nonqualified stock options, stock appreciation rights, restricted stock, restricted stock units and performance-based awards to eligible individuals. As amended, the 2005 Plan allows the granting of an aggregate of 3,500,000 shares of Encore’s common stock for awards, plus the number of shares of stock that were available for future awards under the prior 1999 Equity Participation Plan (“1999 Plan”). In addition, shares subject to options granted under either the 1999 Plan or the 2005 Plan that terminate or expire without being exercised will become available for grant under the 2005 Plan. The benefit provided under these plans is compensation subject to authoritative guidance for stock-based compensation.

In accordance with authoritative guidance for stock-based compensation, compensation expense is recognized only for those shares expected to vest, based on the Company’s historical experience and future expectations. Total compensation expense during the years ended December 31, 2011, 2010, and 2009 was \$7.7 million, \$6.0 million, and \$4.4 million, respectively.

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

#### ***Stock Options***

The 2005 Plan permits the granting of stock options to employees, officers, executives and directors of, and consultants and advisors to, the Company. Option awards are generally granted with an exercise price equal to the market price of the Company’s stock at the date of issuance. They generally vest over three to five years of continuous service, and have ten-year contractual terms.

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

The fair value for options granted was estimated at the date of grant using a Black-Scholes option-pricing model with the following weighted-average assumptions:

	Year Ended December 31,					
	2011		2010		2009	
Weighted average fair value of options granted	\$13.26		\$9.70		\$4.91	
Risk free interest rate	2.0	%	2.3	%	2.1	%
Dividend yield	0.0	%	0.0	%	0.0	%
Volatility factors of the expected market price of the Company’s common stock	61.0	%	62	%	57	%
Weighted-average expected life of options	5 Years		5 Years		5 Years	

Unrecognized compensation cost related to stock options as of December 31, 2011, was \$2.7 million. The weighted-average remaining expense period, based on the unamortized value of these outstanding stock options was approximately 1.7 years.

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A summary of the Company's stock option activity as of December 31, 2011, and changes during the year then ended, is presented below:

	Number of Shares	Option Price Per Share	Weighted Average Exercise Price	Aggregate Intrinsic Value <i>(in thousands)</i>
Outstanding at December 31, 2010	2,437,062	\$ 0.51 - \$20.09	\$ 10.74	
Granted	209,000	24.65	24.65	
Cancelled/forfeited	(36,498 )	2.89 - 17.90	11.50	
Exercised	(426,624 )	0.51 - 17.90	5.92	
Outstanding at December 31, 2011	<u>2,182,940</u>	<u>\$0.51 - \$24.65</u>	<u>\$ 13.00</u>	\$ 18,740
Exercisable at December 31, 2011	<u>1,275,945</u>	<u>\$ 0.51 - \$20.09</u>	<u>\$ 11.41</u>	\$ 12,567

The total intrinsic value of options exercised during the years ended December 31, 2011, 2010, and 2009 was \$10.5 million, \$6.2 million, and \$2.0 million, respectively. As of December 31, 2011, the weighted-average remaining contractual life of options outstanding and options exercisable was 5.81 years and 4.30 years, respectively.

### *Non-Vested Shares*

Under the Company's 2005 Plan, employees, officers, executives and directors of, and consultants and advisors to, the Company are eligible to receive restricted stock units and restricted stock awards. In accordance with the authoritative guidance, the fair value of these non-vested shares is equal to the closing sale price of the Company's common stock on the date of issuance. The total number of these awards expected to vest is adjusted by estimated forfeiture rates. As of December 31, 2011, 37,662 of the non-vested shares are expected to vest over approximately one year based on certain performance goals ("Performance-Based Awards"). The fair value of the Performance-Based Awards is expensed over the expected vesting period, net of estimated forfeitures. If performance goals are not expected to be met, the compensation expense previously recognized would be reversed. No reversals of compensation expense related to the Performance-Based Awards have been made as of December 31, 2011. The remaining 551,455 non-vested shares are not performance-based, and will vest over approximately one to three years of continuous service.

A summary of the status of the Company's restricted stock units as of December 31, 2011, and changes during the year then ended, is presented below:

<u>Restricted Stock Units</u>	<u>Non-Vested Shares</u>	<u>Weighted Average Grant Date Fair Value</u>
Non-vested at December 31, 2010	614,370	\$ 13.08
Awarded	319,344	\$ 24.99
Vested	(302,344)	\$ 12.90
Cancelled/forfeited	<u>(42,253 )</u>	\$ 18.74
Non-vested at December 31, 2011	<u>589,117</u>	\$ 19.22

Unrecognized compensation cost related to restricted stock units as of December 31, 2011, was \$6.3 million. The weighted-average remaining expense period, based on the unamortized value of these outstanding restricted stock units was approximately 2.0 years. The fair value of restricted stock units vested for the years ended December 31, 2011, 2010, and 2009 was \$7.5 million, \$8.0 million, and \$1.7 million, respectively.

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### Note 10: Income Taxes

During the year ended December 31, 2011, the Company recorded an income tax provision of \$38.3 million, reflecting an effective rate of 38.6% of pretax income. The effective tax rate for the year ended December 31, 2011, primarily consisted of a provision for federal income taxes of 32.7% (which is net of a benefit for state taxes of 2.3%), a provision for state taxes of 6.5% and a benefit of 0.6%, due to permanent book versus tax differences. During the year ended December 31, 2010, the Company recorded an income tax provision of \$28.9 million, reflecting an effective rate of 37.1% of pretax income. The effective tax rate for the year ended December 31, 2010, primarily consisted of a provision for federal income taxes of 32.7% (which is net of a benefit for state taxes of 2.3%), a provision for state taxes of 6.7%, a 0.6% beneficial adjustment to the state and federal tax payable as a result of state and federal tax true-ups and a benefit of 1.7%, due to permanent book versus tax differences.

The pretax income consists of the following (*in thousands*):

	Year Ended December 31,		
	2011	2010	2009
Domestic	\$93,354	\$73,863	\$52,839
Foreign	5,910	4,135	904
	<u>\$99,264</u>	<u>\$77,998</u>	<u>\$53,743</u>

The provision for income taxes consists of the following (*in thousands*):

	Year Ended December 31,		
	2011	2010	2009
Current expense:			
Federal	\$31,011	\$23,922	\$15,734
State	6,688	4,585	3,551
Foreign	2,407	—	—
	<u>40,106</u>	<u>28,507</u>	<u>19,285</u>
Deferred expense:			
Federal	(814 )	369	1,212
State	90	70	199
Foreign	(1,076)	—	—
	<u>(1,800)</u>	<u>439</u>	<u>1,411</u>
	<u>\$38,306</u>	<u>\$28,946</u>	<u>\$20,696</u>

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The components of deferred tax assets and liabilities consist of the following for the years presented (*in thousands*):

	<u>December 31,</u> <u>2011</u>	<u>December 31,</u> <u>2010</u>
Deferred tax assets:		
State taxes	\$ 1,599	\$ 1,825
Stock option expense	7,266	5,995
Accrued expenses	2,069	876
Non-qualified plan	(151 )	(97 )
Deferred revenue	1,112	1,490
Interest rate swap	1,262	(104 )
State net operating losses	143	189
Other	(26 )	1,124
Valuation allowance	(12 )	(12 )
	<u>13,262</u>	<u>11,286</u>
Deferred tax liabilities:		
Deferred court costs	(15,900 )	(11,674 )
Difference in basis of amortizable assets	(5,621 )	(5,285 )
Difference in basis of depreciable assets	(4,387 )	(2,418 )
Differences in income recognition related to receivable portfolios	(1,854 )	(8,477 )
Deferred debt cancellation income	(1,222 )	(1,222 )
Other	13	164
	<u>(28,971 )</u>	<u>(28,912 )</u>
Net deferred tax liability	<u>\$ (15,709 )</u>	<u>\$ (17,626 )</u>

The differences between the total income tax expense and the income tax expense computed using the applicable federal income tax rate of 35% per annum were as follows (*in thousands*):

	<u>Year Ended December 31,</u>		
	<u>2011</u>	<u>2010</u>	<u>2009</u>
Computed "expected" Federal income tax expense	\$34,742	\$27,299	\$18,810
Increase (decrease) in income taxes resulting from:			
State income taxes, net	4,222	3,306	2,437
Foreign non-taxed income	(772 )	(1,447)	(316 )
Other adjustments, net	114	(212 )	(235 )
	<u>\$38,306</u>	<u>\$28,946</u>	<u>\$20,696</u>

The Company has not provided for the United States income taxes or foreign withholding taxes on the undistributed earnings from continuing operations of its subsidiary operating outside of the United States. Undistributed earnings of the subsidiary for the year ended December 31, 2011, were approximately \$6.0 million. Such undistributed earnings are considered permanently reinvested. If the net earnings were to be distributed, it is estimated that taxes in the amount of approximately \$2.3 million would need to be reflected in the financial statements.

The Company's subsidiary in India was operating under a tax holiday through March 31, 2011, at which time the tax holiday expired. If there had been no tax holiday for the quarter ended March 31, 2011, the Company would have expensed an additional \$0.6 million in income taxes.

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A reconciliation of the beginning and ending amount of the Company's unrecognized tax benefit is as follows (*in thousands*):

	<u>Amount</u>
Balance at December 31, 2010	\$754
Additions based on tax positions related to current year	476
Balance at December 31, 2011	<u>\$1,230</u>

As of December 31, 2011, the Company has a net tax expense recorded for penalties and interest of approximately \$0.1 million. The penalties and interest are recorded as part of the provision for income taxes.

The Company has gross unrecognized tax benefits of \$1.9 million at December 31, 2011, related to the refund of state taxes previously paid that, if recognized, would result in a net tax benefit of \$1.2 million and would have a positive effect on the Company's effective tax rate. The Company believes that it is reasonably possible that its \$1.9 million gross unrecognized tax benefits will significantly decrease within the next 12 months or be eliminated entirely, as the Company is currently undergoing a state tax audit. The completion of the audit could significantly reduce or eliminate the unrecognized tax benefits. Accordingly, the Company has recorded a reserve on the net unrecognized tax benefits.

The Company files U.S. federal, state, and foreign income tax returns in jurisdictions with varying statutes of limitations. The 2008 through 2011 tax years remain subject to examination by federal taxing authorities, the 2000 through 2011 tax years generally remain subject to examination by state tax authorities, and the 2010 and 2011 tax years remain subject to examination by foreign tax authorities.

### **Note 11: Purchase Concentrations**

The following table summarizes the concentration of initial purchase cost by seller sorted by total aggregate costs (*in thousands, except percentages*):

	<u>Year Ended December 31, 2011</u>	
	<u>Cost</u>	<u>%</u>
Seller 1	\$ 94,108	24.3 %
Seller 2	74,986	19.4 %
Seller 3	30,943	8.0 %
Seller 4	23,509	6.1 %
Seller 5	18,429	4.8 %
Other sellers	144,875	37.4 %
	<u>\$ 386,850</u>	<u>100.0 %</u>
Adjustments <sup>(1)</sup>	(505)	
Purchases, net	<u>\$ 386,345</u>	

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

### **Note 12: Commitments and Contingencies**

#### ***Litigation***

The Company is involved in disputes and legal actions from time to time in the ordinary course of business. The Company, along with others in its industry, is routinely subject to legal actions based on the Fair Debt Collection Practices Act ("FDCPA") comparable state statutes, the Telephone Consumer Protection Act ("TCPA"), state and federal unfair competition statutes and common law causes of action. The violations of law



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alleged in these actions often include claims that the Company lacks specified licenses to conduct its business, attempts to collect debts on which the statute of limitations has run, has made inaccurate assertions of fact in support of its collection actions and /or has acted improperly in connection with its efforts to contact consumers. These cases are frequently styled as supposed class actions. In addition, from time to time, the Company is subject to litigation and other actions by governmental bodies, including formal and informal investigations relating to its collection activities by the Federal Trade Commission, state attorneys general and other governmental bodies, with which the Company cooperates.

On May 19, 2008, an action captioned *Brent v. Midland Credit Management, Inc et. al* was filed in the United States District Court for the Northern District of Ohio Western Division, in which the plaintiff filed a class action counter-claim against two of the Company's subsidiaries (the "Midland Defendants"). The complaint alleged that the Midland Defendants' business practices violated consumers' rights under the FDCPA and the Ohio Consumer Sales Practices Act. The plaintiff sought actual and statutory damages for the class of Ohio residents, plus attorney's fees and costs of class notice and class administration. On August 12, 2011, the court issued an order granting final approval to the parties agreed upon settlement of this lawsuit, as well as two other pending lawsuits in the Northern District of Ohio entitled *Franklin v. Midland Funding LLC* and *Vassalle v. Midland Funding LLC*, on a national class basis, and dismissed the cases against the Midland Defendants with prejudice. That order has been appealed by certain objectors to the settlement, which appeals remain pending.

On November 2, 2010 and December 17, 2010, two national class actions entitled *Robinson v. Midland Funding LLC* and *Tovar v. Midland Credit Management*, respectively, were filed in the United States District Court for the Southern District of California. The complaints allege that the Company's subsidiaries violated the TCPA by calling consumers' cellular phones without their prior express consent. The complaints seek monetary damages under the TCPA, injunctive relief, and other relief, including attorney fees. On May 10, 2011 and May 11, 2011, two class actions entitled *Scardina v. Midland Credit Management, Inc. Midland Funding LLC and Encore Capital Group, Inc.* and *Martin v. Midland Funding, LLC*, respectively, were filed in the United States District Court for the Northern District of Illinois. The complaints allege on behalf of a putative class of Illinois consumers that the Company's subsidiaries violated the TCPA by calling consumers' cellular phones without their prior express consent. The complaints seek monetary damages under the TCPA, injunctive relief, and other relief, including attorney fees. On July 28, 2011, the Company filed a motion to transfer the *Scardina* and *Martin* cases to the United States District Court for the Southern District of California to be consolidated with the *Tovar* and *Robinson* cases. On October 11, 2011, the United States Judicial Panel on Multidistrict Litigation granted the Company's motion to transfer.

In certain legal proceedings, the Company may have recourse to insurance or third party contractual indemnities to cover all or portions of its litigation expenses, judgments or settlements. In accordance with authoritative guidance, the Company records loss contingencies in its financial statements only for matters in which losses are probable and can be reasonably estimated. Where a range of loss can be reasonably estimated with no best estimate in the range, the Company records the minimum estimated liability. The Company continuously assesses the potential liability related to the Company's pending litigation and revises its estimates when additional information becomes available. The Company's legal costs are recorded to expense as incurred.

### **Leases**

The Company leases office facilities in San Diego, California; Phoenix, Arizona; Arlington, Texas; St. Cloud, Minnesota; Gurgaon, India; and Costa Rica. The leases are structured as operating leases, and the Company incurred related rent expense in the amounts of \$5.8 million, \$4.5 million and \$4.3 million during the years ended December 31, 2011, 2010, and 2009, respectively.

The Company has capital lease obligations primarily for certain computer equipment. Refer to "Capital Lease Obligations" under Note 8 "Debt" for additional information on the Company's capital leases. The related

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amortization expense was \$5.2 million, \$2.4 million, and \$0.5 million, for the years ended December 31, 2011, 2010, and 2009, respectively. Amortization of assets under capital leases is included in depreciation and amortization expense.

Future minimum lease payments under lease obligations consist of the following for the years ending December 31 (*in thousands*):

	<u>Capital Leases</u>	<u>Operating Leases</u>	<u>Total</u>
2012	\$5,586	\$5,660	\$11,246
2013	2,731	5,943	8,674
2014	716	5,702	6,418
2015	302	5,057	5,359
2016	139	4,746	4,885
Thereafter	—	8,181	8,181
Total minimal leases payments	9,474	<u>\$35,289</u>	<u>\$44,763</u>
Less: Interest	(524 )		
Present value of minimal lease payments	<u>\$8,950</u>		

### ***Purchase Commitments***

In the normal course of business, the Company enters into forward flow purchase agreements and other purchase commitment agreements. As of December 31, 2011, the Company has entered into agreements to purchase receivable portfolios with a face value of approximately \$3.2 billion for a purchase price of approximately \$151.0 million. The Company has no purchase commitments extending past one year.

### ***Employee Benefit Plans***

The Company maintains a 401(k) Salary Deferral Plan (the “Plan”) whereby eligible employees may voluntarily contribute up to a maximum percentage of compensation, as specified in Internal Revenue Code limitations. The Company may match a percentage of employee contributions at its discretion. Employer matching contributions and administrative costs relating to the Plan totaled \$1.1 million, \$1.2 million, and \$0.7 million for the years ended December 31, 2011, 2010, and 2009, respectively.

The Company maintains a non-qualified deferred compensation plan for its senior management. This plan permits deferral of a portion of compensation until a specified period of time. As of December 31, 2011, the plan assets and plan liabilities were \$0.7 million and \$0.5 million, respectively. As of December 31, 2010, the plan assets and plan liabilities were \$0.8 million and \$0.7 million, respectively. These amounts are included in the Company’s consolidated statements of financial condition in other assets and accrued liabilities. The use of plan assets is legally restricted to distributions to participants or to creditors in the event of bankruptcy.

### ***Self-Insured Health Benefits***

The Company maintains a self-insured health benefit plan for its employees. This plan is administered by a third party. As of December 31, 2011, the plan had stop loss provisions insuring losses beyond \$150,000 per employee per year. As of December 31, 2011, the Company recorded a reserve for unpaid claims in the amount of \$0.4 million which is included in accrued liabilities in the Company’s consolidated statement of financial condition. This amount represents the Company’s estimate of incurred but not yet reported claims, as of December 31, 2011.

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### **Guarantees**

Encore's Certificate of Incorporation and indemnification agreements between the Company and its officers and directors provide that the Company will indemnify and hold harmless its officers and directors for certain events or occurrences arising as a result of the officer or director serving in such capacity. The Company has also agreed to indemnify certain third parties under certain circumstances pursuant to the terms of certain underwriting agreements, registration rights agreements and portfolio purchase and sale agreements. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited. The Company believes the estimated fair value of these indemnification agreements is minimal and, as of December 31, 2011, has no liabilities recorded for these agreements.

### **Note 13: Quarterly Information (Unaudited)**

The following table summarizes quarterly financial data for the periods presented (*in thousands, except per share amounts*):

	Three Months Ended			December 31
	March 31	June 30	September 30	
<b>2011</b>				
Gross collections	\$ 191,073	\$ 195,081	\$ 189,058	\$ 185,946
Revenue	110,303	115,830	120,563	120,675
Total operating expenses	82,546	86,223	89,804	88,024
Net income	13,679	14,775	15,370	17,134
Basic earnings per share	0.56	0.60	0.62	0.69
Diluted earnings per share	0.54	0.58	0.60	0.67
<b>2010</b>				
Gross collections	\$ 141,267	\$ 156,789	\$ 157,372	\$ 149,181
Revenue	87,338	96,231	97,967	99,772
Total operating expenses	65,641	72,782	74,265	71,589
Net income	10,861	11,730	12,290	14,171
Basic earnings per share	0.46	0.49	0.51	0.59
Diluted earnings per share	0.44	0.47	0.49	0.56

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### EXHIBIT INDEX

<u>Number</u>	<u>Description</u>
3.1	Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to Amendment No. 2 to the Company's Registration Statement on Form S-1/A filed on June 14, 1999, File No. 333-77483)
3.2	Certificate of Amendment to the Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on April 4, 2002, File No. 000-26489)
3.3	Bylaws, as amended through February 8, 2011 (incorporated by reference to Exhibit 3.3 to the Company's Annual Report on Form 10-K filed on February 14, 2011)
4.1	Registration Rights Agreement, dated as of February 21, 2002, between the Company and the several Purchasers listed on Schedule A thereto (incorporated by reference to Exhibit 4.3 to the Company's Current Report on Form 8-K filed on February 25, 2002, File No. 000-26489)
4.2	Amended and Restated Registration Rights Agreement, dated as of October 31, 2000, between the Company and the several stockholders listed therein (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on August 22, 2003, File No. 000-26489)
4.3	Registration Rights Agreement, dated as of September 19, 2005, by and among Encore Capital Group, Inc. and Morgan Stanley & Co. Incorporated and J.P. Morgan Securities Inc. (incorporated by reference to Exhibit 10.5 to the Company's Current Report on Form 8-K filed on September 22, 2005)
4.4	First Amendment, dated as of March 13, 2001, to Amended and Restated Registration Rights Agreement, dated as of October 31, 2000, between the Company and the several stockholders listed therein (incorporated by reference to Exhibit 4.3 to the Company's Current Report on Form 8-K filed on August 22, 2003, File No. 000-26489)
4.5	Indenture, dated September 19, 2005, by and between Encore Capital Group, Inc. and JP Morgan Chase Bank, N.A. (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on September 22, 2005)
4.6	Instrument of Resignation, Appointment and Acceptance, dated September 21, 2006, by and among Encore Capital Group, Inc., JPMorgan Chase Bank, N.A., and The Bank of New York (now known as The Bank of New York Mellon Trust Company, N.A.) as successor trustee (incorporated by reference to Exhibit 4.1 to the Company's Quarterly Report on Form 10-Q filed on July 30, 2009)
4.7	Form of 3.375% Convertible Senior Notes due 2010 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on September 22, 2005)
4.8	Form of Common Stock Certificate (incorporated by reference to Exhibit 4.7 to the Company's Registration Statement on Form S-3 filed on December 21, 2009, File No. 333-163876)
4.9 *	Senior Secured Note Purchase Agreement, dated September 20, 2010, by and among the Company, The Prudential Insurance Company of America, Pruco Life Insurance Company, Prudential Retirement Insurance and Annuity Company and Prudential Annuities Life Assurance Corporation (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K/A filed on October 25, 2010)
4.10 *	Form of Note (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K/A filed on October 25, 2010)
4.11 *	Amended and Restated Senior Secured Note Purchase Agreement, dated February 10, 2011, by and among the Company, The Prudential Insurance Company of America, Pruco Life Insurance Company, Prudential Retirement Insurance and Annuity Company and Prudential Annuities Life Assurance Corporation (incorporated by reference to Exhibit 4.1 to the Company's Quarterly Report on Form 10-Q filed on April 27, 2011)

4.12 Form of 7.75% Senior Secured Note due 2017 (incorporated by reference to Exhibit 4.2 to the Company' s Quarterly Report on Form 10-Q filed on April 27, 2011)

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<u>Number</u>	<u>Description</u>
4.13	Form of 7.375% Senior Secured Note due 2018 (incorporated by reference to Exhibit 4.3 to the Company' s Quarterly Report on Form 10-Q filed on April 27, 2011)
10.1	Multi-Tenant Office Lease dated as of April 8, 2004 between LBA Realty Fund-Holding Co. I, LLC and Midland Credit Management, Inc. (the "Midland Lease") (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on May 4, 2004, File No. 000-26489)
10.2	Lease Guaranty dated as of April 8, 2004 by the Company in favor of LBA Realty Fund-Holding Co. I, LLC in connection with the Midland Lease (incorporated by reference to Exhibit 10.2 to the Company' s Current Report on Form 8-K filed on May 4, 2004, File No. 000-26489)
10.3+	1999 Equity Participation Plan, as amended (incorporated by reference to Appendix I to the Company' s proxy statement filed on April 1, 2004, File No. 000-26489)
10.4+	Form of Indemnification Agreement (incorporated by reference to Exhibit 10.1 of the Company' s Current Report on Form 8-K filed on May 4, 2006)
10.5+	Form of Option Amendment (incorporated by reference to Exhibit 10.2 of the Company' s Current Report on Form 8-K filed on May 4, 2006)
10.6+	Executive Non-Qualified Excess Plan (incorporated by reference to Exhibit 10.6 of the Company' s Annual Report on Form 10-K filed on February 11, 2009)
10.7+	Encore Capital Group, Inc. 2005 Stock Incentive Plan, as amended and restated (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on June 15, 2009)
10.8+	Amended Form of Stock Option Agreement for awards under the 2005 Stock Incentive Plan (incorporated by reference to Exhibit 10.3 to the Company' s Quarterly Report on Form 10-Q filed on July 30, 2009)
10.9+	Amended Form of Restricted Stock Unit Grant Notice and Agreement (incorporated by reference to Exhibit 10.2 to the Company' s Quarterly Report on Form 10-Q filed on July 30, 2009)
10.10+	Form of Split-Dollar Agreement (incorporated by reference to Exhibit 10.3 to the Company' s Current Report on Form 8-K filed on May 4, 2006)
10.11	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") (incorporated by reference to Exhibit 10.3 to the Company' s Current Report on Form 8-K filed on June 8, 2005)
10.12	Amendment No. 1 to the Credit Agreement, dated as of August 1, 2005 (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on August 1, 2005)
10.13	Amendment No. 2, to the Credit Agreement, dated as of May 3, 2006 (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on May 9, 2006)
10.14	Amendment No. 3, to the Credit Agreement, dated as of February 27, 2007 (incorporated by reference to Exhibit 10.29 to the Company' s Annual Report on Form 10-K filed on February 28, 2007)
10.15	Consent and Amendment No. 4 to the Credit Agreement, dated as of May 7, 2007 (incorporated by reference to Exhibit 10.3 to the Company' s Quarterly Report on Form 10-Q filed on May 8, 2007)
10.16	Amendment No. 5 to the Credit Agreement, dated as of October 19, 2007 (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on October 22, 2007)
10.17	Amendment No. 6 to the Credit Agreement, dated as of December 27, 2007 (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on December 27, 2007)

- 10.18 Amendment No. 7 to the Credit Agreement, dated as of May 9, 2008 (incorporated by reference to Exhibit 10.2 to the Company' s Current Report on Form 8-K filed July 7, 2008)
- 10.19 Amendment No. 8 to the Credit Agreement, dated as of July 3, 2008 (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed July 7, 2008)

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<u>Number</u>	<u>Description</u>
10.20	Pledge and Security Agreement dated as of June 7, 2005, with respect to the Credit Agreement (incorporated by reference to Exhibit 10.4 to the Company' s Current Report on Form 8-K filed on June 8, 2005)
10.21	Guaranty dated as of June 7, 2005, with respect to the Credit Agreement (incorporated by reference to Exhibit 10.5 to the Company' s Current Report on Form 8-K filed on June 8, 2005)
10.22+	Severance protection letter agreement dated as of March 11, 2009 between the Company and J. Brandon Black (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on March 13, 2009)
10.23+	Severance protection letter agreement dated as of March 11, 2009 between the Company and Paul Grinberg (incorporated by reference to Exhibit 10.2 to the Company' s Current Report on Form 8-K filed on March 13, 2009)
10.24	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. (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on June 8, 2005)
10.25	Acknowledgement Agreement dated as of June 7, 2005 between CompuCredit Corporation and Midland Funding LLC (incorporated by reference to Exhibit 10.2 to the Company' s Current Report on Form 8-K filed on June 8, 2005)
10.26	Asset Purchase Agreement dated as of August 30, 2005 among Ascension Capital Group, Ltd., Ascension Capital Management, L.L.C., The Erich M. Ramsey Trust, Erich M. Ramsey, Leonard R. Oszustowicz, Jeffrey J. Walter, Ascension Acquisition, LP, and Encore Capital Group, Inc. (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on September 2, 2005)
10.27	Convertible Note Hedge Confirmation, dated as of September 13, 2005, by and between Encore Capital Group, Inc. and JPMorgan Chase Bank, National Association, an affiliate of J.P. Morgan Securities Inc. (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on September 22, 2005)
10.28	Convertible Note Hedge Confirmation, dated as of September 13, 2005, by and between Encore Capital Group, Inc. and Morgan Stanley International Limited, an affiliate of Morgan Stanley & Co. Incorporated. (incorporated by reference to Exhibit 10.3 to the Company' s Current Report on Form 8-K filed on September 22, 2005)
10.29	Convertible Note Hedge Confirmation, dated as of September 30, 2005, by and between Encore Capital Group, Inc. and JPMorgan Chase Bank, National Association, an affiliate of J.P. Morgan Securities Inc. (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on October 6, 2005)
10.30	Convertible Note Hedge Confirmation, dated as of September 30, 2005, by and between Encore Capital Group, Inc. and Morgan Stanley International Limited, an affiliate of Morgan Stanley & Co. Incorporated. (incorporated by reference to Exhibit 10.3 to the Company' s Current Report on Form 8-K filed on October 6, 2005)
10.31	Warrant Confirmation, dated as of September 13, 2005, by and between Encore Capital Group, Inc. and JPMorgan Chase Bank, National Association, an affiliate of J.P. Morgan Securities Inc. (incorporated by reference to Exhibit 10.2 to the Company' s Current Report on Form 8-K filed on September 22, 2005)
10.32	Warrant Confirmation, dated as of September 13, 2005, by and between Encore Capital Group, Inc. and Morgan Stanley International Limited, an affiliate of Morgan Stanley & Co. Incorporated. (incorporated by reference to Exhibit 10.4 to the Company' s Current Report on Form 8-K filed on September 22, 2005)
10.33	Warrant Confirmation, dated as of September 30, 2005, by and between Encore Capital Group, Inc. and JPMorgan Chase Bank, National Association, an affiliate of J.P. Morgan Securities Inc. (incorporated by reference to Exhibit 10.2 to the Company' s Current Report on Form 8-K filed on October 6, 2005)

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<u>Number</u>	<u>Description</u>
10.34	Warrant Confirmation, dated as of September 30, 2005, by and between Encore Capital Group, Inc. and Morgan Stanley International Limited, an affiliate of Morgan Stanley & Co. Incorporated. (incorporated by reference to Exhibit 10.4 to the Company' s Current Report on Form 8-K filed on October 6, 2005)
10.35	Lease Agreement, dated as of March 24, 2009, between Midland Credit Management India Private Limited, Dinesh Kumar and Manmohan Gaiind, for real property located in Gurgaon, India (incorporated by reference to Exhibit 10.3 to the Company' s Quarterly Report on Form 10-Q filed on April 29, 2009)
10.36	Lease Deed, dated as of April 22, 2009, between Midland Credit Management India Private Limited and R.S. Technologies Private Limited, for real property located in Gurgaon, India (incorporated by reference to Exhibit 10.4 to the Company' s Quarterly Report on Form 10-Q filed on April 29, 2009)
10.37	Sublease, dated as of March 31, 2008, by and between Encore Capital Group, Inc. and FMT Services, Inc., for real property located in St. Cloud, Minnesota (incorporated by reference to Exhibit 10.2 to the Company' s Quarterly Report on Form 10-Q filed on August 4, 2008)
10.38	Multi-Tenant Net Commercial Lease, dated as of February 20, 2008, by and between Encore Capital Group, Inc. and Pranjivan R. Lodhia and Lolita Lodhia, for real property located in Phoenix, Arizona (incorporated by reference to Exhibit 10.3 to the Company' s Quarterly Report on Form 10-Q filed on August 4, 2008)
10.39	Sublease, dated as of February 12, 2004, by and between Southwestern Bell Telephone, L.P. and Ascension Capital Group, Inc., as successor in interest to Ascension Capital Group, Ltd., for real property located in Arlington, Texas (incorporated by reference to Exhibit 10.39 to the Company' s Annual Report on Form 10-K filed on February 8, 2010)
10.40	Assignment and Consent to Assignment of Sublease, dated as of August 18, 2005, by and between DBSI Housing, Inc., Ascension Capital Group, Ltd., Encore Capital Group, Inc., Ascension Acquisition, L.P., now known as Ascension Capital Group, Inc., and Southwestern Bell Telephone, L.P. (incorporated by reference to Exhibit 10.40 to the Company' s Annual Report on Form 10-K filed on February 8, 2010)
10.41	Credit Agreement dated as of February 8, 2010 by and among Encore Capital Group, Inc., the Lenders from time to time parties thereto, and JPMorgan Chase Bank, N.A., as administrative agent (the "2010 Credit Agreement") (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on February 8, 2010)
10.42	Pledge and Security Agreement dated as of February 8, 2010 with respect to the 2010 Credit Agreement (incorporated by reference to Exhibit 10.2 to the Company' s Current Report on Form 8-K filed on February 8, 2010)
10.43	Guaranty dated as of February 8, 2010 with respect to the 2010 Credit Agreement (incorporated by reference to Exhibit 10.3 to the Company' s Current Report on Form 8-K filed on February 8, 2010)
10.44	Form of Restricted Stock Agreement by and between George Lund and Encore Capital Group, Inc. (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on June 17, 2010)
10.45	Amendment No. 1 to the Credit Agreement, dated September 20, 2010, by and among the Company, the financial institutions listed on the signatures pages thereto and JPMorgan Chase Bank N.A. as collateral agent and administrative agent (incorporated by reference to Exhibit 10.1 to the Company' s Current Report on Form 8-K filed on September 23, 2010)
10.46	Amendment No. 2 to the Credit Agreement, dated September 21, 2010, by and among the Company, the financial institutions listed on the signatures pages thereto and JPMorgan Chase Bank N.A. as collateral agent and administrative agent (incorporated by reference to Exhibit 10.2 to the Company' s Current Report on Form 8-K filed on September 23, 2010)
10.47	Amendment No. 3 to the Credit Agreement, dated as of March 25, 2011, by and among the Company, the financial institutions listed on the signatures pages thereto and JPMorgan Chase Bank N.A. as collateral agent, lender and

administrative agent (incorporated by reference to Exhibit 10.1 to the Company' s Quarterly Report on Form 10-Q filed on April 27, 2011)

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<u>Number</u>	<u>Description</u>
10.48	Lease Deed, dated as of October 26, 2010, between Midland Credit Management India Private Limited and R.S. Technologies Private Limited, for real property located in Gurgaon, India (incorporated by reference to Exhibit 10.47 to the Company's Annual Report on Form 10-K filed on February 14, 2011)
10.49	Lease Deed, dated as of March 4, 2011, between Midland Credit Management, Inc., a Kansas corporation ("Tenant") and Teachers Insurance and Annuity Association of America for the Benefit of its Separate Real Estate Account, a New York corporation ("Landlord") for real property located in San Diego, California (the "San Diego Lease") (filed herewith)
10.50	Lease Guaranty dated as of March 4, 2011 by Encore Capital Group, Inc. in favor of Teachers Insurance and Annuity Association of America for the Benefit of its Separate Real Estate Account in connection with the San Diego Lease (filed herewith)
10.51	Lease Deed, dated as of September 27, 2011, between TRES - CIENTO DOS - SEISCIENTOS TREINTA Y CUATRO MIL DOSCIENTOS CUARENTA Y TRES, SOCIEDAD DE RESPONSABILIDAD LIMITADA ("Lessee") and B.T. Consulting and Services, S.A. ("Lessor"), for real property located in Lagunilla de Heredia, Costa Rica, as amended on October 20, 2011 to reflect the name change of Lessee to MCM Midland Management Costa Rica, S.r.L. (filed herewith)
21	List of Subsidiaries (filed herewith)
23	Consent of Independent Registered Public Accounting Firm, BDO USA, LLP, dated February 9, 2012 (filed herewith)
24	Power of Attorney (filed herewith)
31.1	Certification of the Principal Executive Officer pursuant to Rule 13a-14(a) or 15d-14(a) under the Securities Exchange Act of 1934 (filed herewith)
31.2	Certification of the Principal Financial Officer pursuant to Rule 13a-14(a) or 15d-14(a) under the Securities Exchange Act of 1934 (filed herewith)
32.1	Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (furnished herewith)
101	The following financial information from the Encore Capital Group, Inc. Annual Report on Form 10-K for the year ended December 31, 2011 formatted in eXtensible Business Reporting Language (XBRL): (i) Consolidated Statements of Financial Condition; (ii) Consolidated Statements of Income; (iii) Consolidated Statements of Stockholders' Equity and Comprehensive Income; (iv) Consolidated Statements of Cash Flows; and (v) the Notes to Consolidated Financial Statements, tagged as blocks of text. **

\* The asterisk denotes that confidential portions of this exhibit have been omitted in reliance on Rule 24b-2 of the Securities Exchange Act of 1934. The confidential portions have been submitted separately to the Securities and Exchange Commission.

+ Management contract or compensatory plan or arrangement.

\*\* Pursuant to Rule 406T of Regulation S-T, the Interactive Data Files on Exhibit 101 hereto are deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, are deemed not filed for purposes of Section 18 of the Securities and Exchange Act of 1934, as amended, and otherwise are not subject to liability under those sections.

**OFFICE LEASE**

**by and between**

**TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA FOR THE BENEFIT OF ITS  
REAL ESTATE ACCOUNT, a New York corporation**

**(“Landlord”)**

**And**

**MIDLAND CREDIT MANAGEMENT, INC.,  
a Kansas corporation**

**(“Tenant”)**

**Dated as of**

**March 4, 2011**

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**OFFICE LEASE**

THIS OFFICE LEASE is dated for reference purposes only as of March 4, 2011 (“Effective Date”) and is made between TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA FOR THE BENEFIT OF ITS SEPARATE REAL ESTATE ACCOUNT, a New York corporation (“Landlord”), and the Tenant described in *Item 1* of the Basic Lease Provisions.

**LEASE OF PREMISES**

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, subject to all of the terms and conditions set forth herein, those certain premises (the “Premises”) described in *Item 3* of the Basic Lease Provisions and as shown in the drawing attached hereto as *Exhibit A-1*. The Premises are located in the Building described in *Item 2* of the Basic Lease Provisions. The Building is located on that certain land (the “Land”) more particularly described on *Exhibit A-2* attached hereto, which is also improved with landscaping, parking facilities and other improvements, fixtures and common areas and appurtenances now or hereafter placed, constructed or erected on the Land (sometimes collectively referred to herein as the “Project”).

**BASIC LEASE PROVISIONS**

1. **Tenant:** MIDLAND CREDIT MANAGEMENT, INC.,  
a Kansas corporation (“Tenant”)
2. **Building:** 3111 Camino del Rio North  
San Diego, California 92108
3. **Description of Premises:** The entire twelfth (12<sup>th</sup>) and thirteenth (13<sup>th</sup>) floors of the Building
- Rentable Area of Premises:** 32,503 square feet of Rentable Area  
**Usable Area of Premises:** 31,378 square feet of Usable Area  
**Building Size:** 202,913 square feet of Rentable Area (subject to Paragraph 18)
4. **Tenant’s Proportionate Share:** 16.02% (32,503 rsf / 202,913 rsf) (See Paragraph 3)
4. **Base Rent:** (See Paragraph 2)

<u>Months</u>	<u>Base Rent</u>
1 to 12	*\$ 65,006.00
13 to 24	\$ 66,956.18
25 to 36	\$ 68,964.87
37 to 48	\$ 71,033.82
49 to 60	\$ 73,164.83
61 to 72	\$ 75,359.77
73 to 84	\$ 77,620.56
85 to 94	\$ 79,949.18

\* Subject to abatement as provided in Paragraph 2(b) below.

6. **Base Rent Payable Upon Execution:** \$65,006.00

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7. **Security Deposit Payable Upon Execution:** \$79,949.18 (See Paragraph 2(c))
8. **Base Year:** 2011
9. **Initial Term:** Ninety-four (94) months, commencing on the Commencement Date and ending on the day immediately preceding the ninety-fourth (94<sup>th</sup>) month anniversary of the Commencement Date (See Paragraph 1)
10. **Estimated Commencement Date:** June 1, 2011, Actual Commencement Date to be determined as provided in Paragraph 1
11. **Estimated Termination Date:** March 31, 2019
12. **Broker(s) (See Paragraph 19(k)):**
- Landlord' s Broker:** Jones Lang LSalle Americas  
4747 Executive Drive, Suite 400  
San Diego, California 92121  
Attn: Richard J. Gonor
- Tenant' s Broker:** Irving Hughes, Inc.  
655 West Broadway, Suite 1650  
San Diego, California 92101  
Attn: David B. Marino
13. **Number of Parking Spaces:** Up to four (4) unreserved parking spaces per one thousand (1,000) square feet of Rentable Area leased (i.e., 130 unreserved parking spaces based upon 32,500 square feet of Rentable Area in the Premises) and five (5) reserved parking spaces free of charge throughout the Initial Term. Subject to availability, Tenant shall have right to lease up to an additional five (5) reserved parking spaces at Landlord' s then prevailing charge for reserved parking spaces as the same may change from time to time, currently at the rate of \$75.00 per reserved space per month. Landlord shall also provide Tenant with 300 hours of parking validations per month for visitor parking, provided such validations may only be used in the month of issuance and shall not be available to Tenant on a cumulative or rollover basis. In addition, Landlord shall provide Tenant with up to an additional 0.5 unreserved parking spaces per one thousand (1,000) square feet of Rentable Area leased (i.e., up to an additional 16 parking spaces based upon 32,500 square feet of Rentable Area in the Premises (“Overflow Parking”) anywhere in the Project and/or upon any other property adjacent to the Project over which Landlord has parking rights and provided Tenant' s rights to such additional Overflow Parking shall be personal to the original Tenant executing this Lease and available only while the original Tenant occupies not less than 100% of the leased Premises. (See Paragraph 18)

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14. **Addresses for Notices:**

**To: TENANT:**

**Prior to occupancy of the Premises:**

Midland Credit Management, Inc.  
8875 Aero Drive, Suite 200  
San Diego, CA 92123  
Attn: Glen Freter, Vice President and  
Controller

**After occupancy of the Premises:**

To the Premises

**To: LANDLORD:**

TIAA-CREF  
4675 MacArthur Court, Suite 1100  
Newport Beach, California 92660  
Attn: Robert Niendorf, Director - Asset Management

**With a copy to:**

Jones Lang LaSalle  
4747 Executive Drive, Suite 400  
San Diego, CA 92121  
Attn: Karen Christian

15. **Address for Payment of Rent:**

All payments payable under this Lease shall be sent to Landlord at the address set forth below or to such other address as Landlord may designate in writing:

TIAA-Centerside I  
File #70175  
Los Angeles, California 90074-0175

16. **Guarantor:**

Encore Capital Group, Inc.

17. **Landlord's Construction Allowance:**

None. Tenant Improvements shall be provided by Landlord on a "turnkey" basis, as more particularly set forth in Exhibit B.

18. **The "State" is the State of California**

19. **Options:**

One (1) option to extend the Term for five (5) years (See Rider No. 1). Right of First Offer as to Suites 1150 and 1100 (See Rider No. 3). Right of First Refusal as to Suite 1125 (See Rider No. 4).

This Lease consists of the foregoing introductory paragraphs and Basic Lease Provisions, the provisions of the Standard Lease Provisions (the "Standard Lease Provisions") (consisting of Paragraphs 1 through 19 which follow) and Exhibit A-1 through Exhibit A-6 and Exhibit B through Exhibit E, and the following Riders: Rider No. 1 through Rider No. 5, all of which are incorporated herein by this reference. In the event of any conflict between the provisions of the Basic Lease Provisions and the provisions of the Standard Lease Provisions, the Standard Lease Provisions shall control.

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## STANDARD LEASE PROVISIONS

### 1. **TERM**

(a) The Initial Term (as defined in *Item 9* of the Basic Lease Provisions) of this Lease and the payment of “Rent” (as that term is defined in Paragraph 3(j) below) by Tenant shall commence on the earliest of (i) the date that the “Tenant Improvements” are “Substantially Completed” (as those terms are defined and provided in the attached Exhibit B Work Letter), or (ii) the date the Tenant Improvements would have been Substantially Completed except for “Tenant Delays” (as that term is defined and provided in the attached Exhibit B Work Letter), or (iii) the date that Tenant, or any person occupying any of the Premises with Tenant’s permission, commences business operations from the Premises (the “Commencement Date”). However, regardless of any other provision of this Paragraph 1 or any other provision of this Lease, the Commencement Date shall not be deemed to have occurred until after Landlord has provided Tenant with a minimum of five (5) business days of early access as provided in Paragraph 1(d) below to complete Tenant’s installation of its furnishings and equipment. Unless earlier terminated in accordance with the provisions hereof, the Initial Term of this Lease shall be the period shown in *Item 9* of the Basic Lease Provisions. As used herein, “Lease Term” shall mean the Initial Term referred to in *Item 9* of the Basic Lease Provisions, subject to any extension of the Initial Term hereof exercised in accordance with the terms and conditions expressly set forth herein. This Lease shall be a binding contractual obligation effective upon execution hereof by Landlord and Tenant, notwithstanding the later commencement of the Initial Term of this Lease.

(b) The Premises will be delivered to Tenant when the Tenant Improvements have been Substantially Completed. If the Commencement Date is delayed or otherwise does not occur on the Estimated Commencement Date, set forth in *Item 10* of the Basic Lease Provisions, except as otherwise provided in this Section 1, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom, but provided the Commencement Date is not delayed as a result of Tenant Delays, the Commencement Date shall be extended until it occurs as provided in Paragraph 1(a) above. Notwithstanding the foregoing:

(i) If for reasons other than Tenant Delays (as that term is defined and provided in the attached Exhibit B Work Letter) the Commencement Date does not occur within ninety (90) days after the Estimated Commencement Date (“90 Day Delay Period”), then after the expiration of the 90 Day Delay Period, for each day thereafter that the Commencement Date has not occurred, the Abatement Period (as defined in Section 2 hereof) shall be increased by one (1) day.

(ii) If for reasons other than Tenant Delays (as that term is defined and provided in the attached Exhibit B Work Letter) the Commencement Date does not occur within one hundred eighty (180) days after the Estimated Commencement Date (“180 Day Delay Period”), then after the expiration of the 180 Day Delay Period, Tenant shall have the unconditional right to terminate this Lease by giving written notice of termination to Landlord (“180 Day Delay Termination”) within two (2) business days after the expiration of such 180 Day Delay Period. In the event of a 180 Day Delay Termination, Landlord and Tenant shall not for any reason owe any amounts to each other or have any liabilities or obligations to each other of any kind, and the effect of a 180 Day Delay Termination shall be the same as if Landlord and Tenant had never entered into this Lease.

(iii) If the Commencement Date is delayed as a result of Tenant Delays, the 90 Day Delay Period and the 180 Day Delay Period shall each be extended by the number of days that the Commencement Date is delayed as a result of Tenant Delays.

(c) Upon Substantial Completion of the Tenant Improvements, Landlord shall prepare and deliver to Tenant, Tenant’s Initial Certificate in the form of Exhibit E attached hereto (the “Certificate”), which Tenant shall acknowledge by executing a copy and returning it to Landlord. If Tenant fails to sign and return the Certificate to Landlord within ten (10) days of its receipt from Landlord, the Certificate as sent by Landlord shall be deemed to have correctly set forth the Commencement Date and the other matters addressed in the Certificate. Failure of Landlord to send the Certificate shall have no effect on the Commencement Date.

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(d) So long as Landlord has received from Tenant the first month's Base Rent due pursuant to this Lease, certificates satisfactory to Landlord evidencing the insurance required to be carried by Tenant under this Lease, and Tenant's Security Deposit and the fully executed Guaranty, and so long as the Tenant and its contractors and employees do not interfere with the completion of the Tenant Improvements, Landlord shall use reasonable efforts to give Tenant's designated contractors access to the Premises a minimum of five (5) business days prior to the estimated Commencement Date (the "**Early Access Period**") for purposes of installing Tenant's telecommunications equipment, cabling, furniture, fixtures, and equipment ("**Tenant's Work**"). Tenant's Work shall be performed by Tenant at Tenant's sole cost and expense. Tenant's access to the Premises during the Early Access Period shall be subject to all terms and conditions of this Lease, except that Tenant shall not be obligated to pay Rent during the Early Access Period until the Commencement Date. Tenant agrees to provide Landlord with prior notice of any such intended early access and to cooperate with Landlord during the period of any such early access so as not to interfere with Landlord in the completion of any Landlord's work in the Premises pursuant to the Work Letter (the "**Landlord's Work**"). Should Landlord reasonably determine such early access interferes with Landlord's Work, Landlord may deny Tenant access to the Premises, Tenant shall promptly surrender any keys or other means of access to the Premises, and Tenant shall otherwise comply with such denial by Landlord until such interference with Landlord's Work has been eliminated.

## **2. BASE RENT AND SECURITY DEPOSIT**

(a) Tenant agrees to pay during each month of the Lease Term as Base Rent ("Base Rent") for the Premises the sums shown for such periods in *Item 5* of the Basic Lease Provisions.

(b) Except as expressly provided to the contrary herein, Base Rent shall be payable in consecutive monthly installments, in advance, without demand, deduction or offset, commencing on the Commencement Date and continuing on the first day of each calendar month thereafter until the expiration of the Lease Term. The first full monthly installment of Base Rent shall be payable upon Tenant's execution of this Lease. The obligation of Tenant to pay Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. If the Commencement Date is a day other than the first day of a calendar month, or the Lease Term expires on a day other than the last day of a calendar month, then the Rent for such partial month shall be calculated on a per diem basis. Notwithstanding the foregoing, provided Tenant is not in monetary or material non-monetary default under this Lease beyond any applicable notice and cure period, Landlord hereby agrees to abate Tenant's obligation to pay the monthly installments of Base Rent for the second (2<sup>nd</sup>) through twelfth (12<sup>th</sup>) full months of the Initial Term (such months being hereinafter referred to as the "Abatement Period", and such total amount of abated Base Rent being hereinafter referred to as the "Abated Amount"). During such Abatement Period, Tenant will still be responsible for the payment of all other monetary obligations under the Lease, including payment of Additional Rent. Tenant acknowledges that any monetary or material non-monetary default by Tenant under this Lease will cause Landlord to incur costs not contemplated hereunder, the exact amount of such costs being extremely difficult and impracticable to ascertain, therefore, should Tenant at any time during the Term be in monetary or material nonmonetary default after having been given notice and opportunity to cure, then the total unamortized sum of such Abated Amount (amortized on a straight line basis over the Initial Term) so conditionally excused shall become immediately due and payable by Tenant to Landlord and any further rent abatement shall cease immediately notwithstanding that Landlord, in Landlord's sole discretion, elects to allow the Lease to continue; provided, however, Tenant acknowledges and agrees that nothing in this Section 2(b) is intended to limit any other remedies available to Landlord at law or in equity under applicable law (including, without limitation, the remedies under Civil Code Section 1951.2 and/or 1951.4 and any successor statutes or similar laws), in the event Tenant is in monetary or material non-monetary default under this Lease beyond any applicable notice and cure period.

(c) Simultaneously with the execution of this Lease, Tenant has paid or will pay Landlord the security deposit (the "Security Deposit") in the amount stated in *Item 7* of the Basic Lease Provisions as security for the performance of the provisions of this Lease by Tenant. Landlord shall not be required to keep the Security Deposit separate from its general funds and Tenant shall not be entitled to interest thereon.

If Tenant defaults with respect to any monetary or material non-monetary provision of this Lease, including, without limitation, the provisions relating to the payment of Rent, the cleaning of the Premises upon the termination of this Lease, or amounts which Landlord

may be entitled to recover pursuant to the provisions of Section 1951.2 of the California Civil Code, Landlord may, but shall not be required to, use, apply or retain all or

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any part of the Security Deposit (i) for the payment of any Rent or any other sum in default, (ii) for the payment of any other amount which Landlord may spend or become obligated to spend by reason of Tenant's monetary or material non-monetary default hereunder, or (iii) to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's monetary or material non-monetary default hereunder, including, without limitation, costs and reasonable attorneys' fees incurred by Landlord to recover possession of the Premises following such default by Tenant hereunder. If any portion of the Security Deposit is so used or applied, Tenant shall, upon demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to the appropriate amount, as determined hereunder. If Tenant shall fully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within thirty (30) days following the expiration of the Lease Term; provided, however, that Landlord may retain the Security Deposit until such time as any amount due from Tenant in accordance with Paragraph 3 below has been determined and paid to Landlord in full. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code. Tenant also waives all provisions of law, now or hereafter in force, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any "Tenant Affiliates" (as that term is defined in Paragraph 6(f)(i) below). The use or application of the Security Deposit or any portion thereof shall not prevent Landlord from exercising any other right or remedy provided hereunder or any Law and shall not be construed as liquidated damages.

(d) The parties agree that for all purposes hereunder the Premises shall be stipulated to contain the number of square feet of Rentable Area described in *Item 3* of the Basic Lease Provisions.

(e) The provisions for payment of Operating Expenses by means of periodic payment of Tenant's Proportionate Share of estimated Operating Expenses and the year end adjustment of such payments are intended to pass on to Tenant and reimburse Landlord for Tenant's Proportionate Share of all costs and expenses of the nature described in Paragraph 3 of this Lease, below.

### **3. ADDITIONAL RENT**

(a) Tenant shall pay to Landlord each month as additional rent ("Additional Rent") an amount equal to "Tenant's Proportionate Share" (as that term is defined in Paragraph 3(b) below) of the positive excess, if any, of "Operating Expenses" (as that term is defined in Paragraph 3(c) below) for each year over the Operating Expenses for the Base Year.

(b) "Tenant's Proportionate Share" is, subject to the provisions of Paragraph 18 below, the percentage number described in *Item 4* of the Basic Lease Provisions. Tenant's Proportionate Share represents, subject to the provisions of Paragraph 18 below, a fraction, the numerator of which is the number of square feet of Rentable Area in the Premises and the denominator of which is the number of square feet of Rentable Area in the Building, as determined by Landlord pursuant to Paragraph 18, below.

(c) "Operating Expenses" means all costs, expenses and obligations incurred or payable by Landlord in connection with the operation, ownership, management, repair or maintenance of the Building and the Project during or allocable to the Lease Term, including without limitation, the following:

(i) Any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, charge, improvement bond, tax, water and sewer rents and charges, utilities and communications taxes and charges or similar or dissimilar imposition imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, or any other governmental charge, general and special, ordinary and extraordinary, foreseen and unforeseen, which may be assessed against any legal or equitable interest of Landlord in the Premises, Building, Common Areas or Project (collectively, "Taxes"). Taxes shall also include, without limitation:

(A) any tax on Landlord's "right" to rent or "right" to other income from the Premises or as against Landlord's business of leasing the Premises;

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(B) any assessment, tax, fee, levy or charge in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax, it being acknowledged by Tenant and Landlord that Proposition 13 was adopted by the voters of the State of California in the June, 1978 election and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants. It is the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies and charges be included within the definition of "Taxes" for the purposes of this Lease;

(C) any assessment, tax, fee, levy or charge allocable to or measured by the area of the Premises or other premises in the Building or the rent payable by Tenant hereunder or other tenants of the Project, including, without limitation, any gross receipts tax or excise tax levied by state, city or federal government, or any political subdivision thereof, with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof but not on Landlord's other operations;

(D) any assessment, tax, fee, levy or charge upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises;

(E) any assessment, tax, fee, levy or charge by any governmental agency related to any transportation plan, fund or system (including assessment districts) instituted within the geographic area of which the Project is a part; and/or

(F) any costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in attempting to protest, reduce or minimize Taxes.

(ii) The cost of services and utilities (including taxes and other charges incurred in connection therewith) provided to the Premises, the Building or the Project, including, without limitation, water, power, gas, sewer, waste disposal, telephone and cable television facilities, fuel, supplies, equipment, tools, materials; service contracts, janitorial services, waste and refuse disposal, window cleaning, maintenance and repair of sidewalks and Building exterior and services areas, gardening and landscaping; insurance, including, but not limited to, public liability, fire, property damage, wind, hurricane, earthquake, terrorism, flood, rental loss, rent continuation, boiler machinery, business interruption, contractual indemnification and All Risk or Causes of Loss - Special Form coverage insurance for up to the full replacement cost of the Project and such other insurance as is customarily carried by operators of other similar class office buildings in the city in which the Project is located, to the extent carried by Landlord in its discretion, and the deductible portion of any insured loss otherwise covered by such insurance; the cost of compensation, including employment, welfare and social security taxes, paid vacation days, disability, pension, medical and other fringe benefits of all persons (including independent contractors) who perform services connected with the operation, maintenance, repair or replacement of the Project; any association assessments, costs, dues and/or expenses relating to the Project, personal property taxes on, and maintenance and repair of, equipment and other personal property used in connection with the operation, maintenance or repair of the Project; repair and replacement of window coverings provided by Landlord in the premises of tenants in the Project; such reasonable auditors' fees and legal fees as are incurred in connection with the operation, maintenance or repair of the Project; administration fees; a property management fee (which fee may be imputed if Landlord has internalized management or otherwise acts as its own property manager); the costs of maintenance of any easements or ground leases benefiting the Project, whether by Landlord or by an independent contractor; a reasonable allowance for depreciation of personal property used in the operation, maintenance or repair of the Project; license, permit and inspection fees; all costs and expenses required by any governmental or quasigovernmental authority or by applicable law, for any reason, including capital improvements, whether capitalized or not; the cost of the capital improvements to be made by Landlord as provided in Exhibit C as to shower rooms, Floor 12 & 13 lobbies, corridors and restrooms, parking ADA improvements and entrance

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modifications (such costs to be amortized over such reasonable periods as Landlord shall reasonably determine together with interest thereon at the rate of ten percent per annum or such higher rate as may have been paid by Landlord on funds borrowed for the purpose of funding such improvements; any capital improvements made to the Project by Landlord that improve life-safety systems or reduce operating expenses and the costs to replace items at the end of their useful life which Landlord is obligated to maintain, repair and replace under the Lease (such costs to be amortized over such reasonable periods as Landlord shall reasonably determine together with interest thereon at the rate of ten percent per annum or such higher rate as may have been paid by Landlord on funds borrowed for the purpose of funding such improvements); the cost of air conditioning, heating, ventilating, plumbing, elevator maintenance, and repair (to include the replacement of components) and other mechanical and electrical systems repair and maintenance; sign maintenance and repair; and "Common Area" (as that term is defined in Paragraph 18(b), below) repair, resurfacing, operation and maintenance; the cost of temporary lobby displays and events commensurate with the operation of a similar class building, and the cost of providing security services, if any, deemed appropriate by Landlord.

Notwithstanding anything to the contrary contained in this Lease including within this Section 3(c), The following items shall be excluded from Operating Expenses:

(A) leasing commissions, attorneys' fees, costs and disbursements and other expenses incurred in connection with leasing, renovating or improving vacant space in the Project for tenants or prospective tenants of the Project;

(B) costs (including permit, license and inspection fees) incurred in renovating or otherwise improving or decorating, painting or redecorating space for tenants or vacant space;

(C) costs of services sold to tenants for which Landlord is entitled to be reimbursed by such tenants as an additional charge or rental over and above the Base Rent and Operating Expenses payable under the lease with such tenant or other occupant;

(D) any depreciation or amortization of the Project except as expressly permitted herein;

(E) costs incurred due to a violation of "Law" (as that term is defined in Paragraph 6(b), below) by Landlord relating to the Project;

(F) ground lease rent, interest on debt or amortization payments on any mortgages or deeds of trust or any other debt for borrowed money;

(G) costs of all items and services for which Tenant or other tenants reimburse Landlord outside of Operating Expenses;

(H) costs of repairs or other work occasioned by fire, windstorm or other casualty or work paid for through insurance or condemnation proceeds (excluding any deductible);

(I) legal expenses incurred for (i) negotiating lease terms for prospective tenants, (ii) negotiating termination or extension of leases with existing tenants, (iii) proceedings against any other specific tenant relating solely to the collection of rent or other sums due to Landlord from such tenant, or (iv) the development and/or construction of the Project;

(J) costs of repairs resulting from any defect in the original design or construction of the Project;

(K) Seismic Standards Expenses as that term is defined in Section 5(d) of this Lease.

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(d) Variable Operating Expenses for any calendar year during which actual occupancy of the Project is less than one hundred percent (100%) of the Rentable Area of the Project shall be appropriately adjusted to reflect one hundred percent (100%) occupancy of the existing Rentable Area of the Project during such period. In determining Operating Expenses, if any services or utilities are separately charged to tenants of the Project or others, Operating Expenses shall be adjusted by Landlord to reflect the amount of expense which would have been incurred for such services or utilities on a full time basis for normal Project operating hours. Operating Expenses for the Tenant's Base Year for Operating Expenses (as defined in *Item 8* of the Basic Lease Provisions) shall not include Operating Expenses attributable to temporary market-wide labor-rate increases and/or utility rate increases due to extraordinary circumstances, including, but not limited to Force Majeure, conservation surcharges, boycotts, embargoes, or other shortages. In the event (i) the Commencement Date shall be a date other than January 1, (ii) the date fixed for the expiration of the Lease Term shall be a date other than December 31, (iii) of any early termination of this Lease, or (iv) of any increase or decrease in the size of the Premises, then in each such event, an appropriate and reasonable adjustment in the application of this Paragraph 3 shall, subject to the provisions of this Lease, be made to reflect such event on a basis reasonably determined by Landlord to be consistent with the principles underlying the provisions of this Paragraph 3. In addition, Landlord shall have the right, from time to time, to equitably allocate and prorate some or all of the Operating Expenses among different tenants and/or different buildings of the Project and/or on a building-by-building basis (the "Cost Pools"), adjusting Tenant's Proportionate Share as to each of the separately allocated costs based on the ratio of the Rentable Area of the Premises to the Rentable Area of all of the premises to which such costs are allocated. Such Cost Pools may include, without limitation, the office space tenants and retail space tenants of the buildings in the Project.

(e) Prior to the commencement of each calendar year of the Lease Term following the Commencement Date, Landlord shall have the right to give to Tenant a written estimate of Tenant's Proportionate Share of the Operating Expenses for the Project for the ensuing year. Tenant shall pay such estimated amount to Landlord in equal monthly installments, in advance on the first day of each month. On or before June 30th of each calendar year, Landlord shall furnish Tenant a statement indicating in reasonable detail the Operating Expenses for the prior calendar year, and the parties shall, within thirty (30) days thereafter, make any payment or allowance necessary to adjust Tenant's estimated payments to Tenant's Proportionate Share of such Operating Expenses as indicated by such annual statement. Except with respect to Taxes and any invoices submitted by third parties to Landlord after the issuance of a statement, Landlord shall not be permitted to make any adjustments, corrections and/or revisions to the statement from and after one hundred eighty (180) days after delivery of said statement to Tenant. Any payment due Landlord shall be payable by Tenant on demand from Landlord. Any amount due Tenant shall be credited against installments next becoming due under this Paragraph 3(e) or refunded to Tenant, if requested by Tenant.

(f) Except as excluded under Paragraph 3(c) above, all levies or other taxes assessed or imposed on Landlord upon the rents payable to Landlord under this Lease, if any, and any excise, transaction, sales or privilege tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents from the Premises and/or the Project or any portion thereof, if any, shall be paid by Tenant to Landlord monthly in estimated installments or upon demand, at the option of Landlord, as additional rent to be allocated to monthly Operating Expenses. Regardless of the foregoing, Landlord agrees that all income taxes imposed on Landlord are excluded from the scope of this Section 3(f).

(g) Prior to the execution of this Lease, Landlord provided to Tenant a history of the Operating Expenses that have been incurred by Landlord for the 2008, 2009 and 2010 calendar years, and a projection of the Operating Expenses Landlord expects to incur for the 2011 calendar years (collectively "Operating Expenses Information"). Landlord hereby represents and warrants to Tenant that the Operating Expenses Information is accurate and complete in all material respects, is not misleading in any material respect, and that to the best of Landlord's knowledge and belief, the types of Operating Expenses that Landlord reasonably expects to incur during the Initial Term will be substantially similar to the types of Operating Expenses described in the Operating Expense Information.

(h) Tenant shall pay ten (10) days before delinquency, all taxes and assessments (i) levied against any personal property, Alterations, tenant improvements or trade fixtures of Tenant in or about the Premises and (ii) based upon this Lease or any document to which Tenant is a party creating or transferring an interest in this Lease or an estate in all or any portion of the Premises. If any such taxes or assessments are levied against Landlord or

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Landlord's property or if the assessed value of the Project is increased by the inclusion therein of a value placed upon such personal property or trade fixtures, Tenant shall upon demand reimburse Landlord for the taxes and assessments so levied against Landlord, or such taxes, levies and assessments resulting from such increase in assessed value. To the extent that any such taxes are not separately assessed or billed to Tenant, Tenant shall pay the amount thereof as invoiced to Tenant by Landlord. If the Project is owned by an entity the property of which is exempt from taxation pursuant to the California Revenue and Taxation Code, Tenant's possessory interest may be subject to property taxation pursuant to Section 107.6 of the California Revenue and Taxation Code and to the payment of property taxes levied on that interest. The "full cash value," as defined in Sections 110 and 110.1 of the Revenue and Taxation Code, of the possessory interest, upon which property taxes will be based, shall equal the greater of (A) the full cash value of the possessory interest or (B) if Tenant has leased less than all of the Project, Tenant's allocable share of the full cash value of the Project that would have been enrolled if the Project had been subject to property tax upon acquisition by Landlord. The full cash value as provided for pursuant to either (A) or (B) of the preceding sentence shall reflect the anticipated term of possession if, on the lien date described in Section 2192 of the California Revenue and Taxation Code, that term is expected to terminate prior to the end of the next succeeding fiscal year. Tenant's Proportionate Share shall, subject to the preceding sentence, be the Rentable Area of the Premises divided by the Rentable Area of the Building.

(i) Any delay or failure of Landlord in (i) delivering any estimate or statement described in this Paragraph 3, or (ii) computing or billing Tenant's Proportionate Share of Operating Expenses shall not constitute a waiver of its right to require an increase in Rent, or in any way impair, the continuing obligations of Tenant under this Paragraph 3. In the event of any dispute as to any Additional Rent due under this Paragraph 3, Tenant, an officer of Tenant or Tenant's certified public accountant (but (a) in no event shall Tenant hire or employ an accounting firm of accountants or any person to audit Landlord as set forth under this Paragraph 3 who is compensated or paid for such audit on a contingency basis and (b) in the event Tenant hires or employs an independent party to perform such audit, Tenant shall provide Landlord with a copy of the engagement letter) shall have the right after reasonable notice and at reasonable times to inspect one time per calendar year Landlord's accounting records at Landlord's accounting office. If, after such inspection, Tenant still disputes such Additional Rent, upon Tenant's written request therefor, a certification as to the proper amount of Operating Expenses and the amount due to or payable by Tenant shall be made by an independent certified public accountant mutually agreed to by Landlord and Tenant. If Landlord and Tenant cannot mutually agree to an independent certified public accountant, then the parties agree that Landlord shall choose an independent certified public accountant to conduct the certification as to the proper amount of Tenant's Proportionate Share of Operating Expenses due by Tenant for the period in question; provided, however, such certified public accountant shall not be the accountant who conducted Landlord's initial calculation of Operating Expenses to which Tenant is now objecting. Such certification shall be final and conclusive as to all parties. If the certification reflects that Tenant has overpaid Tenant's Proportionate Share of Operating Expenses for the period in question, then Landlord shall credit such excess to Tenant's next payment of Operating Expenses or, at the request of Tenant, promptly refund such excess to Tenant and conversely, if Tenant has underpaid Tenant's Proportionate Share of Operating Expenses, Tenant shall promptly pay such additional Operating Expenses to Landlord. Tenant agrees to pay the cost of such certification and the investigation with respect thereto and no adjustments in Tenant's favor shall be made unless it is determined that Landlord's original statement was in error in Landlord's favor by more than five percent (5%). Tenant waives the right to dispute any matter relating to the calculation of Operating Expenses or Additional Rent under this Paragraph 3 if any claim or dispute is not asserted in writing to Landlord within one hundred eighty (180) days after delivery to Tenant of the original billing statement with respect thereto. Notwithstanding the foregoing, Tenant shall maintain strict confidentiality of all of Landlord's accounting records and shall not disclose the same to any other person or entity except for Tenant's professional advisory representatives (such as Tenant's employees, accountants, advisors, attorneys and consultants) with a need to know such accounting information, who agree to similarly maintain the confidentiality of such financial information.

(j) Even though the Lease Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Proportionate Share of Operating Expenses for the year in which this Lease terminates, Tenant shall immediately pay any increase due over the estimated Operating Expenses paid, and conversely, any overpayment made by Tenant shall be promptly refunded to Tenant by Landlord.

(k) The Base Rent, Additional Rent, and other amounts required to be paid by Tenant to Landlord hereunder are sometimes collectively referred to as, and shall constitute, "Rent".



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#### **4. IMPROVEMENTS AND ALTERATIONS**

(a) Landlord's sole construction obligation under this Lease is set forth in the Work Letter attached hereto as *Exhibit B*.

(b) Any alterations, additions, or improvements made by or on behalf of Tenant to the Premises (the "Alterations") shall be subject to Landlord's prior written consent. Landlord's consent shall not be unreasonably withheld with respect to proposed Alterations that (i) comply with all applicable laws, ordinances, rules and regulations, (ii) are compatible with the Building and its mechanical, electrical, HVAC and life safety systems, (iii) will not interfere with the use and occupancy of any other portion of the Building by any other tenant or their invitees, (iv) do not affect the structural portions of the Building or require capital alterations to any other portions of the Building or the Project, and, (v) do not and will not, whether alone or taken together with other improvements, require the construction of any other improvements or alterations within the Building. Tenant shall cause, at its sole cost and expense, all Alterations to comply with insurance requirements and with Laws and shall construct, at its sole cost and expense, any alteration or modification required by Laws as a result of any Alterations. All Alterations shall be constructed at Tenant's sole cost and expense, in a first class and good and workmanlike manner by contractors reasonably acceptable to Landlord and only good grades of materials shall be used. All plans and specifications for any Alterations shall be submitted to Landlord for its approval, which approval will not be unreasonably withheld, delayed or conditioned. Landlord may monitor construction of the Alterations and Tenant shall reimburse Landlord for any costs incurred by Landlord in monitoring such construction. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to see that such plans and specifications or construction comply with applicable laws, codes, rules and regulations. Without limiting any other grounds upon which Landlord may refuse to approve any contractor or subcontractor, Landlord may take into account the desirability of maintaining harmonious labor relations at the Project. Landlord may also require that all life safety related work and all mechanical, electrical, plumbing and roof related work be performed by contractors designated by Landlord. Landlord shall have the right, in its sole discretion, to instruct Tenant to remove those improvements or Alterations from the Premises which (i) were not approved in advance by Landlord, (ii) were not built in conformance with plans and specifications approved by Landlord, or (iii) Landlord specified during its review of plans and specifications for Alterations would need to be removed by Tenant upon the expiration of this Lease. Except as set forth in the preceding sentence, Tenant shall not be obligated to remove such Alterations at the expiration of this Lease. Landlord shall not unreasonably withhold or delay its approval with respect to what improvements or Alterations Landlord may require Tenant to remove at the expiration of the Lease. If upon the termination of this Lease Landlord requires Tenant to remove any or all of such Alterations from the Premises, then Tenant, at Tenant's sole cost and expense, shall promptly remove such Alterations and improvements and Tenant shall repair and restore the Premises to its original condition as of the Commencement Date, reasonable wear and tear excepted. Any Alterations remaining in the Premises following the expiration of the Lease Term, or following the surrender of the Premises from Tenant to Landlord, shall become the property of Landlord unless Landlord notifies Tenant otherwise. Tenant shall provide Landlord with the identities and mailing addresses of all persons performing work or supplying materials, prior to beginning such construction, and Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law. Tenant shall assure payment for the completion of all work free and clear of liens and shall provide certificates of insurance for worker's compensation and other coverage in amounts and from an insurance company reasonably satisfactory to Landlord protecting Landlord against liability for bodily injury or property damage during construction. Upon completion of any Alterations and upon Landlord's reasonable request, Tenant shall deliver to Landlord sworn statements setting forth the names of all contractors and subcontractors who did work on the Alterations and final lien waivers from all such contractors and subcontractors. Additionally, upon completion of any Alteration, Tenant shall provide Landlord, at Tenant's expense, with a complete set of plans in reproducible form and specifications reflecting the actual conditions of the Alterations, together with a copy of such plans on diskette in the AutoCAD format or such other format as may then be in common use for computer assisted design purposes. Tenant shall pay to Landlord, as additional rent, the reasonable costs of Landlord's engineers and other consultants (but not Landlord's on-site management personnel) for review of all plans, specifications and working drawings for the Alterations and for the incorporation of such Alterations in the Landlord's master Building drawings, within ten (10) business days after Tenant's receipt of invoices either from Landlord or such consultants together with (in any event) an administrative charge of ten percent (10%) of the actual costs of such work. In addition to such costs, Tenant shall pay to Landlord, within ten (10) business days after completion of any Alterations, the actual, reasonable costs incurred by Landlord for services rendered by Landlord's management personnel and engineers to coordinate and/or supervise any of the Alterations to the extent such services are provided in excess of or after the normal on-site hours of such engineers and management personnel.



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(c) Tenant shall keep the Premises, the Building and the Project free from any and all liens arising out of any Alterations, work performed, materials furnished, or obligations incurred by or for Tenant. If Tenant shall not, within ten (10) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a bond in a form and issued by a surety acceptable to Landlord, Landlord shall have the right, but not the obligation, to cause such lien to be released by such means as it shall deem proper (including payment of or defense against the claim giving rise to such lien); in such case, Tenant shall reimburse Landlord for all amounts so paid by Landlord in connection therewith, together with all of Landlord's costs and expenses, with interest thereon at the "Default Rate" (as that term is defined in Paragraph 12, below) and Tenant shall indemnify and defend each and all of the "Landlord Indemnitees" (as that term is defined in Paragraph 8(b), below) against any damages, losses or costs arising out of any such claim. Tenant's indemnification of Landlord contained in this Paragraph 4 shall survive the expiration or earlier termination of this Lease. Such rights of Landlord shall be in addition to all other remedies provided herein or by law.

(d) NOTICE IS HEREBY GIVEN THAT LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT, OR TO ANYONE HOLDING THE PREMISES THROUGH OR UNDER TENANT, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN THE PREMISES.

## **5. REPAIRS**

(a) Landlord's obligation with respect to repair as part of Basic Services shall be limited to (i) the structural portions of the Building, (ii) the exterior walls of the Building, including, without limitation, glass and glazing, (iii) the roof, (iv) mechanical, electrical, plumbing and life safety systems except for any lavatory, shower, toilet, wash basin and kitchen facilities that serve Tenant exclusively, and any supplemental heating and air conditioning systems which are subsequently added by Tenant after delivery of possession by Landlord (including all plumbing connected to said facilities or systems), and (v) Common Areas. Landlord shall not be deemed to have breached any obligation with respect to the condition of any part of the Project unless Tenant has given to Landlord written notice of any required repair and Landlord has not made such repair within a reasonable time following the receipt by Landlord of such notice. The foregoing notwithstanding: (A) Landlord shall not be required to repair damage to any of the foregoing to the extent caused by the acts or omissions of Tenant or its agents, employees or contractors, except to the extent covered by insurance carried by Landlord; and (B) the obligations of Landlord pertaining to damage or destruction by casualty not caused by the acts or omissions of Tenant or its agents or employees shall be governed by the provisions of Paragraph 9, below. Landlord shall have the right but not the obligation to undertake work of repair that Tenant is required to perform under this Lease and that Tenant fails or refuses to perform in a timely and efficient manner. All actual costs incurred by Landlord in performing any such repair for the account of Tenant shall be repaid by Tenant to Landlord upon demand, together with an administration fee equal to ten percent (10%) of such costs. Except as expressly provided in Paragraph 9 of this Lease, there shall be no abatement of Rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Premises, the Building or the Project. Tenant waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect (including the provisions of California Civil Code Section 1942 and any successive sections or statutes of a similar nature).

(b) Tenant, at its expense, (i) shall keep the Premises and all furniture and fixtures and personal property contained therein in a safe, clean and neat condition, and (ii) shall bear the cost of maintenance and repair, by contractors selected by Landlord, of all facilities which are not expressly required to be maintained or repaired by Landlord and which are located in the Premises, including, without limitation, lavatory, shower, toilet, wash basin and kitchen facilities, and supplemental heating and air conditioning systems (including all plumbing connected to said facilities or systems installed by or on behalf of Tenant or existing in the Premises at the time of Landlord's delivery of the Premises to Tenant). Tenant shall make all repairs to the Premises not required to be made by Landlord under Paragraph 5(a), above with replacements of any materials to be made by use of materials of equal or better quality. Tenant shall do all decorating, remodeling, alteration and painting required by Tenant during the

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Lease Term. Tenant shall pay for the cost of any repairs to the Premises, the Building or the Project made necessary by any negligence or willful misconduct of Tenant or any of its assignees, subtenants, employees or their respective agents, representatives, contractors, or other persons permitted in or invited to the Premises or the Project by Tenant. If Tenant fails to make such repairs or replacements within fifteen (15) days after written notice from Landlord, Landlord may at its option make such repairs or replacements, and Tenant shall within thirty (30) days of demand pay Landlord for the cost thereof, together with an administration fee equal to fifteen percent (15%) of such costs.

(c) Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in a safe, clean and neat condition, normal wear and tear excepted. Except as otherwise set forth in Paragraph 4(b) of this Lease, Tenant shall remove from the Premises all trade fixtures, furnishings and other personal property of Tenant and all computer and phone cabling and wiring installed by or on behalf of Tenant, shall repair all damage caused by such removal, and shall restore the Premises to its original condition, reasonable wear and tear excepted. In addition to all other rights Landlord may have, in the event Tenant does not so remove any such fixtures, furnishings or personal property, Tenant shall be deemed to have abandoned the same, in which case Landlord may store the same at Tenant's expense, appropriate the same for itself, and/or sell the same in its discretion.

(d) Landlord represents and warrants that Landlord has no reason to believe that the Building is not presently in compliance with all applicable earthquake and other seismic construction and safety laws, rules, regulations and standards (collectively "Seismic Standards"), and regardless of any other provision of this Lease, Landlord agrees that Landlord shall be solely responsible for all obligations and expenses associated with the requirements of any Seismic Standards relative to the Building or Common Areas ("Seismic Standards Expenses").

## **6. USE OF PREMISES**

(a) Tenant shall use the Premises only for general office uses and shall not use the Premises or permit the Premises to be used for any other purpose. Landlord shall have the right to deny its consent to any change in the permitted use of the Premises in its sole and absolute discretion.

(b) Tenant shall not at any time use or occupy the Premises, or permit any act or omission in or about the Premises in violation of any law, statute, ordinance or any governmental rule, regulation or order including without limitation the Americans with Disabilities Act of 1990 as amended, or of any written copy provided by Landlord to Tenant of any certificates of occupancy issued for or restrictive covenants, conditions or restrictions pertaining to the Building or the Premises (collectively, "Law" or "Laws") and Tenant shall, upon written notice from Landlord, discontinue any use of the Premises which is declared by any governmental authority to be a violation of Law. If any Law shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to (i) modification or other maintenance of the Premises, the Building or the Project, or (ii) the use, Alteration or occupancy thereof, Tenant shall comply with such Law at Tenant's sole cost and expense. If any architectural control committee or department of the State or the city or county in which the Project is located shall at any time contend or declare that the Premises are used or occupied in violation of any such Law, Tenant shall, upon five (5) days notice from Landlord or any such governmental agency, immediately discontinue such use of the Premises (and otherwise remedy such violation). The failure by Tenant to discontinue such use shall be considered a default under this Lease and Landlord shall have the right to exercise any and all rights and remedies provided herein or by Law.

(c) Tenant shall not knowingly (after written notice from Landlord) do or permit to be done anything which may invalidate or increase the cost of any fire, All Risk, Causes of Loss - Special Form or other insurance policy covering the Building, the Project and/or property located therein and shall comply with all rules, orders, regulations and requirements of the appropriate fire codes and ordinances or any other organization performing a similar function; provided, however, Landlord acknowledges that Tenant's use of the Premises for ordinary office use consistent with ordinary office uses of other tenants in the Building will not invalidate or cause any increase to the costs of Landlord's insurance. In addition to all other remedies of Landlord, Landlord may require Tenant, promptly upon demand, to reimburse Landlord for the full amount of any additional premiums charged for such policy or policies by reason of Tenant's failure to comply with the provisions of this Paragraph 6.

(d) Tenant shall not in any way interfere with the rights or quiet enjoyment of other tenants or occupants of the Premises, the Building or the Project. Tenant shall not use or allow the Premises to be used for any

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improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain, or permit any nuisance in, on or about the Premises, the Building or the Project. Tenant shall not place weight upon any portion of the Premises exceeding the structural floor load (per square foot of area) which such area was designated (and is permitted by Law) to carry or otherwise use any Building system in excess of its capacity or in any other manner which may damage such system or the Building. Tenant shall not create within the Premises a working environment with a density of greater than five (5) persons per 1,000 square feet of Rentable Area. Business machines and mechanical equipment shall be placed and maintained by Tenant, at Tenant's expense, in locations and in settings sufficient in Landlord's reasonable judgment to absorb and prevent vibration, noise and annoyance. Tenant shall not commit or suffer to be committed any waste in, on, upon or about the Premises, the Building or the Project.

(e) Tenant shall take all reasonable steps necessary to adequately secure the Premises from unlawful intrusion, theft, fire and other hazards, and shall keep and maintain any and all security devices in or on the Premises in good working order, including, but not limited to, exterior door locks for the Premises and smoke detectors and burglar alarms located within the Premises and shall cooperate with Landlord and other tenants in the Project with respect to access control and other safety matters.

(f) As used herein, the term "Hazardous Material" means any (a) oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which (i) pose a hazard to the Project or to persons on or about the Project or (ii) cause the Project to be in violation of any Hazardous Materials Laws; (b) asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (c) chemical, material or substance defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "restricted hazardous waste", or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. § 300, et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, et seq.; the Federal Hazardous Substances Control Act, as amended, 15 U.S.C. § 1261, et seq.; and the Occupational Safety and Health Act, as amended, 29 U.S.C. § 651, et seq.; Sections 25115, 25117, 25122.7, 25140, 25249.8, 25281, 25316, 25501, and 25316 of the California Health and Safety Code (collectively, the "Environmental Laws"); (d) other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety of the occupants of the Project or the owners and/or occupants of property adjacent to or surrounding the Project, or any other person coming upon the Project or adjacent property; and (e) other chemicals, materials or substances which may or could pose a hazard to the environment. The term "Permitted Hazardous Materials" shall mean Hazardous Materials which are contained in ordinary office supplies of a type and in quantities typically used in the ordinary course of business within executive offices of similar size in the comparable office buildings, but only if and to the extent that such supplies are transported, stored and used in full compliance with all applicable laws, ordinances, orders, rules and regulations and otherwise in a safe and prudent manner. Hazardous Materials which are contained in ordinary office supplies but which are transported, stored and used in a manner which is not in full compliance with all applicable laws, ordinances, orders, rules and regulations or which are not in any respect safe and prudent shall not be deemed to be "Permitted Hazardous Materials" for the purposes of this Lease. Landlord represents that as of the date of this Lease, to Landlord's actual knowledge, the Project and Premises are not in violation of any Environmental Laws.

(i) Tenant, its assignees, subtenants, and their respective agents, servants, employees, representatives and contractors (collectively referred to herein as "Tenant Affiliates") shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by Tenant or by Tenant Affiliates without the prior written consent of Landlord (which may be granted, conditioned or withheld in the sole discretion of Landlord), save and except only for Permitted Hazardous Materials, which Tenant or Tenant Affiliates may bring, store and use in reasonable quantities for their intended use in the Premises, but only in full compliance with all applicable laws, ordinances, orders, rules and regulations. On or before the expiration or earlier termination of this Lease, Tenant shall remove from the Premises all Hazardous Materials (including, without limitation, Permitted Hazardous Materials), regardless of whether

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such Hazardous Materials are present in concentrations which require removal under applicable laws, except to the extent that such Hazardous Materials were present in the Premises as of the Commencement Date and were not brought onto the Premises by Tenant or Tenant Affiliates.

(ii) Tenant agrees to indemnify, defend and hold Landlord and its "Affiliates" (as that term is defined in Paragraph 8(a), below) harmless for, from and against any and all claims, actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities, interest or losses, including reasonable attorneys' fees and expenses, court costs, consultant fees, and expert fees, together with all other costs and expenses of any kind or nature that arise during or after the Lease Term directly or indirectly from or in connection with the presence, suspected presence, or release of any Hazardous Material in or into the air, soil, surface water or groundwater at, on, about, under or within the Premises, or any portion thereof caused by Tenant or Tenant Affiliates.

(iii) If any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other remedial work (collectively, the "Remedial Work") is required under any applicable federal, state or local Law, by any judicial order, or by any governmental entity as the result of operations or activities upon, or any use or occupancy of any portion of the Premises by Tenant or Tenant Affiliates, Tenant shall perform or cause to be performed the Remedial Work in compliance with such Law or order at Tenant's sole cost and expense. All Remedial Work shall be performed by one or more contractors, reasonably approved by Landlord, and under the supervision of a consulting engineer, selected by Tenant and reasonably approved in advance in writing by Landlord. All costs and expenses of such Remedial Work shall be paid by Tenant, including, without limitation, the charges of such contractor(s), the consulting engineer, and Landlord's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work.

(iv) Each of the covenants and agreements of Tenant set forth in this Paragraph 6(f) shall survive the expiration or earlier termination of this Lease for a period of two (2) years.

(g) From and after May 1, 2011 through April 30, 2012, so long as Tenant is not in monetary or material non-monetary default, Tenant shall have a non-exclusive and revocable license and right (along with other tenants of the Building) to use on a temporary as-available basis that certain space known as Suite 1125 of the Building containing approximately 2,772 rentable square feet of area as depicted on Exhibit "A-3" attached hereto (the "Temporary Space") as a conference room for periodic company meetings and for no other purpose, subject to Tenant's advance reservation of said Temporary Space with Landlord (or any onsite Building manager) and payment for use of such Temporary Space in the amount of Twenty Dollars (\$20.00) per hour (the "Temporary Space Hourly Fee"); provided, however, Tenant shall be entitled to use the Temporary Space for up to ten (10) hours per month, on a non-cumulative basis, without payment of the Temporary Space Hourly Fee. Tenant's use the Temporary Space shall be upon and subject to all terms and conditions of this Lease, provided Tenant shall have no obligation to pay any additional rent for use of the Temporary Space, other than the Temporary Space Hourly Fee, if applicable. Tenant agrees to accept the condition of the Temporary Space in its present "AS-IS" condition, provided Landlord agrees to install new building standard carpet and base in the Temporary Space and shall have sole discretion over the colors and materials for such improvements to the Temporary Space. Notwithstanding anything to the contrary contained herein, Landlord shall have the absolute right to immediately terminate and revoke Tenant's license rights to the Temporary Space upon not less than fifteen (15) days prior written notice if at any time Landlord requires the Temporary Space for a prospective tenant of the Building on a permanent basis, in which case Tenant shall cease all use of the Temporary Space and surrender the Temporary Space to Landlord within such fifteen (15) day period following notice from Landlord and Tenant's temporary license provided herein shall be of no further force or effect.

## **7. UTILITIES AND SERVICES**

(a) Landlord shall furnish, or cause to be furnished to the Premises, in quantities sufficient to operate in a reasonable manner the entire Premises as described and completed in accordance with the Plans attached to the Work Letter as Schedule 1, and the Standards attached to the Work Letter as Schedule 2, the utilities and services described in this Paragraph 7(a) (collectively the "Basic Services");

(i) Tepid water at those points of supply provided for general use of other tenants in the Building;

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(ii) Central heat and air conditioning in season, at such times as Landlord normally furnishes these services to other tenants in the Building and at such temperatures and in such amounts as are reasonably considered by Landlord to be standard or as may be permitted or controlled by applicable Laws;

(iii) Routine maintenance, repairs, structural and exterior maintenance (including, without limitation, exterior glass and glazing), painting and electric lighting service for all public areas and special service areas of the Project in the manner and to the extent reasonably deemed by Landlord to be standard, subject to the limitation contained in Paragraph 5(a) above;

(iv) Janitorial service on a five (5) day week basis, excluding holidays;

(v) An electrical system to convey power delivered by public utility providers selected by Landlord in amounts sufficient for normal office operations as provided in similar office buildings, but not to exceed a total allowance of four (4) watts per square foot of Rentable Area during normal office hours (which includes an allowance for lighting of the Premises at the maximum wattage per square foot of Rentable Area permitted under applicable laws, ordinances, orders, rules and regulations), provided that no single item of electrical equipment consumes more than 0.5 kilowatts at rated capacity or requires a voltage other than 120 volts, single phase; and

(vi) Public elevator service and a freight elevator serving the floors on which the Premises are situated, during hours designated by Landlord.

(b) Landlord shall provide to Tenant at Tenant's sole cost and expense (and subject to the limitations hereinafter set forth) the following extra services (collectively the "Extra Services"):

(i) Such extra cleaning and janitorial services requested by Tenant, and agreed to by Landlord, for special improvements or Alterations;

(ii) Subject to Paragraph 7(d) below, additional air conditioning and ventilating capacity required by reason of any electrical, data processing or other equipment or facilities or services required to support the same, in excess of that typically provided by the Building;

(iii) Maintaining and replacing lamps, bulbs, and ballasts (except that Landlord shall maintain and replace lamps bulbs, and ballasts in all building standard fixtures as part of Operating Expenses);

(iv) Heating, ventilation, air conditioning or extra electrical service provided by Landlord to Tenant (i) during hours other than normal business hours, (ii) on Saturdays (after normal business hours), Sundays, or holidays, said after hours or extra heating, ventilation and air conditioning service to be furnished at Landlord's prevailing standard hourly charge for after hours HVAC use (presently \$45.00 per hour) solely upon the prior written request of Tenant given with such advance notice as Landlord may reasonably require (normal business hours for the Building are currently 8:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 1:00 p.m. on Saturdays, excluding holidays, subject to reasonable adjustment by Landlord from time to time); and

(v) Any Basic Service in amounts determined by Landlord to exceed the amounts required to be provided above, but only if Landlord elects to provide such additional or excess service. Tenant shall pay Landlord the actual cost of providing such additional services (or an amount equal to Landlord's reasonable estimate of such cost, if the actual cost is not readily ascertainable) together with an administration fee equal to ten percent (10%) of such cost, within ten (10) days following presentation of an invoice therefore by Landlord to Tenant. The cost chargeable to Tenant for all extra services shall constitute Additional Rent.

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(c) Tenant agrees to cooperate fully at all times with Landlord and to comply with all regulations and requirements which Landlord may from time to time reasonably prescribe for the use of the utilities and Basic Services described herein. Landlord shall not be liable to Tenant for the failure of any other tenant, or its assignees, subtenants, employees, or their respective invitees, licensees, agents or other representatives to comply with such regulations and requirements.

(d) If Tenant requires utilities or services in quantities greater than or at times other than that generally furnished by Landlord as set forth above, Tenant shall pay to Landlord, upon receipt of a written statement therefor, Landlord's charge for such use. If Tenant shall require additional electric current, water or gas for use in the Premises and if, in Landlord's judgment, such excess requirements cannot be furnished unless additional risers, conduits, feeders, switchboards and/or appurtenances are installed in the Building, subject to the conditions stated below, Landlord shall proceed to install the same at the sole cost of Tenant, payable upon demand in advance. The installation of such facilities shall be conditioned upon Landlord's consent (which consent shall not be unreasonably withheld), and a reasonable determination that the installation and use thereof (i) shall be permitted by applicable Law and insurance regulations, (ii) shall not cause permanent damage or injury to the Building or adversely affect the value of the Building or the Project, and (iii) shall not cause or create a dangerous or hazardous condition or interfere with or disturb other tenants in the Building. Subject to the foregoing, Landlord shall, upon reasonable prior notice by Tenant, furnish to the Premises additional elevator, heating, air conditioning and/or cleaning services upon such reasonable terms and conditions as shall be reasonably determined by Landlord, including payment of Landlord's charge therefor. In the case of any additional utilities or services to be provided hereunder, Landlord may require a switch and metering system to be installed so as to measure the amount of such additional utilities or services. The cost of installation, maintenance and repair thereof shall be paid by Tenant upon demand. Notwithstanding the foregoing, Landlord shall have the right to contract with any utility provider it deems appropriate to provide utilities to the Project.

(e) Landlord shall not be liable for, and Tenant shall not be entitled to, any damages, abatement or reduction of Rent, or other liability by reason of any failure to furnish any services or utilities described herein for any reason that is not the fault of Landlord and results from any cause beyond Landlord's control, including, without limitation, when caused by accident, breakage, water leakage, flooding, repairs, Alterations or other improvements to the Project, strikes, lockouts or other labor disturbances or labor disputes of any character, governmental regulation, moratorium or other governmental action, inability to obtain electricity, water or fuel. Landlord shall be entitled to cooperate with the energy conservation efforts of governmental agencies or utility suppliers. No such failure, stoppage or interruption of any such utility or service shall be construed as an eviction of Tenant, nor shall the same relieve Tenant from any obligation to perform any covenant or agreement under this Lease. In the event of any failure, stoppage or interruption thereof, Landlord shall use reasonable efforts to attempt to restore all services promptly. Except as provided in Schedule 2 of the attached *Exhibit B* Work Letter, no representation is made by Landlord with respect to the adequacy or fitness of the Building's ventilating, air conditioning or other systems to maintain temperatures as may be required for the operation of any computer, data processing or other special equipment of Tenant. Tenant hereby waives the provisions of California Civil Code Section 1932, subsection 1, or any other applicable existing or future law, ordinance or governmental regulation permitting the termination of this Lease due to an interruption, failure or inability to provide any services; provided, however, the foregoing waiver does not constitute a waiver by Tenant of any of the obligations of Landlord to provide any services pursuant to this Lease.

(f) Landlord reserves the right from time to time to make reasonable and nondiscriminatory modifications to the above standards for Basic Services and Extra Services, so long as such modifications do not disrupt or otherwise interfere with Tenant's use of the Premises or the conduct of Tenant's business located in the Premises.

## **8. NON-LIABILITY AND INDEMNIFICATION OF LANDLORD; INSURANCE**

(a) To the greatest extent permitted by Law, and except to the extent caused by Landlord's gross negligence or willful misconduct, Landlord shall not be liable for any injury, loss or damage suffered by Tenant or to any person or property occurring or incurred in or about the Premises, the Building or the Project from any cause. Without limiting the foregoing, except to the extent caused by Landlord's gross negligence or willful misconduct, neither Landlord nor any of its partners, officers, trustees, affiliates, directors, employees, contractors, agents or

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representatives (collectively, "Affiliates") shall be liable for and there shall be no abatement of Rent (except in the event of a casualty loss or a condemnation as set forth in Paragraphs 9 and 10 of this Lease) for (i) any damage to Tenant's property stored with or entrusted to Affiliates of Landlord, (ii) loss of or damage to any property by theft or any other wrongful or illegal act, or (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Building or the Project or from the pipes, appliances, appurtenances or plumbing works therein or from the roof, street or sub-surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Building or the Project or from any other cause whatsoever, (iv) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Building, whether within or outside of the Project, or (v) any latent or other defect in the Premises, the Building or the Project. Tenant shall give prompt notice to Landlord in the event of (A) the occurrence of a fire or accident in the Premises or in the Building, or (B) the discovery of a defect therein or in the fixtures or equipment thereof. This paragraph 8(a) shall survive the expiration or earlier termination of this Lease.

(b) To the greatest extent permitted by Law, except to the extent caused by Landlord's gross negligence or willful misconduct, Tenant hereby agrees to indemnify, protect, defend and hold harmless Landlord and its designated property management company, and their respective partners, members, affiliates and subsidiaries, and all of their respective officers, directors, shareholders, employees, servants, partners, representatives, insurers and agents (collectively, "Landlord Indemnitees") for, from and against all liabilities, claims, fines, penalties, costs, damages or injuries to persons, damages to property, losses, liens, causes of action, suits, judgments and expenses (including court costs, attorneys' fees, expert witness fees and costs of investigation), of any nature, kind or description of any person or entity, directly or indirectly arising out of, caused by, or resulting from (in whole or part) (1) Tenant's construction of or use, occupancy or enjoyment of the Premises, (2) any activity, work or other things done, permitted or suffered by Tenant and its agents and employees in or about the Premises, (3) any breach or default in the performance of any of Tenant's obligations under this Lease, (4) any act, omission, negligence or willful misconduct of Tenant or any of its agents, contractors, employees, business invitees or licensees, or (5) any damage to Tenant's property, or the property of Tenant's agents, employees, contractors, business invitees or licensees, located in or about the Premises (collectively, "Liabilities"). This Paragraph 8(b) shall survive the expiration or earlier termination of this Lease.

(c) Tenant shall promptly advise Landlord in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Tenant, at Tenant's expense, shall assume on behalf of each and every Landlord Indemnitee and conduct with due diligence and in good faith the defense thereof with counsel reasonably satisfactory to Landlord; provided, however, that any Landlord Indemnitee shall have the right, at its option, to be represented therein by advisory counsel of its own selection and at its own expense. In the event of failure by Tenant to fully perform in accordance with this Paragraph 8, Landlord, at its option, and without relieving Tenant of its obligations hereunder, may so perform, but all costs and expenses so incurred by Landlord in that event shall be reimbursed by Tenant to Landlord, together with interest on the same from the date any such expense was paid by Landlord until reimbursed by Tenant, at the rate of interest provided to be paid on judgments, by the law of the jurisdiction to which the interpretation of this Lease is subject. The indemnification provided in Paragraph 8(b), above shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation acts, disability benefit acts or other employees' benefit acts.

(d) Insurance.

(i) Tenant at all times during the Lease Term shall, at its own expense, keep in full force and effect (A) commercial general liability insurance providing coverage against bodily injury and disease, including death resulting therefrom, bodily injury and property damage to a combined single limit of Three Million Dollars (\$3,000,000) to one or more than one person as the result of any one accident or occurrence and excess liability coverage of not less than Three Million Dollars (\$3,000,000) per occurrence and annual aggregate, (B) worker's compensation insurance to the statutory limit, if any, and employer's liability insurance to the limit of Five Hundred Thousand Dollars (\$500,000) per occurrence, and (C) All Risk or Causes of Loss - Special Form property insurance, including fire and extended coverage, sprinkler leakage (including earthquake sprinkler leakage), covering full replacement value of all of Tenant's personal property, trade fixtures and improvements in the Premises. Landlord and its designated property management firm shall be named an additional insured on each of said policies (excluding the worker's

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compensation policy) and said policies shall be issued by an insurance company or companies authorized to do business in California and which have policyholder ratings not lower than "A-" and financial ratings not lower than "VII" in Best's Insurance Guide (latest edition in effect as of the Effective Date and subsequently in effect as of the date of renewal of the required policies). EACH OF SAID POLICIES SHALL ALSO INCLUDE A WAIVER OF SUBROGATION PROVISION OR ENDORSEMENT IN FAVOR OF LANDLORD (EXCEPT WITH RESPECT TO WORKERS' COMPENSATION), AND AN ENDORSEMENT PROVIDING THAT LANDLORD SHALL RECEIVE THIRTY (30) DAYS PRIOR WRITTEN NOTICE (EXCEPT TEN (10) DAYS IN THE EVENT OF NON-PAYMENT OF PREMIUMS) OF ANY CANCELLATION OR NONRENEWAL OF COVERAGE ON SAID POLICIES. Tenant hereby waives its right of recovery against any Landlord Indemnitee of any amounts paid by Tenant or on Tenant's behalf to satisfy applicable worker's compensation laws. The policies or duly executed certificates showing the material terms for the same, together with reasonably satisfactory evidence of the payment of the premiums therefor, shall be deposited with Landlord on the date Tenant first occupies the Premises and upon renewals of such policies not less than fifteen (15) days prior to the expiration of the term of such coverage. If certificates are supplied rather than the policies themselves, Tenant shall allow Landlord, at all reasonable times, to inspect the policies of insurance required herein.

(ii) It is expressly understood and agreed that the coverages required represent Landlord's minimum requirements and such are not to be construed to void or limit Tenant's obligations contained in this Lease, including without limitation Tenant's indemnity obligations hereunder. Neither shall (A) the insolvency, bankruptcy or failure of any insurance company carrying Tenant, (B) the failure of any insurance company to pay claims occurring nor (C) any exclusion from or insufficiency of coverage be held to affect, negate or waive any of Tenant's indemnity obligations under this Paragraph 8 or any other provision of this Lease. With respect to insurance coverages, except worker's compensation, maintained hereunder by Tenant and insurance coverages separately obtained by Landlord, all insurance coverages afforded by policies of insurance maintained by Tenant shall be primary insurance as such coverages apply to Landlord, and such insurance coverages separately maintained by Landlord shall be excess, and Tenant shall have its insurance policies so endorsed. The amount of liability insurance under insurance policies maintained by Tenant shall not be reduced by the existence of insurance coverage under policies separately maintained by Landlord. Tenant shall be solely responsible for any premiums, assessments, penalties, deductible assumptions, retentions, audits, retrospective adjustments or any other kind of payment due under its policies.

(iii) Tenant's occupancy of the Premises without delivering the certificates of insurance shall not constitute a waiver of Tenant's obligations to provide the required coverages. If Tenant provides to Landlord a certificate that does not evidence the coverages required herein, or that is faulty in any respect, such shall not constitute a waiver of Tenant's obligations to provide the proper insurance

(iv) Throughout the Lease Term, Landlord agrees to maintain (i) fire and extended coverage insurance, and, at Landlord's option earthquake damage coverage and such additional property insurance coverage as Landlord deems appropriate, on the insurable portions of Building and the remainder of the Project in an amount not less than the fair replacement value thereof, subject to reasonable deductibles (ii) boiler and machinery insurance amounts and with deductibles that would be considered standard for similar class office building in San Diego, California metropolitan area and (iii) commercial general liability insurance with a combined single limit coverage of at least One Million Dollars (\$1,000,000) per occurrence. All such insurance shall be obtained from insurers Landlord reasonably believes to be financially responsible in light of the risks being insured. The premiums for any such insurance shall be a part of Operating Expenses.

(e) Mutual Waivers of Recovery. Notwithstanding anything to the contrary in this Lease, Landlord, Tenant, and all parties claiming under them, each mutually release and discharge each other from responsibility for that portion of any loss or damage paid or reimbursed by an insurer of Landlord or Tenant under any fire, extended coverage or other property insurance policy maintained by Tenant with respect to its Premises or by Landlord with respect to the Building or the Project (or which would have been paid had the insurance required to be maintained hereunder been in full force and effect), no matter how caused, including negligence, and each waives any right of recovery from the other including, but not limited to, claims for contribution or indemnity, which might otherwise

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exist on account thereof. Any fire, extended coverage or property insurance policy maintained by Tenant with respect to the Premises, or Landlord with respect to the Building or the Project, shall contain, in the case of Tenant' s policies, a waiver of subrogation provision or endorsement in favor of Landlord, and in the case of Landlord' s policies, a waiver of subrogation provision or endorsement in favor of Tenant, or, if such insurers cannot or shall not include or attach such waiver of subrogation provision or endorsement, Tenant and Landlord shall obtain the approval and consent of their respective insurers, in writing, to the terms of this Lease. Tenant agrees to indemnify, protect, defend and hold harmless each and all of the Landlord Indemnitees from and against any claim, suit or cause of action asserted or brought by Tenant' s insurers for, on behalf of, or in the name of Tenant, including, but not limited to, claims for contribution, indemnity or subrogation, brought in contravention of this paragraph. Landlord agrees to indemnify, protect, defend and hold Tenant harmless from and against any claim, suit or cause of action asserted or brought by Landlord' s insurers for, on behalf of, or in the name of Landlord, including, but not limited to, claims for contribution, indemnity or subrogation, brought in contravention of this paragraph. The mutual releases, discharges and waivers contained in this provision shall apply EVEN IF THE LOSS OR DAMAGE TO WHICH THIS PROVISION APPLIES IS CAUSED SOLELY OR IN PART BY THE NEGLIGENCE OF LANDLORD OR TENANT.

(f) Business Interruption. Landlord shall not be responsible for, and Tenant releases and discharges Landlord from, and Tenant further waives any right of recovery from Landlord for, any loss for or from business interruption or loss of use of the Premises suffered by Tenant in connection with Tenant' s use or occupancy of the Premises, EVEN IF SUCH LOSS IS CAUSED SOLELY OR IN PART BY THE NEGLIGENCE OF LANDLORD.

(g) Adjustment of Claims. Tenant shall cooperate with Landlord and Landlord' s insurers in the adjustment of any insurance claim pertaining to the Building or the Project or Landlord' s use thereof.

(h) Increase in Landlord' s Insurance Costs. Tenant agrees to pay to Landlord any increase in premiums for Landlord' s insurance policies resulting from Tenant' s use or occupancy of the Premises.

(i) Failure to Maintain Insurance. Any failure of Tenant to obtain and maintain the insurance policies and coverages required hereunder or failure by Tenant to meet any of the material insurance requirements of this Lease shall constitute an event of default hereunder, and such failure shall entitle Landlord to pursue, exercise or obtain any of the remedies provided for in Paragraph 12(b), and Tenant shall be solely responsible for any loss suffered by Landlord as a result of such failure. In the event of failure by Tenant to maintain the insurance policies and coverages required by this Lease or to meet any of the insurance requirements of this Lease, Landlord, at its option, and without relieving Tenant of its obligations hereunder, may obtain said insurance policies and coverages or perform any other insurance obligation of Tenant, but all costs and expenses incurred by Landlord in obtaining such insurance or performing Tenant' s insurance obligations shall be reimbursed by Tenant to Landlord, together with interest on same from the date any such cost or expense was paid by Landlord until reimbursed by Tenant, at the rate of interest provided to be paid on judgments, by the law of the jurisdiction to which the interpretation of this Lease is subject.

## **9. FIRE OR CASUALTY**

(a) Subject to the provisions of this Paragraph 9, if the Premises, or access thereto, is wholly or partially destroyed by fire or other casualty, Landlord shall (to the extent permitted by Law and covenants, conditions and restrictions then applicable to the Project) rebuild, repair or restore the Premises and access thereto to substantially the same condition as existing immediately prior to such destruction (excluding Tenant' s Alterations, trade fixtures, equipment and personal property, which Tenant shall be required to restore) and this Lease shall continue in full force and effect. Notwithstanding the foregoing, (i) Landlord' s obligation to rebuild, repair or restore the Premises shall not apply to any personal property, above-standard tenant improvements or other items installed or contained in the Premises, and (ii) Landlord shall have no obligation whatsoever to rebuild, repair or restore the Premises with respect to any damage or destruction occurring during the last twelve (12) months of the term of this Lease or any extension of the term.

(b) Landlord may elect to terminate this Lease in any of the following cases of damage or destruction to the Premises, the Building or the Project: (i) where the cost of rebuilding, repairing and restoring (collectively, "Restoration") of the Building or the Project, would, regardless of the lack of damage to the Premises or access



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thereto, in the reasonable opinion of Landlord, exceed twenty percent (20%) of the then replacement cost of the Building; (ii) where, in the case of any damage or destruction to the Premises or access thereto by uninsured casualty, the cost of Restoration of the Premises or access thereto, in the reasonable opinion of Landlord, exceeds the lesser of Five Hundred Thousand Dollars (\$500,000) or twenty percent (20%) of the replacement cost of the Premises; or (iii) if Landlord has not obtained appropriate zoning approvals for reconstruction of the Project, Building or Premises. Any such termination shall be made by thirty (30) days prior written notice to Tenant given within ninety (90) days of the date of such damage or destruction. If this Lease is not terminated by Landlord and as the result of any damage or destruction, the Premises, or a portion thereof, are rendered untenable, the Base Rent shall abate reasonably during the period of Restoration (based upon the extent to which such damage and Restoration materially interfere with Tenant's business in the Premises). Notwithstanding the foregoing provisions of this Lease, if following any damage or destruction Landlord reasonably determines that the Premises or access thereto cannot be restored within two hundred ten (210) days following such damage or destruction, then Tenant shall have the right to terminate this Lease upon written notice to Landlord. This Lease shall be considered an express agreement governing any case of damage to or destruction of the Premises, the Building or the Project. This Lease sets forth the terms and conditions upon which this Lease may terminate in the event of any damage or destruction. Accordingly, the parties hereby waive the provisions of California Civil Code Section 1932, Subsection 2, and Section 1933, Subsection 4 (and any successor statutes thereof permitting the parties to terminate this Lease as a result of any damage or destruction).

#### **10. EMINENT DOMAIN**

If the whole of the Premises, the Building or the Project shall be taken under the power of eminent domain, or sold to prevent the exercise thereof (collectively, a "Taking"), this Lease shall automatically terminate as of the date of such Taking. If a Taking of a portion of the Project, the Building or the Premises shall, in the reasonable opinion of Landlord, substantially interfere with Landlord's operation thereof, Landlord may terminate this Lease upon thirty (30) days written notice to Tenant given at any time within sixty (60) days following the date of such Taking. For purposes of this Lease, the date of Taking shall be the earlier of the date of transfer of title resulting from such Taking or the date of transfer of possession resulting from such Taking. If a portion of the Premises is so taken and this Lease is not terminated, Landlord shall, to the extent of proceeds paid to Landlord as a result of the Taking, with reasonable diligence, use commercially reasonable efforts to proceed to restore (to the extent permitted by Law and covenants, conditions and restrictions then applicable to the Project) the Premises (other than Tenant's personal property and fixtures, and above-standard tenant improvements) to a complete, functioning unit. In such case, the Base Rent shall be reduced proportionately based on the portion of the Premises so taken. If all or any portion of the Premises is the subject of a temporary Taking, this Lease shall remain in full force and effect and Tenant shall continue to perform each of its obligations under this Lease; in such case, Tenant shall be entitled to receive the entire award allocable to the temporary Taking of the Premises. Except as provided herein, Tenant shall not assert any claim against Landlord for, and hereby assigns to Landlord, any compensation in connection with any such Taking, and Landlord shall be entitled to receive the entire amount of any award therefor, without deduction for any estate or interest of Tenant. Nothing contained in this Paragraph 10 shall be deemed to give Landlord any interest in, or prevent Tenant from seeking any award against the condemning authority for the Taking of personal property, fixtures, above standard tenant improvements of Tenant or for relocation or moving expenses recoverable by Tenant from the condemning authority. This Paragraph 10 shall be Tenant's sole and exclusive remedy in the event of a Taking. This Lease sets forth the terms and conditions upon which this Lease may terminate in the event of a Taking. Accordingly, the parties waive the provisions of the California Code of Civil Procedure Section 1265.130 and any successor or similar statutes permitting the parties to terminate this Lease as a result of a Taking.

#### **11. ASSIGNMENT AND SUBLETTING**

(a) Tenant shall not directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, assign, sublet, mortgage or otherwise encumber all or any portion of its interest in this Lease or in the Premises or grant any license for any person other than Tenant or its employees to use or occupy the Premises or any part thereof without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Any such attempted assignment, subletting, license, mortgage, other encumbrance or other use or occupancy without the consent of Landlord shall, at Landlord's option, be null and void and of no effect. Any mortgage, or encumbrance of all or any portion of Tenant's interest in this Lease or in the Premises and

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any grant of a license for any person other than Tenant or its employees to use or occupy the Premises or any part thereof shall be deemed to be an “assignment” of this Lease. In addition, as used in this Paragraph 11, the term “Tenant” shall also mean any entity that has guaranteed Tenant’s obligations under this Lease, and the restrictions applicable to Tenant contained herein shall also be applicable to such guarantor.

(b) No assignment or subletting shall relieve Tenant of its obligation to pay the Rent and to perform all of the other obligations to be performed by Tenant hereunder. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any subletting or assignment. Consent by Landlord to one subletting or assignment shall not be deemed to constitute a consent to any other or subsequent attempted subletting or assignment. If Tenant desires at any time to assign this Lease or to sublet the Premises or any portion thereof, it shall first notify Landlord of its desire to do so and shall submit in writing to Landlord all pertinent information relating to the proposed assignee or sublessee, all pertinent information relating to the proposed assignment or sublease, and all such financial information as Landlord may reasonably request concerning the Tenant and proposed assignee or subtenant. Any assignment or sublease shall be expressly subject to the terms and conditions of this Lease.

(c) At any time within thirty (30) days after Landlord’s receipt of the information specified in Paragraph 11(b) above, Landlord may by written notice to Tenant elect to terminate this Lease as to the portion of the Premises so proposed to be subleased or assigned (which may include all of the Premises), with a proportionate abatement in the Rent payable hereunder.

(d) Tenant acknowledges that it shall be reasonable for Landlord to withhold its consent to a proposed assignment or sublease in any of the following instances:

(i) The assignee or sublessee is not, in Landlord’s reasonable opinion, sufficiently creditworthy to perform the obligations such assignee or sublessee will have under this Lease;

(ii) The intended use of the Premises by the assignee or sublessee is not for general office use;

(iii) The intended use of the Premises by the assignee or sublessee would materially increase the pedestrian or vehicular traffic to the Premises or the Building;

(iv) Occupancy of the Premises by the assignee or sublessee would, in the good faith judgment of Landlord, violate any agreement binding upon Landlord, the Building or the Project with regard to the identity of tenants, usage in the Building, or similar matters;

(v) The assignee or sublessee is then negotiating with Landlord or has negotiated with Landlord within the previous six (6) months, or is a current tenant or subtenant within the Building or Project;

(vi) The identity or business reputation of the assignee or sublessee will, in the good faith judgment of Landlord, tend to damage the goodwill or reputation of the Building or Project;

(vii) the proposed sublease would result in more than two subleases of portions of the Premises being in effect at any one time during the Lease Term;

(viii) the net effective rent payable by the assignee or sublessee (adjusted on a square foot of Rentable Area basis) is less than the net effective rent then being quoted by Landlord for new leases in the Building for comparable size space for a comparable period of time; or

(ix) In the case of a sublease, the subtenant has not acknowledged that the Lease controls over any inconsistent provision in the sublease.

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(e) The foregoing criteria shall not exclude any other reasonable basis for Landlord to refuse its consent to such assignment or sublease. Notwithstanding any contrary provision of this Lease, if Tenant or any proposed assignee or sublessee claims that Landlord has unreasonably withheld its consent to a proposed assignment or sublease or otherwise has breached its obligations under this Paragraph 11, their sole remedy shall be to seek a declaratory judgment and/or injunctive relief without any monetary damages, and, with respect thereto, Tenant, on behalf of itself and, to the extent permitted by law, such proposed assignee/sublessee, hereby waives all other remedies against Landlord, including, without limitation, the right to seek monetary damages or to terminate this Lease.

(f) Notwithstanding any assignment or subletting, Tenant and any guarantor or surety of Tenant's obligations under this Lease shall at all times during the Initial Term and any subsequent renewals or extensions remain fully responsible and liable for the payment of the rent and for compliance with all of Tenant's other obligations under this Lease. If the Rent due and payable by a sublessee or assignee (or a combination of the rental payable under such sublease or assignment, plus any bonus or other consideration therefor or incident thereto) exceeds the Rent payable under this Lease, then Tenant shall be bound and obligated to pay Landlord, as additional rent hereunder, one-half of all such excess Rent and other excess consideration within ten (10) days following receipt thereof by Tenant.

(g) If this Lease is assigned or if the Premises is subleased (whether in whole or in part), or in the event of the mortgage or pledge of Tenant's leasehold interest, or grant of any concession or license within the Premises, or if the Premises are occupied in whole or in part by anyone other than Tenant, then upon a monetary or material non-monetary default by Tenant hereunder beyond applicable notice and cure periods Landlord may collect Rent from the assignee, sublessee, mortgagee, pledgee, concessionee or licensee or other occupant and, except to the extent set forth in the preceding Paragraph 11(f), apply the amount collected to the next Rent payable hereunder; and all such Rent collected by Tenant shall be held in deposit for Landlord and immediately forwarded to Landlord. No such transaction or collection of Rent or application thereof by Landlord, however, shall be deemed a waiver of these provisions or a release of Tenant from the further performance by Tenant of its covenants, duties, or obligations hereunder.

(h) If Tenant effects an assignment or sublease or requests the consent of Landlord to any proposed assignment or sublease, then Tenant shall, upon demand, pay Landlord a non-refundable administrative fee of One Thousand Dollars (\$1,000), plus any reasonable attorneys' and paralegal fees and costs incurred by Landlord in connection with such assignment or sublease or request for consent. Acceptance of the One Thousand Dollar (\$1,000) administrative fee and/or reimbursement of Landlord's attorneys' and paralegal fees shall in no event obligate Landlord to consent to any proposed assignment or sublease.

(i) Notwithstanding any provision of this Lease to the contrary, if this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute the property of Tenant or Tenant's estate within the meaning of the Bankruptcy Code. All such money and other consideration not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and shall be promptly paid or delivered to Landlord.

## **12. DEFAULT**

(a) Events of Default. The occurrence of any one or more of the following events shall constitute an "event of default" or "default" (herein so called) under this Lease by Tenant: (i) the failure by Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder, where such failure continues for three (3) days after written notice thereof from Landlord that such payment was not received; (ii) the failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than monetary failures as specified in Paragraph 12(a)(i) above, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than ten (10) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said ten (10) day period and thereafter diligently prosecute such cure to completion, which completion shall occur not later than sixty (60) days from the date of such notice from Landlord; (iii) the making by Tenant or any guarantor hereof of any general

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assignment for the benefit of creditors, (iv) the filing by or against Tenant or any guarantor hereof of a petition to have Tenant or any guarantor hereof adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant or any guarantor hereof, the same is dismissed within sixty (60) days), (v) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease or of substantially all of guarantor's assets, where possession is not restored to Tenant or guarantor within sixty (60) days, (vi) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of substantially all of guarantor's assets or of Tenant's interest in this Lease where such seizure is not discharged within sixty (60) days; (vii) any material representation or warranty made by Tenant or guarantor in this Lease or any other document delivered in connection with the execution and delivery of this Lease or pursuant to this Lease proves to be incorrect in any material respect; (viii) Tenant or guarantor shall be liquidated or dissolved or shall begin proceedings towards its liquidation or dissolution; or (ix) the vacation or abandonment of the Premises by Tenant in excess of five (5) business days.

Any notice sent by Landlord to Tenant pursuant to this Paragraph 12(a) shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161.

(b) Landlord's Remedies; Termination. In the event of any event of monetary or material non-monetary default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder and Landlord shall have all the rights and remedies of a landlord provided by Section 1951.2 of the California Civil Code. If Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

(i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(ii) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom including, but not limited to: unamortized Tenant Improvement costs; attorneys' fees; brokers' commissions; the costs of refurbishment, alterations, renovation and repair of the Premises; and removal (including the repair of any damage caused by such removal) and storage (or disposal) of Tenant's personal property, equipment, fixtures, Tenant Alterations, Tenant Improvements and any other items which Tenant is required under this Lease to remove but does not remove.

As used in Paragraphs 12(b)(i) and 12(b)(ii) above, the "worth at the time of award" is computed by allowing interest at the "Default Rate" (as that term is defined hereinbelow). As used in Paragraph 12(b)(iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). The term "Default Rate" as used in this Lease shall mean the lesser of (A) the rate announced from time to time by Wells Fargo Bank or, if Wells Fargo bank ceases to exist or ceases to publish such rate, then the rate announced from time to time by the largest (as measured by deposits) chartered bank operating in California, as its "prime rate" or "reference rate", plus five percent (5%), or (B) the maximum rate of interest permitted by applicable law.

(c) Landlord's Remedies; Re-Entry Rights. In the event of any event of any monetary or material non-monetary default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed, stored and/or disposed of pursuant to Paragraph 5(c) of this Lease or any other procedures permitted by applicable law. No re-entry or taking

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possession of the Premises by Landlord pursuant to this Paragraph 12(c), and no acceptance of surrender of the Premises or other action on Landlord's part, shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

(d) Continuation of Lease. Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any event of monetary or material non-monetary default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all Rent as it becomes due.

(e) Landlord's Right to Perform. Except as specifically provided otherwise in this Lease, all covenants and agreements by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement or offset of Rent. If Tenant shall fail to pay any sum of money (other than Base Rent) or perform any other act on its part to be paid or performed hereunder and such failure shall continue for three (3) days with respect to monetary obligations (or ten (10) days with respect to non-monetary obligations, except in case of emergencies, in which such case, such shorter period of time as is reasonable under the circumstances) after Tenant's receipt of written notice thereof from Landlord, Landlord may, without waiving or releasing Tenant from any of Tenant's obligations, make such payment or perform such other act on behalf of Tenant. All sums so paid by Landlord and all necessary incidental costs incurred by Landlord in performing such other acts shall be payable by Tenant to Landlord within five (5) days after demand therefor as Additional Rent.

(f) Interest. If any monthly installment of Rent or Operating Expenses, or any other amount payable by Tenant hereunder is not received by Landlord by the date when due, it shall bear interest at the Default Rate from the date due until paid. All interest, and any late charges imposed pursuant to Paragraph 12(g) below, shall be considered Additional Rent due from Tenant to Landlord under the terms of this Lease.

(g) Late Charges. Tenant acknowledges that, in addition to interest costs, the late payments by Tenant to Landlord of any monthly installment of Base Rent, Additional Rent or other sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such other costs include, without limitation, processing, administrative and accounting charges and late charges that may be imposed on Landlord by the terms of any mortgage, deed of trust or related loan documents encumbering the Premises, the Building or the Project. Accordingly, if any monthly installment of Base Rent, Additional Rent or any other amount payable by Tenant hereunder is not received by Landlord within five (5) days after the due date thereof, Tenant shall pay to Landlord an additional sum of five percent (5%) of the overdue amount as a late charge, but in no event more than the maximum late charge allowed by law. The parties agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of any late payment as hereinabove referred to by Tenant, and the payment of late charges and interest are distinct and separate in that the payment of interest is to compensate Landlord for the use of Landlord's money by Tenant, while the payment of late charges is to compensate Landlord for Landlord's processing, administrative and other costs incurred by Landlord as a result of Tenant's delinquent payments. Acceptance of a late charge or interest shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord under this Lease or at law or in equity now or hereafter in effect.

(h) Rights and Remedies Cumulative. All rights, options and remedies of Landlord contained in this Paragraph 12 and elsewhere in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease. Nothing in this Paragraph 12 shall be deemed to limit or otherwise affect Tenant's indemnification of Landlord pursuant to any provision of this Lease.

(i) Tenant's Waiver of Redemption. Tenant hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, (i) any right and privilege which it or any of them may have under any present or future law to redeem any of the Premises or to have a continuance of this Lease after termination of this Lease or of Tenant's right of occupancy or possession pursuant to any court order or any provision hereof, and (ii) the benefits of any present or future law which exempts property from liability for debt or for distress for Rent.



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### 13. ACCESS: CONSTRUCTION

Landlord reserves from the leasehold estate hereunder, in addition to all other rights reserved by Landlord under this Lease, the right to use the roof and exterior walls of the Premises and the area beneath, adjacent to and above the Premises. Landlord also reserves the right to install, use, maintain, repair, replace and relocate equipment, machinery, meters, pipes, ducts, plumbing, conduits and wiring through the Premises, which serve other portions of the Building or the Project in a manner and in locations which do not unreasonably interfere with Tenant's use of the Premises. In addition, Landlord shall have free access to any and all mechanical installations of Landlord or Tenant, including, without limitation, machine rooms, telephone rooms and electrical closets. Tenant agrees that there shall be no construction of partitions or other obstructions which materially interfere with or which threaten to materially interfere with Landlord's free access thereto, or materially interfere with the moving of Landlord's equipment to or from the enclosures containing said installations. Upon at least twenty-four (24) hours prior notice (except in the event of an emergency, when no notice shall be necessary), Landlord reserves and shall at any time and all times have the right to enter the Premises to inspect the same, to supply janitorial service and any other service to be provided by Landlord to Tenant hereunder, to exhibit the Premises to prospective purchasers, lenders or tenants, to post notices of non-responsibility, to alter, improve, restore, rebuild or repair the Premises or any other portion of the Building, or to do any other act permitted or contemplated to be done by Landlord hereunder, all without being deemed guilty of an eviction of Tenant and without liability for abatement of Rent or otherwise. For such purposes, Landlord may also erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed. Landlord shall conduct all such inspections and/or improvements, alterations and repairs so as to minimize, to the extent reasonably practical and without material additional expense to Landlord, any interruption of or interference with the business of Tenant. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of such purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises (excluding Tenant's vaults and safes, access to which shall be provided by Tenant upon Landlord's reasonable request). Landlord shall have the right to use any and all means which Landlord may deem proper in an emergency in order to obtain entry to the Premises or any portion thereof, and Landlord shall have the right, at any time during the Lease Term, to provide whatever access control measures it deems reasonably necessary to the Project, without any interruption or abatement in the payment of Rent by Tenant. Any entry into the Premises obtained by Landlord by any of such means shall not under any circumstances be construed to be a forcible or unlawful entry into, or a detainer of, the Premises, or any eviction of Tenant from the Premises or any portion thereof. No provision of this Lease shall be construed as obligating Landlord to perform any repairs, Alterations or decorations to the Premises or the Project except as otherwise expressly agreed to be performed by Landlord pursuant to the provisions of this Lease.

### 14. BANKRUPTCY

(a) If at any time on or before the Commencement Date there shall be filed by or against Tenant in any court, tribunal, administrative agency or any other forum having jurisdiction, pursuant to any applicable law, either of the United States or of any state, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver, trustee or conservator of all or a portion of Tenant's property, or if Tenant makes an assignment for the benefit of creditors, this Lease shall *ipso facto* be canceled and terminated and in such event neither Tenant nor any person claiming through or under Tenant or by virtue of any applicable law or by an order of any court, tribunal, administrative agency or any other forum having jurisdiction, shall be entitled to possession of the Premises and Landlord, in addition to the other rights and remedies given by Paragraph 12 hereof or by virtue of any other provision contained in this Lease or by virtue of any applicable law, may retain as damages any Rent, Security Deposit or moneys received by it from Tenant or others on behalf of Tenant.

(b) If, after the Commencement Date, or if at any time during the term of this Lease, there shall be filed against Tenant in any court, tribunal, administrative agency or any other forum having jurisdiction, pursuant to any applicable law, either of the United States or of any state, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver, trustee or conservator of all or a portion of Tenant's property, and the same is not dismissed after sixty (60) calendar days, or if Tenant makes an assignment for the benefit of

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creditors, this Lease, at the option of Landlord exercised within a reasonable time after notice of the happening of any one or more of such events, may be canceled and terminated and in such event neither Tenant nor any person claiming through or under Tenant or by virtue of any statute or of an order of any court shall be entitled to possession or to remain in possession of the Premises, but shall forthwith quit and surrender the Premises, and Landlord, in addition to the other rights and remedies granted by Paragraph 12 hereof or by virtue of any other provision contained in this Lease or by virtue of any applicable law, may retain as damages any Rent, Security Deposit or moneys received by it from Tenant or others on behalf of Tenant.

**15. INTENTIONALLY OMITTED**

**16. SUBORDINATION; ATTORNMENT; ESTOPPEL CERTIFICATES**

(a) Tenant agrees that this Lease and the rights of Tenant hereunder shall be subject and subordinate to any and all deeds of trust, security interests, mortgages, master leases, ground leases or other security documents and any and all modifications, renewals, extensions, consolidations and replacements thereof (collectively, "Security Documents") which now or hereafter constitute a lien upon or affect the Project, the Building or the Premises. Such subordination shall be effective without the necessity of the execution by Tenant of any additional document for the purpose of evidencing or effecting such subordination. In addition, Landlord shall have the right to subordinate or cause to be subordinated any such Security Documents to this Lease and in such case, in the event of the termination or transfer of Landlord's estate or interest in the Project by reason of any termination or foreclosure of any such Security Documents, Tenant shall, notwithstanding such subordination, attorn to and become the Tenant of the successor-in-interest to Landlord at the option of such successor-in-interest. Furthermore, Tenant shall execute, acknowledge and deliver within fifteen (15) days of demand therefor a subordination of lease or subordination of deed of trust, in the form required by the holder of the Security Document requesting the document; the failure to do so by Tenant within such time period shall be a material default hereunder; provided, however, as a condition to Tenant's agreement to execute such a subordination agreement, the holder of any Security Document shall agree that Tenant's quiet enjoyment of the Premises shall not be disturbed as long as Tenant is not in default under this Lease.

(b) If any proceeding is brought for default under any ground or master lease to which this Lease is subject or in the event of foreclosure or the exercise of the power of sale under any mortgage, deed of trust or other Security Document made by Landlord covering the Premises, at the election of such ground lessor, master lessor or purchaser at foreclosure, Tenant shall attorn to and recognize the same as Landlord under this Lease, provided such successor expressly agrees in writing to be bound to all future obligations by the terms of this Lease, and if so requested, Tenant shall enter into a new lease with that successor on the same terms and conditions as are contained in this Lease (for the unexpired term of this Lease then remaining). Tenant hereby waives its rights under any current or future law which gives or purports to give Tenant any right to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any such foreclosure proceeding or sale.

(c) Tenant shall, upon not less than fifteen (15) days prior notice by Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying that (i) this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (ii) the dates to which the Base Rent, Additional Rent and other charges hereunder have been paid, if any, and (iii) whether or not to the best knowledge of Tenant, Landlord is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Tenant may have knowledge. The form of the statement attached hereto as Exhibit D is hereby approved by Tenant for use pursuant to this Paragraph 16(d); however, at Landlord's option, Landlord shall have the right to use other forms for such purpose. Tenant's failure to execute and deliver such statement within such time shall be conclusive upon Tenant that this Lease is in full force and effect without modification except as may be represented by Landlord in any such certificate prepared by Landlord and delivered to Tenant for execution. Any statement delivered pursuant to this Paragraph 16 may be relied upon by any prospective purchaser of the fee of the Building or the Project or any mortgagee, ground lessor or other like encumbrancer thereof or any assignee of any such encumbrance upon the Building or the Project.

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## **17. SALE BY LANDLORD; TENANT'S REMEDIES; NONRECOURSE LIABILITY**

(a) In the event of a sale or conveyance by Landlord of the Building or the Project, Landlord shall be released from any and all liability under this Lease arising from and after the sale of the Building or Project, as the case may be. If the Security Deposit has been deposited by Tenant to Landlord prior to such sale or conveyance, Landlord shall transfer the Security Deposit to the purchaser, and upon delivery to Tenant of notice thereof, Landlord shall be discharged from any further liability in reference thereto.

(b) Landlord shall not be in default of any obligation of Landlord hereunder unless Landlord fails to perform any of its obligations under this Lease within thirty (30) days after receipt of written notice of such failure from Tenant; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, Landlord shall not be in default if Landlord commences to cure such default within the thirty (30) day period and thereafter diligently prosecutes the same to completion. All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Project and not thereafter. All obligations of Landlord hereunder shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder.

(c) Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including any actual or alleged breach or default by Landlord) do not constitute personal obligations of the individual partners, directors, officers, members or shareholders of Landlord or Landlord's members or partners, and Tenant shall not seek recourse against the individual partners, directors, officers, members or shareholders of Landlord or against Landlord's members or partners or against any other persons or entities having any interest in Landlord, or against any of their personal assets for satisfaction of any liability with respect to this Lease. Any liability of Landlord for a default by Landlord under this Lease, or a breach by Landlord of any of its obligations under the Lease, shall be limited solely to its interest in the Project, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord, its partners, directors, officers, members, shareholders or any other persons or entities having any interest in Landlord. Tenant's sole and exclusive remedy for a default or breach of this Lease by Landlord shall be either (i) an action for damages, or (ii) an action for injunctive relief; Tenant hereby waiving and agreeing that Tenant shall have no offset rights or right to terminate this Lease on account of any breach or default by Landlord under this Lease. Under no circumstances whatsoever shall Landlord ever be liable for punitive, consequential or special damages under this Lease and Tenant waives any rights it may have to such damages under this Lease in the event of a breach or default by Landlord under this Lease.

(d) As a condition to the effectiveness of any notice of default given by Tenant to Landlord, Tenant shall also concurrently give such notice under the provisions of Paragraph 17(b) to each beneficiary under a Security Document encumbering the Project of whom Tenant has received written notice from the beneficiary under such Security Document(s) (such notice to specify the address of the beneficiary). If Landlord shall fail to cure any breach or default within the time period specified in Paragraph 17(b), then prior to the pursuit of any remedy therefor by Tenant, the beneficiary shall have an additional thirty (30) days within which to cure such default, or if such default cannot reasonably be cured within such period, then each such beneficiary shall have such additional time as shall be necessary to cure such default, provided that within such thirty (30) day period, such beneficiary has commenced and is diligently pursuing the remedies available to it which are necessary to cure such default (including, without limitation, as appropriate, commencement of foreclosure proceedings).

## **18. PARKING; COMMON AREAS**

(a) Tenant shall have the right to (i) the nonexclusive use of the number of non-reserved parking spaces, and (ii) the exclusive use of the number of reserved parking spaces, located in the parking areas of the Project specified in *Item 13* of the Basic Lease Provisions for the parking of operational motor vehicles used by Tenant, its officers and employees only. Landlord reserves the right, at any time upon written notice to Tenant, to designate the location of Tenant's parking spaces as determined by Landlord in its reasonable discretion. The use of such spaces shall be subject to the rules and regulations adopted by Landlord from time to time for the use of the parking areas. Landlord further reserves the right to make such changes to the parking system as Landlord may deem necessary or reasonable from time to time (*i.e.*, Landlord may provide for one or a combination of parking

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systems, including, without limitation, self-parking, single or double stall parking spaces, and valet assisted parking). Except as otherwise expressly agreed to in this Lease, Tenant agrees that Tenant, its officers and employees shall not be entitled to park in any reserved or specially assigned areas designated by Landlord from time to time in the Project' s parking areas. Landlord may require execution of an agreement with respect to the use of such parking areas by Tenant and/or its officers and employees in form reasonably satisfactory to Landlord as a condition of any such use by Tenant, its officers and employees. A material default by Tenant, its officers or employees in the payment of such charges, the compliance with such rules and regulations, or the performance of such agreement(s) shall constitute a material default by Tenant hereunder. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant' s officers, employees, suppliers, shippers, customers or invitees to be loaded, unloaded or parked in areas other than those designated by Landlord for such activities. If Tenant permits or allows any of the prohibited activities described in this Paragraph 18(a), then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.

(b) Subject to Paragraph 18(c) below and the remaining provisions of this Lease, Tenant shall have the nonexclusive right, in common with others, to the use of such entrances, lobbies, fire vestibules, restrooms (excluding restrooms on any full floors leased by a tenant), mechanical areas, ground floor corridors, elevators and elevator foyers, electrical and janitorial closets, telephone and equipment rooms, loading and unloading areas, the Project' s plaza areas, if any, ramps, drives, stairs, and similar access ways and service ways and other common areas and facilities in and adjacent to the Building and the Project as are designated from time to time by Landlord for the general nonexclusive use of Landlord, Tenant and the other tenants of the Project and their respective employees, agents, representatives, licensees and invitees ("Common Areas"). The use of such Common Areas shall be subject to the rules and regulations contained herein and the provisions of any covenants, conditions and restrictions affecting the Building or the Project. Tenant shall keep all of the Common Areas free and clear of any obstructions created or permitted by Tenant or resulting from Tenant' s operations, and shall use the Common Areas only for normal activities, parking and ingress and egress by Tenant and its employees, agents, representatives, licensees and invitees to and from the Premises, the Building or the Project. If, in the reasonable opinion of Landlord, unauthorized persons are using the Common Areas by reason of the presence of Tenant in the Premises, Tenant, upon demand of Landlord, shall correct such situation by appropriate action or proceedings against all such unauthorized persons. Nothing herein shall affect the rights of Landlord at any time to remove any such unauthorized persons from said areas or to prevent the use of any of said areas by unauthorized persons. Landlord reserves the right to make such changes, alterations, additions, deletions, improvements, repairs or replacements in or to the Building, the Project (including the Premises) and the Common Areas as Landlord may reasonably deem necessary or desirable, including, without limitation, constructing new buildings and making changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading areas, landscaped areas and walkways; provided, however, that there shall be no unreasonable permanent obstruction of access to or use of the Premises resulting therefrom. Notwithstanding any provision of this Lease to the contrary, the Common Areas shall not in any event be deemed to be a portion of or included within the Premises leased to Tenant and the Premises shall not be deemed to be a portion of the Common Areas. This Lease is granted subject to the terms hereof, the rights and interests of third parties under existing liens, ground leases, easements and encumbrances affecting such property, all zoning regulations, rules, ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction over the Project or any part thereof. Landlord represents and warrants to Tenant that, as of Landlord' s delivery of possession of the Premises to Tenant, to Landlord' s actual knowledge, the Premises (subject to completion of the Tenant Improvements) and the Common Areas of the Building, but excluding tenant spaces and excluding Common Areas within any multi-tenant floor of the Building which is not improved or occupied by any tenant(s), shall comply with current building codes and general ADA and Title 24 requirements existing as of the Effective Date.

(c) Notwithstanding any provision of this Lease to the contrary, Landlord specifically reserves the right to redefine the terms "Building" and "Project" for purposes of allocating and calculating Operating Expenses so as to include or exclude areas as Landlord shall from time to time reasonably determine or specify (and any such determination or specification shall be without prejudice to Landlord' s right to reasonably revise thereafter such determination or specification). In addition, Landlord shall have the right to contract or otherwise arrange for amenities, services or utilities (the cost of which is included within Operating Expenses) to be on a common or shared basis to both the Project (*i.e.*, the area with respect to which Operating Expenses are determined) and adjacent areas not included within the Project, so long as the basis on which the cost of such amenities, services or

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utilities is allocated to the Project is determined on an arms-length basis or some other basis reasonably determined by Landlord. In the case where the definition of the Building is revised for purposes of the allocation or determination of Operating Expenses, Tenant's Proportionate Share shall be appropriately revised to equal the percentage share of all Rentable Area contained within the Building (as then defined) represented by the Premises. The Rentable Area of the Building is subject to adjustment by Landlord from time to time to reflect any remeasurement thereof by Landlord's architect, at Landlord's request, and/or as a result of any additions or deletions to any of the buildings in the Project as reasonably designated by Landlord. Landlord shall have the sole right to reasonably determine which portions of the Project and other areas, if any, shall be served by common management, operation, maintenance and repair. Landlord shall have the exclusive rights to the airspace above and around, and the subsurface below, the Premises and other portions of the Building and Project. So long as there is no default by Tenant under this Lease (beyond the expiration of all applicable notice and cure periods), Landlord acknowledges and agrees that Tenant's employees employed at the Premises shall have the right to utilize the Building's fitness center ("Fitness Center") for so long as Landlord reasonably determines that such Fitness Center will be in operation at the Building. Tenant, for Tenant and its employees, hereby agrees that the Landlord Indemnitees shall not be liable for, and are hereby released from, any responsibility for any loss, cost, damage, expense or liability to person or property arising from the use of the Fitness Center by Tenant or Tenant's employees. In connection with the operation of the Fitness Center, Landlord reserves the right to promulgate commercially reasonable rules and regulations applicable to all users of the Fitness Center, which rules and regulations may include, as a condition to any person's use of the Fitness Center, of such person's execution and delivery to Landlord of a release agreement in a form specified by Landlord, releasing Landlord from any liability arising out of or in connection with such person's use of the Fitness Center (and upon such person's compliance with such rules and regulations which Landlord may specify for the use of the Fitness Center). Landlord shall have the right, from time to time, to relocate or eliminate the Fitness Center and use such space as leasable space.

## **19. MISCELLANEOUS**

(a) Attorneys' Fees. In the event of any legal action or proceeding brought by either party against the other arising out of this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs (including, without limitation, court costs and expert witness fees) incurred in such action. Such amounts shall be included in any judgment rendered in any such action or proceeding.

(b) Waiver. No waiver by either party of any provision of this Lease or of any breach by the other party hereunder shall be deemed to be a waiver of any other provision hereof, or of any subsequent breach by such other party. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval under this Lease shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act of Tenant. No act or thing done by Landlord or Landlord's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, unless in writing signed by Landlord. The delivery of the keys to any employee or agent of Landlord shall not operate as a termination of the Lease or a surrender of the Premises. The acceptance of any Rent by Landlord following a breach of this Lease by Tenant shall not constitute a waiver by Landlord of such breach or any other breach unless such waiver is expressly stated in a writing signed by Landlord.

(c) Notices. Any notice, demand, request, consent, approval, disapproval or certificate ("Notice") required or desired to be given under this Lease shall be in writing and given by certified mail, return receipt requested, by personal delivery or by a nationally recognized overnight delivery service (such as Federal Express or UPS) providing a receipt for delivery. Notices may not be given by facsimile. The date of giving any Notice shall be deemed to be the date upon which delivery is actually made by one of the methods described in this Paragraph 19(c) (or attempted if said delivery is refused or rejected). If a Notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day. All notices, demands, requests, consents, approvals, disapprovals, or certificates shall be addressed at the address specified in *Item 14* of the Basic Lease Provisions or to such other addresses as may be specified by written notice from Landlord to Tenant and if to Tenant, at the Premises. Either party may change its address by giving reasonable advance written Notice of its new address in accordance with the methods described in this Paragraph 19(c); provided, however, no notice of either party's change of address shall be effective until fifteen (15) days after the addressee's actual receipt thereof.

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(d) Access Control. Landlord shall be the sole determinant of the type and amount of any access control or courtesy guard services to be provided to the Project, if any. IN ALL EVENTS, LANDLORD SHALL NOT BE LIABLE TO TENANT, AND TENANT HEREBY WAIVES ANY CLAIM AGAINST LANDLORD, FOR (I) ANY UNAUTHORIZED OR CRIMINAL ENTRY OF THIRD PARTIES INTO THE PREMISES, THE BUILDING OR THE PROJECT, (II) ANY DAMAGE TO PERSONS, OR (III) ANY LOSS OF PROPERTY IN AND ABOUT THE PREMISES, THE BUILDING OR THE PROJECT, BY OR FROM ANY UNAUTHORIZED OR CRIMINAL ACTS OF THIRD PARTIES, REGARDLESS OF ANY ACTION, INACTION, FAILURE, BREAKDOWN, MALFUNCTION AND/OR INSUFFICIENCY OF THE ACCESS CONTROL OR COURTESY GUARD SERVICES PROVIDED BY LANDLORD, IF ANY. Tenant may install a supplemental security system subject in all events to the terms of Paragraph 4 regarding alterations and provided Landlord in all events has access to the Premises via such security system and such system does not interfere with any Building systems and equipment and that Tenant remove such security and restore all damage to the Premises resulting therefrom upon the expiration or earlier termination of the Lease as provided in Paragraph 4. Tenant shall coordinate such services and equipment with any security provided by Landlord. The determination of the extent to which such supplemental security equipment, systems and procedures are reasonably required shall be made in the sole judgment, and shall be the sole responsibility, of Tenant. Tenant acknowledges that it has neither received nor relied upon any representation or warranty made by or on behalf of Landlord with respect to the safety or security of the Premises or the Project or any part thereof or the extent or effectiveness of any security measures or procedures now or hereafter provided by Landlord, and further acknowledges that Tenant has made its own independent determinations with respect to all such matters. Except as otherwise provided in this Lease and subject to Force Majeure and any Access Control then implemented for the Building, Tenant shall have access to the Building and the Premises 24 hours a day, 365 days a year.

(e) Storage. Any storage space at any time leased to Tenant hereunder shall be used exclusively for storage. Notwithstanding any other provision of this Lease to the contrary, (i) Landlord shall have no obligation to provide heating, cleaning, water or air conditioning therefor, and (ii) Landlord shall be obligated to provide to such storage space only such electricity as will, in Landlord's judgment, be adequate to light said space as storage space.

(f) Holding Over. If Tenant retains possession of the Premises after the termination or expiration of the Lease Term, unless otherwise expressly agreed in writing, such possession shall be subject to immediate termination by Landlord at any time, and all of the other terms and provisions of this Lease (excluding any expansion or renewal option or other similar right or option) shall be applicable during such holdover period, except that Tenant shall pay Landlord from time to time, upon demand, as Base Rent for the holdover period, an amount equal to two hundred percent (200%) of the Base Rent in effect on the termination date, computed on a monthly basis for each month or part thereof during such holding over. All other payments shall continue under the terms of this Lease. In addition, Tenant shall be liable for all damages incurred by Landlord as a result of such holding over. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Paragraph 19(f) shall not be construed as consent for Tenant to retain possession of the Premises.

(g) Condition of Premises. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS LEASE, LANDLORD HEREBY DISCLAIMS ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT'S INTENDED PURPOSE OR USE, WHICH DISCLAIMER IS HEREBY ACKNOWLEDGED BY TENANT. THE TAKING OF POSSESSION BY TENANT SHALL BE CONCLUSIVE EVIDENCE THAT TENANT:

- (i) ACCEPTS THE PREMISES, THE BUILDING AND LEASEHOLD IMPROVEMENTS AS SUITABLE FOR THE PURPOSES FOR WHICH THE PREMISES WERE LEASED;
- (ii) ACCEPTS THE PREMISES AND PROJECT AS BEING IN GOOD AND SATISFACTORY CONDITION;
- (iii) WAIVES ANY DEFECTS IN THE PREMISES AND ITS APPURTENANCES EXISTING NOW OR IN THE FUTURE, EXCEPT THAT TENANT'S TAKING OF POSSESSION SHALL NOT BE DEEMED TO WAIVE LANDLORD'S COMPLETION OF MINOR FINISH WORK ITEMS THAT DO NOT INTERFERE WITH TENANT'S OCCUPANCY OF THE PREMISES; AND
- (iv) WAIVES ALL CLAIMS BASED ON ANY IMPLIED WARRANTY OF SUITABILITY OR HABITABILITY.

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(h) Quiet Possession. Upon Tenant' s paying the Rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant' s part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the term hereof without hindrance or ejection by any person lawfully claiming under Landlord, subject to the provisions of this Lease and to the provisions of any (i) covenants, conditions and restrictions, (ii) master lease, or (iii) Security Documents to which this Lease is subordinate or may be subordinated.

(i) Matters of Record. Except as otherwise provided herein, this Lease and Tenant' s rights hereunder are subject and subordinate to all matters affecting Landlord' s title to the Project recorded in the Real Property Records of the County in which the Project is located, prior to and subsequent to the date hereof, including, without limitation, all covenants, conditions and restrictions. Tenant agrees for itself and all persons in possession or holding under it that it will comply with and not violate any such covenants, conditions and restrictions or other matters of record. Landlord reserves the right, from time to time, to grant such easements, rights and dedications as Landlord deems necessary or desirable, and to cause the recordation of parcel maps and covenants, conditions and restrictions affecting the Premises, the Building or the Project, as long as such easements, rights, dedications, maps, and covenants, conditions and restrictions do not materially interfere with the use of the Premises by Tenant.

(j) Successors and Assigns. Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns. Tenant shall attorn to each purchaser, successor or assignee of Landlord.

(k) Brokers. Landlord and Tenant warrant that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, excepting only the brokers named in *Item 12* of the Basic Lease Provisions and that they know of no other real estate broker or agent who is or might be entitled to a commission in connection with this Lease. Tenant hereby agrees to indemnify, defend and hold Landlord harmless for, from and against all claims for any brokerage commissions, finders' fees or similar payments by any persons other than Landlord' s Broker and Tenant' s Broker listed in *Item 12* of the Basic Lease Provisions claiming to have represented Tenant in connection with this Lease and all costs, expenses and liabilities incurred in connection with such claims, including reasonable attorneys' fees and costs. Landlord hereby agrees to indemnify, defend and hold Tenant harmless for, from and against all claims for any brokerage commissions, finders' fees or similar payments by any persons other than Tenant' s Broker and Landlord' s listed in *Item 12* of the Basic Lease Provisions claiming to have represented Landlord in connection with this Lease and all costs, expenses and liabilities incurred in connection with such claims, including reasonable attorneys' fees and costs.

(l) Name. Landlord shall have the exclusive right at all times during the Lease Term to change, modify, add to or otherwise alter the name, number, or designation of the Building and/or the Project, and Landlord shall not be liable for claims or damages of any kind which may be attributed thereto or result therefrom. However, regardless of the foregoing or any other provision of this Lease, Landlord shall not change, modify, add to or otherwise alter the street address of the Building unless Landlord is obligated to do so pursuant to a mandatory and unavoidable legal requirement.

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

(n) Time. Time is of the essence of this Lease and each and all of its provisions.

(o) Defined Terms and Marginal Headings. The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular and for purposes of Paragraphs 5, 7, 13 and 18, the term Landlord shall include Landlord, its employees, contractors and agents. If more than one person is named as Tenant the obligations of such persons are joint and several. The marginal headings and titles to the paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

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(p) Conflict of Laws; Prior Agreements; Separability. This Lease shall be governed by and construed pursuant to the laws of the State of California. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease. No prior agreement, understanding or representation pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The illegality, invalidity or unenforceability of any provision of this Lease shall in no way impair or invalidate any other provision of this Lease, and such remaining provisions shall remain in full force and effect.

(q) Authority. If Tenant is a corporation or limited liability company, each individual executing this Lease on behalf of Tenant hereby covenants and warrants that Tenant is a duly authorized and existing corporation or limited liability company, that Tenant has and is qualified to do business in the State, that the corporation or limited liability company has full right and authority to enter into this Lease, and that each person signing on behalf of the corporation is authorized to do so. If Tenant is a partnership or trust, each individual executing this Lease on behalf of Tenant hereby covenants and warrants that he is duly authorized to execute and deliver this Lease on behalf of Tenant in accordance with the terms of such entity's partnership or trust agreement. Tenant shall provide Landlord on demand with such evidence of such authority as Landlord shall reasonably request, including, without limitation, resolutions, certificates and opinions of counsel. This Lease shall not be construed to create a partnership, joint venture or similar relationship or arrangement between Landlord and Tenant hereunder.

(r) Joint and Several Liability. If two or more individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) shall sign this Lease as Tenant, the liability of each such individual, corporation, partnership or other business association to pay Rent and perform all other obligations hereunder shall be deemed to be joint and several, and all notices, payments and agreements given or made by, with or to any one of such individuals, corporations, partnerships or other business associations shall be deemed to have been given or made by, with or to all of them. In like manner, if Tenant shall be a partnership or other business association, the members of which are, by virtue of statute or federal law, subject to personal liability, then the liability of each such member shall be joint and several.

(s) Rental Allocation. For purposes of Section 467 of the Internal Revenue Code of 1986, as amended from time to time, Landlord and Tenant hereby agree to allocate all Rent to the period in which payment is due, or if later, the period in which Rent is paid.

(t) Rules and Regulations. Tenant agrees to comply with all rules and regulations of the Building and the Project imposed by Landlord as set forth on Exhibit C attached hereto, as the same may be changed from time to time upon reasonable notice to Tenant. Landlord shall not be liable to Tenant for the failure of any other tenant or any of its assignees, subtenants, or their respective agents, employees, representatives, invitees or licensees to conform to such rules and regulations.

(u) Joint Product. This Agreement is the result of arms-length negotiations between Landlord and Tenant and their respective attorneys. Accordingly, neither party shall be deemed to be the author of this Lease and this Lease shall not be construed against either party.

(v) Financial Statements. Upon Landlord's written request, Tenant shall promptly furnish Landlord, from time to time, with the most current audited financial statements of Encore Capital Group, Inc., a Delaware corporation ("ECG"), which is the parent corporation and sole shareholder of Tenant.

(w) Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorism, terrorist activities, inability to obtain services, labor, or materials or reasonable substitutes therefore, governmental actions, civil commotions, fire, flood, earthquake or other casualty, and other causes that are beyond the reasonable control and not the fault of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease and except as to Tenant's obligations under Paragraph 6, Paragraph 8, and Paragraph 19(f) of this Lease (collectively, a "Force Majeure"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a reasonable period resulting from such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the reasonable period of any delay in such party's performance caused by a Force Majeure.



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(x) Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

(y) Waiver of Right to Jury Trial. **TO THE EXTENT ALLOWED BY LAW, LANDLORD AND TENANT WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY OF ANY CONTRACT OR TORT CLAIM, COUNTERCLAIM, CROSS-COMPLAINT, OR CAUSE OF ACTION IN ANY ACTION, PROCEEDING, OR HEARING BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, OR TENANT' S USE OR OCCUPANCY OF THE LEASED PREMISES, INCLUDING WITHOUT LIMITATION ANY CLAIM OF INJURY OR DAMAGE OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY CURRENT OR FUTURE LAW, STATUTE, REGULATION, CODE, OR ORDINANCE.**

Landlord and Tenant agree that this Paragraph 19(y) constitutes a written consent to waiver of trial by jury within the meaning of California Code of Civil Procedure Section 631(a)(2), and Tenant does hereby authorize and empower Landlord to file this Paragraph 19(y) and/or this Lease, as required, with the clerk or judge of any court of competent jurisdiction as a written consent to waiver of jury trial.

(z) Project or Building Name and Signage.

(i) Landlord shall have the right at any time to change the name of the Project or Building and to install, affix and maintain any and all signs on the exterior and on the interior of the Project or Building as Landlord may, in Landlord' s sole discretion, desire. Tenant shall not use the name of the Project or Building or use pictures or illustrations of the Project or Building in advertising or other publicity or for any purpose other than as the address of the business to be conducted by Tenant in the Premises, without the prior written consent of Landlord, which consent Landlord shall not unreasonably withhold. Landlord shall be deemed to have granted Landlord' s written consent that Tenant may use the name of the Project or Building or use pictures or illustrations of the Project or Building in Tenant' s annual report and in tenant' s recruiting materials.

(ii) Subject to this Paragraph 19(z), and subject to Landlord' s prior reasonable approval, the sign criteria for the Building, all covenants, conditions, and restrictions affecting the Project and all applicable laws, rules, regulations, and local ordinances, and subject to Tenant obtaining all necessary permits and approvals from the City of San Diego, California, Tenant shall be granted the following signage rights:

(A) Landlord shall provide Tenant with (i) one (1) identity strip on the Building' s directory signage, and (ii) one (1) Building standard suite identification sign adjacent to the Premises (collectively, "Identity Signage"). The cost to initially construct and install Tenant' s Identity Signage shall be at Landlord' s sole cost and expense. All other costs in connection with Tenant' s Identity Signage, including the cost to make any subsequent changes thereto, shall be at Tenant' s sole cost and expense.

(B) Provided and for so long as Tenant occupies a minimum of the entire initial Premises (consisting of 32,503 square feet of Rentable Area), Tenant shall have the exclusive right to have the name "Encore Capital Group" placed in one (1) location at the top level of the Building on the I-8 Eastfacing side of the Building top as depicted in Exhibit G attached hereto ("Tenant' s East Building Sign"). If Tenant desires, Tenant' s East Building Sign may be illuminated at Tenant' s sole cost and expense, including all costs of electricity reasonably allocable to illumination of such sign. In addition, if (i) Tenant expands the Premises by leasing a minimum of an additional 32,503 square feet of Rentable Area in the Building within the first twenty four (24) months following the Commencement Date, and (ii) so long as Tenant occupies such minimum additional 32,503 square feet of Rentable Area in the Building, and (iii) such signage has not been previously granted by Landlord to another tenant of the Building, Landlord agrees that Tenant shall have the exclusive right to have the name "Encore Capital Group" placed in one (1) additional location at the top level of the Building on the west-facing side of the Building top as depicted in Exhibit G attached hereto ("Tenant' s West Building Sign"). If Tenant desires, Tenant' s West Building Sign may be illuminated at Tenant' s sole cost and expense, including all costs of electricity reasonably allocable to illumination of such sign. In addition to such Building top signage, whether or not Tenant is still qualified to maintain Tenant' s East Building Sign and/or Tenant' s West Building Sign, provided and so long as Tenant occupies at least 16,000 square feet of Rentable Area in the Building, Tenant shall have the



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nonexclusive right, subject to availability, and upon at least thirty (30) days' prior written notice to Landlord, to have the name "Encore Capital Group" placed on a panel on the street-front monument sign at the east driveway ("Monument Sign") of the Common Area. The location of Tenant's panel on the Monument Sign will be determined by Landlord. Tenant shall be solely responsible for payment of all costs and expenses arising from any Building Signs and Tenant's panel on the Monument Sign, including, without limitation, all design, fabrication and permitting costs, license fees, installation, maintenance, repair, removal and restoration costs (including restoration of the façade to original condition, ordinary wear and tear excepted), and electricity (if illumination is permitted). If, at any time Tenant fails to maintain the minimum square footage requirements for Tenant's East Building Sign, Tenant's West Building Sign (if any), and/or the Monument Sign (i.e., 32,503 square feet of Rentable Area for Tenant's East Building Sign, 65,006 square feet of Rentable Area for Tenant's West Building Sign (if any), and 16,000 square feet of Rentable Area for the Monument Sign), then Landlord shall have the right to cancel Tenant's rights relative to such signage, respectively, upon written notice to Tenant, whereupon Tenant shall be required to remove Tenant's East Building Sign, Tenant's West Building Sign (if any), and/or the Monument Sign, as applicable. If Tenant fails to exercise its sign rights hereunder within the first six (6) months after the Commencement Date of this Lease by installing Tenant's East Building Sign and/or Monument Sign, or within the first six (6) months after the commencement of Tenant's term for any expansion space giving rise to Tenant's West Building Sign rights, then Tenant shall be deemed to have waived Tenant's East Building Sign rights, Tenant's West Building Sign rights, and/or Tenant's Monument Sign rights, as applicable.

(C) Landlord shall maintain and repair all of Tenant's signs at Tenant's expense. Upon the expiration or earlier termination of this Lease, Landlord shall, at Tenant's sole cost and expense (except as otherwise set forth hereinabove), (i) cause all of Tenant's signs to be removed from the exterior and interior of the Building and the Common Areas, (ii) repair any damage caused by the removal of Tenant's signs, and (iii) restore the underlying surfaces to the condition existing prior to the installation of Tenant's signs and Tenant shall reimburse Landlord for all such costs within thirty (30) days of written demand from Landlord.

(D) The sign rights granted herein are personal to the original Tenant executing this Lease and may not be assigned, voluntarily or involuntarily, to any person or entity. The rights granted to the original Tenant hereunder are not assignable separate and apart from the Lease, nor may any right granted herein be separated from the Lease in any manner, either by reservation or otherwise.

(aa) Office and Communications Services. Landlord has advised Tenant that certain office and communications services may be offered to tenants of the Building by a concessionaire under contract to Landlord ("Provider"). Tenant shall be permitted to contract with Provider for the provision of any or all of such services on such terms and conditions as Tenant and Provider may agree. Tenant acknowledges and agrees that: (i) Landlord has made no warranty or representation to Tenant with respect to the availability of any such services, or the quality, reliability or suitability thereof; (ii) the Provider is not acting as the agent or representative of Landlord in the provision of such services, and Landlord shall have no liability or responsibility for any failure or inadequacy of such services, or any equipment or facilities used in the furnishing thereof, or any act or omission of Provider, or its agents, employees, representatives, officers or contractors; (iii) Landlord shall have no responsibility or liability for the installation, alteration, repair, maintenance, furnishing, operation, adjustment or removal of any such services, equipment or facilities; and (iv) any contract or other agreement between Tenant and Provider shall be independent of this Lease, the obligations of Tenant hereunder, and the rights of Landlord hereunder, and, without limiting the foregoing, no default or failure of Provider with respect to any such services, equipment or facilities, or under any contract or agreement relating thereto, shall have any effect on this Lease or give to Tenant any offset or defense to the full and timely performance of its obligations hereunder, or entitle Tenant to any abatement of rent or additional rent or any other payment required to be made by Tenant hereunder, or constitute any accrual or constructive eviction of Tenant, or otherwise give rise to any other claim of any nature against Landlord.

(bb) OFAC Compliance.

(i) Certification. Tenant certifies, represents, warrants and covenants that:

(A) It is not acting and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked

Person”, or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and

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(B) It is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation.

(ii) Indemnity. Tenant hereby agrees to defend (with counsel reasonably acceptable to Landlord), indemnify and hold harmless Landlord and the Landlord Indemnitees from and against any and all claims arising from or related to any such breach of the foregoing certifications, representations, warranties and covenants.

(cc) No Easement For Light, Air And View. This Lease conveys to Tenant no rights for any light, air or view. No diminution of light, air or view, or any impairment of the visibility of the Premises from inside or outside the Building, by any structure or other object that may hereafter be erected (whether or not by Landlord) shall entitle Tenant to any reduction of Rent under this Lease, constitute an actual or constructive eviction of Tenant, result in any liability of Landlord to Tenant, or in any other way affect this Lease or Tenant's obligations hereunder, provided Landlord agrees not to apply any "building skin" signage or similar materials that would (a) block or diminish views out of Tenant's windows in the Premises, (b) conflict with or detract from any Building signage showing Tenant's name, or (c) diminish the normal performance and capacity of the HVAC system from what it would be if such "building skin" signage or similar materials had not been applied, and Landlord shall provide Tenant with reasonable advance written notice of Landlord's intent to install any such "building skin" signage that isn't otherwise prohibited by this paragraph, and Tenant shall have reasonable approval rights over the content of any such building skin signage to be installed on the Building.

(dd) Nondisclosure of Lease Terms. Tenant agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord, and that disclosure of the terms hereof could adversely affect the ability of Landlord to negotiate with other tenants. Tenant hereby agrees that Tenant and its partners, officers, directors, employees, agents, real estate brokers and sales persons and attorneys shall not disclose the terms of this Lease to any other person without Landlord's prior written consent, except to any accountants of Tenant in connection with the preparation of Tenant's financial statements or tax returns, to an assignee of this Lease or subtenant of the Premises, or to an entity or person to whom disclosure is required by applicable law or in connection with any action brought to enforce this Lease.

(ee) Anti-Terrorism Representation. To the best of Tenant's knowledge, neither Tenant nor any of its affiliates have engaged in any dealings or transactions, directly or indirectly, (i) in contravention of any U.S., international or other money laundering regulations or conventions, including, without limitation, the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, Trading with the Enemy Act (50 U.S.C. §1 et seq., as amended), or any foreign asset control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, or (ii) in contravention of Executive Order No. 13,244,66 Fed. Reg. 49,079 (2001) issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time to time ("Anti-Terrorism Order") or on behalf of terrorists or terrorist organizations, including those persons or entities that are included on any relevant lists maintained by the United Nations, North Atlantic Treaty Organization, Organization of Economic Cooperation and Development, Financial Action Task Force, U.S. Office of Foreign Assets Control, U.S. Securities & Exchange Commission, U.S. Federal Bureau of Investigation, U.S. Central Intelligence Agency, U.S. Internal Revenue Service, or any country or organization, all as may be amended from time to time. Neither Tenant nor any of its affiliates are a person described in section 1 of the Anti-Terrorism Order and neither Tenant nor any of its affiliates have engaged in any dealings or transactions, or otherwise been associated with any such person. If at any time this representation becomes false then it shall be considered a default under this Lease and Landlord shall have the right to exercise all of the remedies set forth in this Lease in the event of a default.

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(ff) Guarantor. As a condition to Landlord's obligations under this Lease, Encore Capital Group, Inc. ("Guarantor") shall execute a guaranty in the form of the Lease Guaranty attached hereto as Exhibit F. It shall constitute an event of default by Tenant under this Lease if the Guarantor fails or refuses, upon request to provide: (a) evidence of the proper execution of the Lease Guaranty, including the authority of the party signing on the Guarantor's behalf to obligate the Guarantor, (b) current financial statements for the Guarantor, (c) an estoppels certificate signed by the Guarantor in form reasonably requested by Landlord, or (d) written confirmation that the Lease Guaranty is still in effect and is enforceable as a valid and binding obligation of the Guarantor.

## **20. ROOF TOP EQUIPMENT**

(a) During the initial Term and any extension thereof, Tenant shall have the right to install upon the roof of the Building (in accordance with Article 4 of this Lease), and operate and maintain a dish/antenna or other communication and/or data transmission equipment (the "Roof Equipment"), subject to Landlord's prior written approval. The location of the space on the roof reasonably designated by Landlord for installation of Tenant's Roof Equipment is referred to herein as the "Roof Space". Landlord reserves the right to reasonably relocate the Roof Space as reasonably necessary during the Term, provided such relocation does not disrupt the use of Tenant's Roof Equipment. Landlord's designation shall take into account Tenant's use of the Roof Equipment. Notwithstanding the foregoing, Tenant's right to install the Roof Equipment shall be subject to the reasonable approval rights of Landlord and Landlord's architect and/or engineer with respect to the plans and specifications of the Roof Equipment, the size of the Roof Equipment, the manner in which the Roof Equipment is attached to the roof of the Building and the manner in which any cables are run to and from the Roof Equipment. The precise specifications and a general description of the Roof Equipment, or any replacements thereof, along with all documents Landlord reasonably requires to review the installation of the Roof Equipment (the "Plans and Specifications") shall be submitted to Landlord for Landlord's written approval no later than twenty (20) days before Tenant commences to install the Roof Equipment. Tenant (with Landlord's reasonable cooperation) shall be solely responsible for obtaining and maintaining all necessary governmental and regulatory approvals and for the cost of installing, operating, maintaining and removing the Roof Equipment. Tenant shall notify Landlord upon completion of the installation of the Roof Equipment. If Landlord reasonably determines that the Roof Equipment does not comply with the approved Plans and Specifications, that the Building has been damaged during installation of the Roof Equipment or that the installation was defective, Landlord shall notify Tenant of any noncompliance or detected problems and Tenant immediately shall cure the defects. If Tenant fails to immediately and reasonably cure the defects after written notice from Landlord, Tenant shall pay to Landlord upon written demand (accompanied by reasonably detailed and itemized statement) the cost, as reasonably determined by Landlord, of correcting any defects and repairing any damage to the Building caused by such installation. If at any time Landlord, in its sole discretion, deems it necessary, Tenant shall provide and install, at Tenant's sole cost and expense, appropriate aesthetic screening, reasonably satisfactory to Landlord, for the Roof Equipment (the "Aesthetic Screening").

(b) Landlord agrees that Tenant, upon reasonable prior written notice to Landlord, shall have access to the roof of the Building and the Roof Space for the purpose of installing, maintaining, repairing and removing the Roof Equipment, the appurtenances and the Aesthetic Screening, if any, all of which shall be performed by Tenant or Tenant's authorized representative or contractors, which shall be reasonably approved by Landlord, at Tenant's sole cost and risk. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of Tenant, FCC (defined below) inspectors, or persons under their direct supervision will be permitted to have access to the roof of the Building and the Roof Space. Tenant further agrees to exercise firm control over the people requiring access to the roof of the Building and the Roof Space in order to keep to a minimum the number of people having access to the roof of the Building and the Roof Space and the frequency of their visits. It is further understood and agreed that the installation, maintenance, operation and removal of the Roof Equipment, the appurtenances and the Aesthetic Screening, if any, is not permitted to damage the Building or the roof thereof, or interfere with the use of the Building and roof by Landlord. Tenant agrees to be responsible for any damage caused to the roof or any other part of the Building, which may be caused by Tenant or any Tenant Entity.

(c) Tenant agrees to install and maintain only equipment of types and frequencies which will not cause unreasonable interference to Landlord or any other tenant of the Building which has installed communications equipment upon the roof prior to Tenant. In the event Tenant's equipment causes such interference, Tenant will change the frequency on which it transmits and/or receives and take any other reasonable steps necessary to eliminate the interference. If said interference cannot be eliminated within a reasonable period of time, in the



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reasonable judgment of Landlord, then Tenant agrees to remove the Roof Equipment from the Roof Space. Landlord shall make commercially reasonable efforts to ensure that any new equipment installed on the roofs by other tenants or users does not have frequencies which causes unreasonable interference to Tenant's Roof Equipment. Tenant shall, at its sole cost and expense, and at its sole risk, install, operate and maintain the Roof Equipment in a good and workmanlike manner, and in compliance with all Building, electric, communication, and safety codes, ordinances, standards, regulations and requirements, now in effect or hereafter promulgated, of the Federal Government, including, without limitation, the Federal Communications Commission (the "FCC"), the Federal Aviation Administration ("FAA") or any successor agency of either the FCC or FAA having jurisdiction over radio or telecommunications, and of the state, city and county in which the Building is located. Under this Lease, the Landlord and its agents assume no responsibility for the licensing, operation and/or maintenance of Tenant's equipment. Tenant has the responsibility of carrying out the terms of its FCC license in all respects. The Roof Equipment shall be connected to Landlord's power supply in strict compliance with all applicable Building, electrical, fire and safety codes. Neither Landlord nor any Landlord Entity shall be liable to Tenant for any stoppages or shortages of electrical power furnished to the Roof Equipment or the Roof Space because of any act, omission or requirement of the public utility serving the Building, or the act or omission of any other tenant, invitee or licensee or their respective agents, employees or contractors, or for any other cause beyond the reasonable control of Landlord, and Tenant shall not be entitled to any rental abatement for any such stoppage or shortage of electrical power. Neither Landlord any Landlord Entity shall have any responsibility or liability for the conduct or safety of any of Tenant's representatives, repair, maintenance and engineering personnel while in or on any part of the Building or the Roof Space.

(d) The Roof Equipment, the appurtenances and the Aesthetic Screening, if any, shall remain the personal property of Tenant, and shall be removed by Tenant at its own expense at the expiration or earlier termination of this Lease. Tenant shall repair any damage caused by such removal, including the patching of any holes to match, as closely as possible, the color surrounding the area where the equipment and appurtenances were attached. Tenant agrees to maintain all of the Tenant's equipment placed on or about the roof or in any other part of the Building in proper operating condition and maintain same in satisfactory condition as to appearance and safety in Landlord's sole discretion. Such maintenance and operation shall be performed in a manner to avoid any interference with any other tenants or Landlord. Tenant agrees that at all times during the Term, it will keep the roof of the Building and the Roof Space free of all trash or waste materials produced by Tenant or the Tenant Entities.

(e) In light of the specialized nature of the Roof Equipment, Tenant shall be permitted to utilize the services of its choice for installation, operation, removal and repair of the Roof Equipment, the appurtenances and the Aesthetic Screening, if any, subject to the reasonable approval of Landlord. Notwithstanding the foregoing, Tenant must provide Landlord with prior written notice of any such installation, removal or repair and coordinate such work with Landlord in order to avoid voiding or otherwise adversely affecting any warranties granted to Landlord with respect to the roof. If reasonably necessary, Tenant, at its sole cost and expense, shall retain any contractor having a then existing warranty in effect on the roof to perform such work (to the extent that it involves the roof), or, at Tenant's option, to perform such work in conjunction with Tenant's contractor. If Landlord contemplates roof repairs that could affect Tenant's Roof Equipment, or which may result in an interruption of the Tenant's telecommunication and/or data transmission service, Landlord shall formally notify Tenant at least ten (10) business days in advance (except in cases of an emergency) prior to the commencement of such contemplated work in order to allow Tenant to make other arrangements for such service.

(f) Tenant shall not allow any provider of telecommunication, video, data or related services ("Communication Services") to locate any equipment on the roof of the Building or in the Roof Space for any purpose whatsoever other than in connection with the approved Roof Equipment for Tenant's use, nor may Tenant use the Roof Space and/or Roof Equipment to provide Communication Services to an unaffiliated tenant, occupant or licensee of another building, or to facilitate the provision of Communication Services on behalf of another Communication Services provider to an unaffiliated tenant, occupant or licensee of the Building or any other building. Tenant acknowledges that Landlord may at some time establish a standard license agreement (the "License Agreement") with respect to the use of roof space by tenants of the Building. Tenant, upon request of Landlord, shall enter into such License Agreement with Landlord provided that such agreement does not materially or adversely alter the rights of Tenant hereunder with respect to the Roof Space. Tenant specifically acknowledges and agrees that the terms and conditions of Article 8 of this Lease shall apply with full force and effect to the Roof Space and any other portions of the roof accessed or utilized by Tenant, its representatives, agents, employees or contractors.



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(g) If Tenant defaults under any of the terms and conditions of this Section, and Tenant fails to cure said default within the time allowed by Article 12 of this Lease after written notice of such default by Landlord, Landlord shall be permitted to exercise all remedies provided under the terms of this Lease, including removing the Roof Equipment, the appurtenances and the Aesthetic Screening, if any, and restoring the Building and the Roof Space to the condition that existed prior to the installation of the Roof Equipment, the appurtenances and the Aesthetic Screening, if any. If Landlord removes the Roof Equipment, the appurtenances and the Aesthetic Screening, if any, as a result of an uncured default, Tenant shall be liable for all reasonable, actual and documented costs and expenses Landlord incurs in removing the Roof Equipment, the appurtenances and the Aesthetic Screening, if any, and repairing any damage to the Building, the roof of the Building and the Roof Space caused by the installation, operation or maintenance of the Roof Equipment, the appurtenances, and the Aesthetic Screening, if any. Tenant' s rights pursuant to this Article 20 are personal to the named Tenant under this Lease, Permitted Transferees and assignees or subtenants consented to by Landlord pursuant to Article 11 above, and are not otherwise transferable.

**[SIGNATURE PAGE TO FOLLOW]**

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SIGNATURE PAGE TO OFFICE LEASE  
BY AND BETWEEN TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA FOR THE  
BENEFIT OF ITS SEPARATE REAL ESTATE ACCOUNT, AS LANDLORD,  
AND MIDLAND CREDIT MANAGEMENT, INC., AS TENANT

IN WITNESS WHEREOF, the parties have executed this Lease to be effective as of the Date of this Lease.

**“LANDLORD”**:

**“TENANT”**:

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF  
AMERICA FOR THE BENEFIT OF ITS SEPARATE REAL  
ESTATE ACCOUNT, a New York corporation

MIDLAND CREDIT MANAGEMENT, INC., a Kansas  
corporation

By: /s/ Robert E. Niendorf

By: /s/ J. Brandon Black

Name: Robert E. Niendorf

Name: J. Brandon Black

Title: Director

Title: President and CEO

Date: 3/9/11

EXHIBIT A-1

FLOOR PLAN OF THE PREMISES

**CENTERSIDE I**  
3111 CAMINO DEL RIO NORTH  
SAN DIEGO, CALIFORNIA

**TWELFTH FLOOR**

02/08

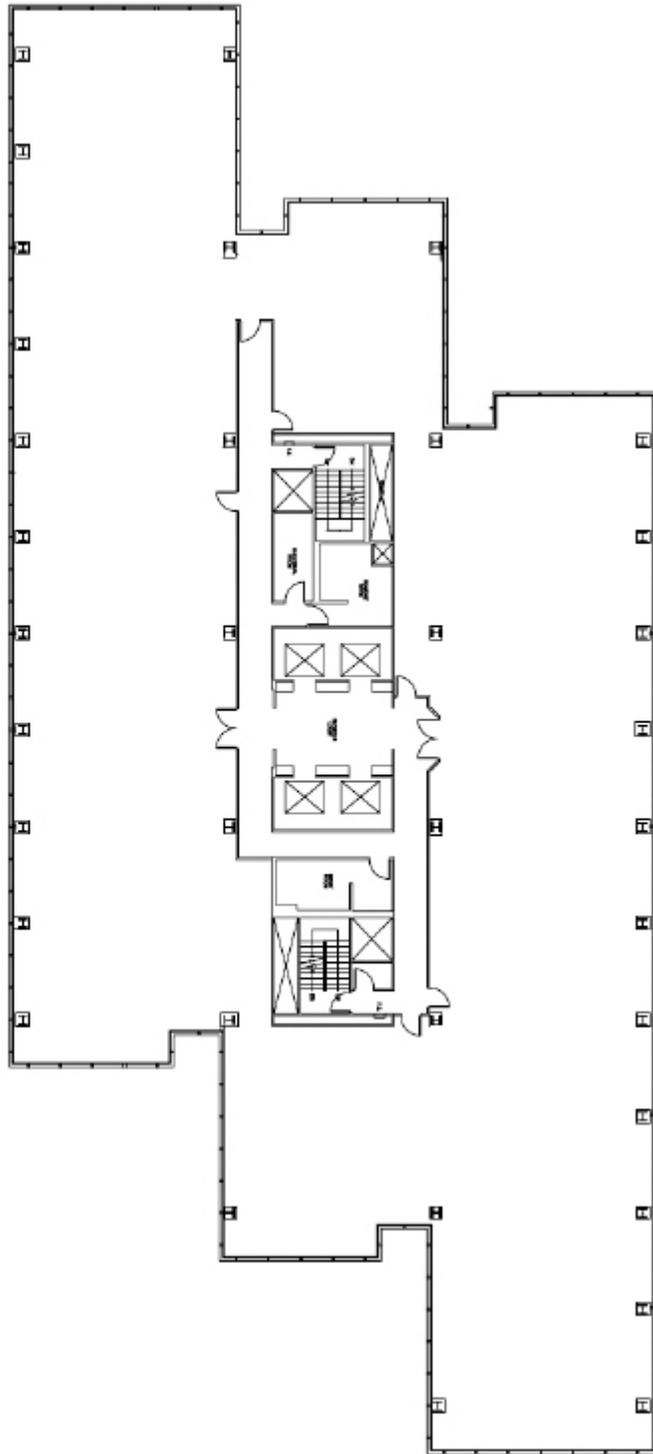
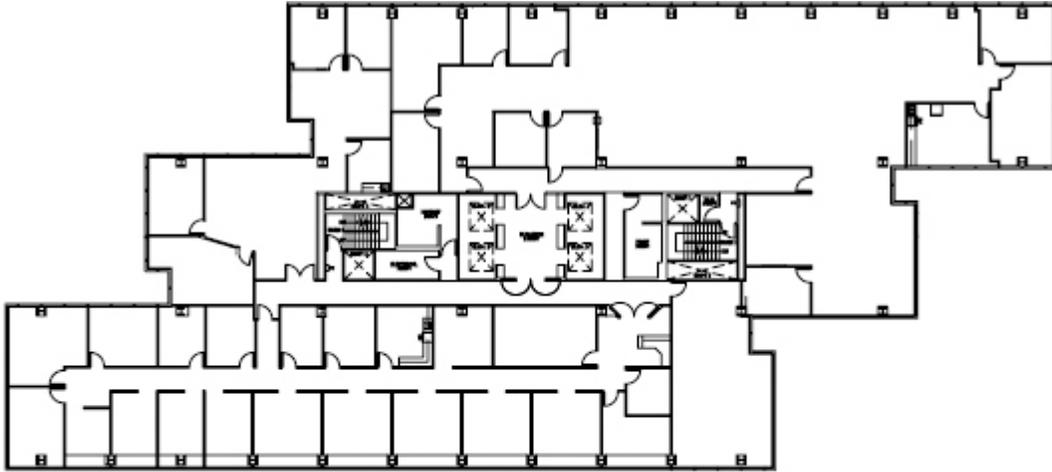


EXHIBIT A-1

-1-



**CENTERSIDE I**

3111 CAMINO DEL RIO NORTH  
SAN DIEGO, CA 92108  
(858)597-2929

JUNE 2, 2008  
N.T.S.



**THIRTEENTH FLOOR**

X,XXX U.S.F.  
X,XXX R.S.F.

EXHIBIT A-1

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**EXHIBIT A-2**

**LEGAL DESCRIPTION OF THE PROJECT**

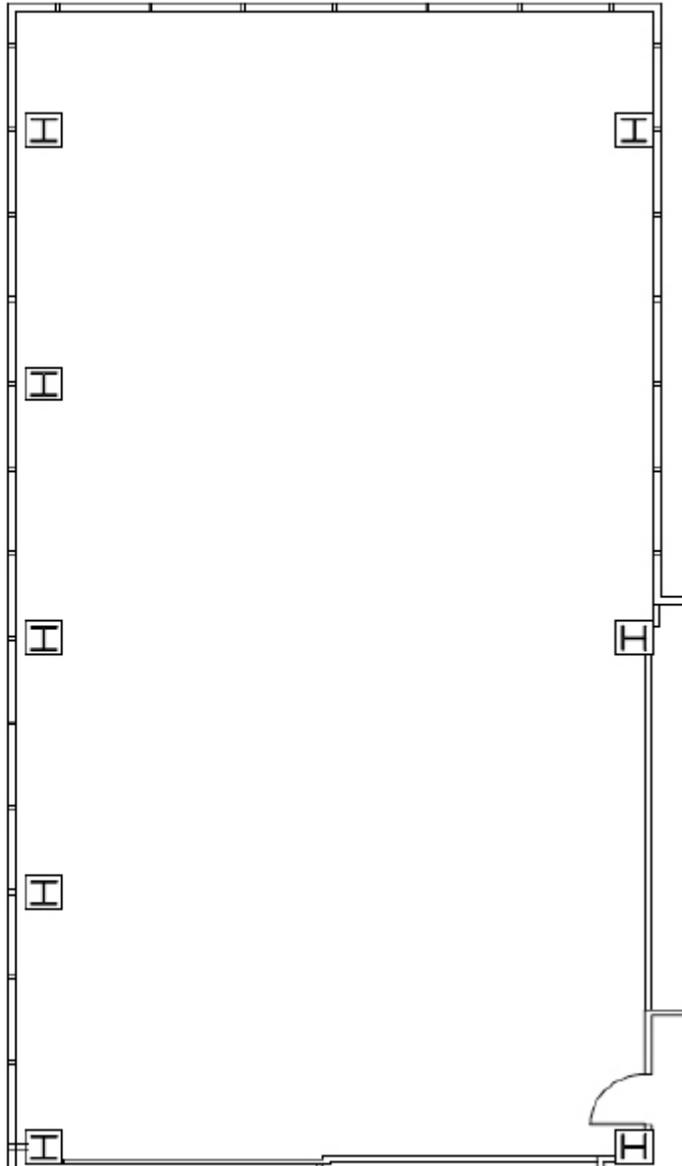
Parcel 2, in the City of San Diego, County of San Diego, State of California, as shown on Page 12358 of Parcel Maps filed in the Office of the County Recorder, County of San Diego, October 1, 1982.

EXHIBIT A-2

-1-

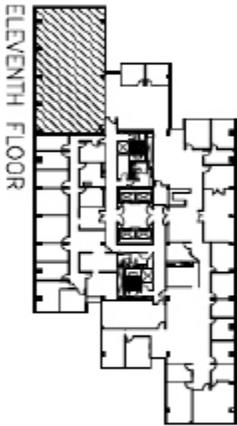
**EXHIBIT A-3**

**TEMPORARY SPACE**



**CENTERSIDE I**

3111 CAMINO DEL RIO NORTH  
SAN DIEGO, CALIFORNIA 92108  
JANUARY 24, 11  
N.T.S.



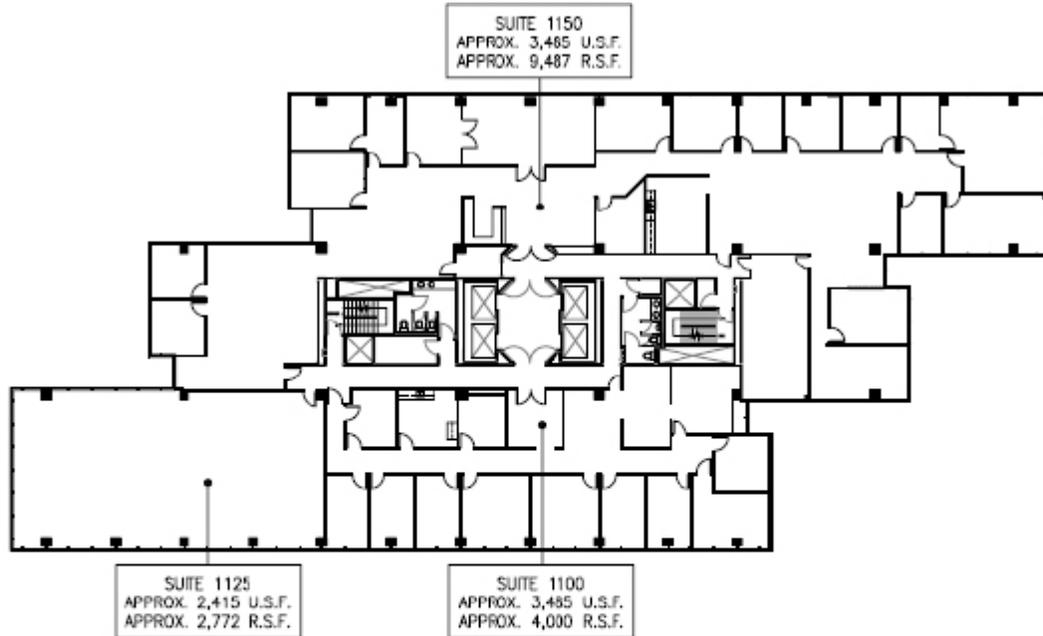
SUITE 1125  
APPROX. 2,415 U.S.F.  
APPROX. 2,772 R.S.F.

MAGGETTI ELAM ASSOCIATES  
3160 CAMINO DEL RIO S., STE. 207  
SAN DIEGO, CA 92108 (619)624-0521

EXHIBIT A-3

**EXHIBIT A-4**

**ROFO SPACE AND ROFR SPACE**



**CENTERSIDE I**

3111 CAMINO DEL RIO NORTH  
SAN DIEGO, CALIFORNIA

DECEMBER 6, 2010  
N.T.S.



ELEVENTH FLOOR

MAGGETTI ELAM ASSOCIATES  
3150 CAMINO DEL RIO S., STE. 207  
SAN DIEGO, CA 92108 (619)624-0521

EXHIBIT A-4

-1-

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**EXHIBIT B**

**WORK LETTER**  
**(TURNKEY)**

1. **TENANT IMPROVEMENTS.** Landlord shall construct and, except as provided below to the contrary, pay for the entire cost of constructing the tenant improvements (“**Tenant Improvements**”) to the Premises and certain improvements to the Building described by the plans and specifications identified in Schedule “1” attached hereto (the “**Plans**”); provided, however, any items specified as “Tenant Alternates” on the Plans selected by Tenant shall not be included as part of the Tenant Improvements constructed by Landlord at Landlord’s cost, and shall instead be included as part of the Tenant Improvements, but paid for by Tenant at Tenant’s sole cost and expense. Tenant may request changes to the Plans provided that (a) the changes shall not be of a lesser quality than Landlord’s standard specifications for tenant improvements for the Building attached hereto as Schedule “2”, as the same may be changed from time to time by Landlord (the “**Standards**”); (b) the changes conform to applicable governmental regulations and necessary governmental permits and approvals can be secured; (c) the changes do not require building service beyond the levels normally provided to other tenants in the Building; (d) the changes do not have any adverse affect on the structural integrity or systems of the Building; (e) the changes will not, in Landlord’s opinion, unreasonably delay construction of the Tenant Improvements; and (f) Landlord has determined in its sole discretion that the changes are of a nature and quality consistent with the overall objectives of Landlord for the Building. The Standards attached hereto as Schedule “2” shall serve only as a reference for Building standard finishes and conditions not previously addressed in the Plans attached hereto as Schedule “1”, and in the event of a conflict between Schedule “1” and Schedule “2”, the provisions of Schedule “2” shall prevail. If Landlord approves a change requested by Tenant, then, as a condition to the effectiveness of Landlord’s approval, Tenant shall pay to Landlord upon demand by Landlord the increased cost attributable to such change, as reasonably determined by Landlord. To the extent any such change results in a delay of completion of construction of the Tenant Improvements, then such delay shall constitute a delay caused by Tenant as described below. In addition, Landlord shall, at Landlord’s sole cost and expense (subject to inclusion in Operating Expenses to the extent permitted in Paragraph 3(c)) make the improvements and/or deliver the Premises and the Building to Tenant in the condition described below in Subparagraphs (a) through (c).

(a) Landlord shall deliver the Premises to Tenant with the existing base-Building HVAC systems and water source heat pumps, base building electrical and fire sprinkler serving and within the Premises (collectively, the “**Operating Systems**”) in good operating condition. If, within the first six (6) months after delivery of the Premises to Tenant, it is determined by Landlord that any of the Operating Systems do not have a remaining useful life of at least the Initial Term, then, promptly after receipt of written notice from Tenant as to any malfunction of any component of the Operating Systems, as Landlord’s sole obligation, Landlord shall repair (or if it is determined that repair is not possible, then Landlord shall replace) the malfunctioning component of the Operating System; provided, however, Landlord shall have no liability hereunder for repairs or replacements necessitated by the acts or omissions of Tenant or any of its agents, contractors, employees, business invitees or licensees.

(b) Landlord shall remodel the existing restrooms on the twelfth (12th) and thirteenth (13th) floors of the Building comprising the Premises to current Building standards, including the addition of fixtures such that each women’s restroom has three (3) toilets and each men’s restroom has two (2) toilets and two (2) urinals.

(c) Landlord shall upgrade the cosmetic condition of the showers in the parking structure serving the Building, consistent with Building standards. Subject to Force Majeure Delays (as described in Section 5 below) and Tenant Delays (as described in Section 4 below), Landlord shall substantially complete such shower upgrade no later than ninety (90) days after the Commencement Date.

2. **CONSTRUCTION OF TENANT IMPROVEMENTS.** Upon Tenant’s payment to Landlord of the total amount of the cost of any changes to the Plans, if any, Landlord’s contractor shall commence and diligently proceed

EXHIBIT B

-1-

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with the construction of the Tenant Improvements, subject to Tenant Delays (as described in Section 4 below) and Force Majeure Delays (as described in Section 5 below). Promptly upon the commencement of the Tenant Improvements, Landlord shall furnish Tenant with a construction schedule letter setting forth the projected completion dates therefor and showing the deadlines for any actions required to be taken by Tenant during such construction (the "Construction Schedule"), and Landlord may from time to time during construction of the Tenant Improvements modify such Construction Schedule. The Construction Schedule and any changes to or modifications of the Construction Schedule shall be subject to Tenant's prior written approval, which approval Tenant shall not unreasonably delay or withhold.

### **3. COMMENCEMENT DATE AND SUBSTANTIAL COMPLETION.**

(a) **Commencement Date.** The Term of the Lease shall commence on the date (the "**Commencement Date**") which is the earlier of:

(i) the date Tenant moves into the Premises to commence operation of its business in all or any portion of the Premises; or

(ii) the date the Tenant Improvements have been "Substantially Completed" (as defined below); provided, however, that if Substantial Completion of the Tenant Improvements is delayed as a result of any Tenant Delays described in Section 4 below, then the Commencement Date as would otherwise have been established pursuant to this Section 3(a)(ii) shall be accelerated by the number of days of such Tenant Delays; provided, however, regardless of the foregoing, the Commencement Date shall not be accelerated to a date prior to the date as of which Landlord is to provide Tenant with early access as provided in Paragraph 1(d) to complete Tenant's installation of its furnishings and equipment.

(b) **Substantial Completion; Punch-List.** For purposes of Section 3(a)(ii) above, the Tenant Improvements shall be deemed to be "**substantially completed**" when Landlord: (a) is able to provide Tenant reasonable access to the Premises; (b) has substantially completed the Tenant Improvements in accordance with the Plans, other than decoration and minor "punch-list" type items and adjustments which do not materially interfere with Tenant's access to or use of the Premises; and (c) has obtained a temporary certificate of occupancy or other required equivalent approval from the local governmental authority permitting occupancy of the Premises. Within ten (10) days after such substantial completion, Tenant shall conduct a walk-through inspection of the Premises with Landlord and provide to Landlord a written punch-list specifying those decoration and other punch-list items which require completion, which items Landlord shall thereafter diligently complete; provided, however, that Tenant shall be responsible, at Tenant's sole cost and expense, for the remediation of any items on the punch-list caused by Tenant's acts or omissions.

(c) **Delivery of Possession.** Landlord agrees to deliver possession of the Premises to Tenant when the Tenant Improvements have been substantially completed in accordance with Section (b) above. The parties estimate that Landlord will deliver possession of the Premises to Tenant and the Term of this Lease will commence on or before the Estimated Commencement Date set forth in Item 10 of the Basic Lease Provisions. Landlord shall use its commercially reasonable efforts to cause the Premises to be substantially completed on or before the Estimated Commencement Date. Tenant agrees that if Landlord is unable to deliver possession of the Premises to Tenant on or prior to the Estimated Commencement Date specified in Item 10 of the Basic Lease Provisions, the Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom, nor shall the expiration date of the Term be in any way extended, unless such late delivery is due solely to the gross negligence or willful misconduct of Landlord. If Landlord is delayed in delivering possession of the Premises due to Landlord's gross negligence or willful misconduct or due to any Force Majeure Delay(s), then, as Tenant's sole remedy, the Commencement Date and the expiration date of the Term shall be extended one (1) day for each day Landlord is delayed in delivering possession of the Premises to Tenant.

4. **TENANT DELAYS.** For purposes of this Work Letter, "**Tenant Delays**" shall mean any delay in the completion of the Tenant Improvements resulting from any or all of the following: (a) Tenant's failure to timely perform any of its obligations pursuant to this Work Letter, including any failure to complete, on or before the due date therefor, any action item which is Tenant's responsibility pursuant to the Construction Schedule; (b) Tenant's changes to the Plans after approval of the Construction Schedule; (c) Tenant's request for materials, finishes, or

EXHIBIT B

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installations which are not readily available or which are incompatible with the Standards; (d) any delay of Tenant in making payment to Landlord for Tenant' s share of any costs in excess of the cost of the Tenant Improvements as described in the Plans; or (e) any other act or failure to act by Tenant, Tenant' s employees, agents, architects, independent contractors, consultants and/or any other person performing or required to perform services on behalf of Tenant.

5. **FORCE MAJEURE DELAYS**. For purposes of this Work Letter, “**Force Majeure Delays**” shall mean any actual delay beyond the reasonable control and not the fault of Landlord in the construction of the Tenant Improvements, which is not a Tenant Delay and which is caused by any of the causes described in Section 19(w) of the Lease.

EXHIBIT B

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**SCHEDULE "1"**

**PLANS AND SPECIFICATIONS**

<p><b>GENERAL NOTES:</b></p> <p>1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE S.I. UNIFORM CONSTRUCTION CODES AND ALL CITY ORDINANCES.</p> <p>2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF SAN DIEGO.</p> <p>3. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE CITY ENGINEER.</p> <p>4. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.</p> <p>5. ALL UTILITIES SHALL BE PROTECTED AND MARKED PRIOR TO ANY EXCAVATION.</p> <p>6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.</p> <p>7. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.</p> <p>8. THE CONTRACTOR SHALL MAINTAIN A NEAT AND SAFE WORK SITE AT ALL TIMES.</p> <p>9. ALL MATERIALS SHALL BE STORED PROPERLY AND PROTECTED FROM THE ELEMENTS.</p> <p>10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.</p>	<p><b>CONSTRUCTION NOTES:</b></p> <p>1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE S.I. UNIFORM CONSTRUCTION CODES AND ALL CITY ORDINANCES.</p> <p>2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF SAN DIEGO.</p> <p>3. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE CITY ENGINEER.</p> <p>4. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.</p> <p>5. ALL UTILITIES SHALL BE PROTECTED AND MARKED PRIOR TO ANY EXCAVATION.</p> <p>6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.</p> <p>7. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.</p> <p>8. THE CONTRACTOR SHALL MAINTAIN A NEAT AND SAFE WORK SITE AT ALL TIMES.</p> <p>9. ALL MATERIALS SHALL BE STORED PROPERLY AND PROTECTED FROM THE ELEMENTS.</p> <p>10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.</p>	<p><b>GENERAL NOTES:</b></p> <p>1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE S.I. UNIFORM CONSTRUCTION CODES AND ALL CITY ORDINANCES.</p> <p>2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF SAN DIEGO.</p> <p>3. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE CITY ENGINEER.</p> <p>4. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.</p> <p>5. ALL UTILITIES SHALL BE PROTECTED AND MARKED PRIOR TO ANY EXCAVATION.</p> <p>6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.</p> <p>7. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.</p> <p>8. THE CONTRACTOR SHALL MAINTAIN A NEAT AND SAFE WORK SITE AT ALL TIMES.</p> <p>9. ALL MATERIALS SHALL BE STORED PROPERLY AND PROTECTED FROM THE ELEMENTS.</p> <p>10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.</p>	<p><b>GENERAL NOTES:</b></p> <p>1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE S.I. UNIFORM CONSTRUCTION CODES AND ALL CITY ORDINANCES.</p> <p>2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF SAN DIEGO.</p> <p>3. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE CITY ENGINEER.</p> <p>4. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.</p> <p>5. ALL UTILITIES SHALL BE PROTECTED AND MARKED PRIOR TO ANY EXCAVATION.</p> <p>6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.</p> <p>7. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.</p> <p>8. THE CONTRACTOR SHALL MAINTAIN A NEAT AND SAFE WORK SITE AT ALL TIMES.</p> <p>9. ALL MATERIALS SHALL BE STORED PROPERLY AND PROTECTED FROM THE ELEMENTS.</p> <p>10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.</p>
<p><b>ENCORE CAPITAL GROUP</b>  <b>CENTERSIDE I</b>  <b>3111 CAMINO DEL RIO NORTH</b>  <b>SUITES 1209 &amp; 1309</b>  <b>SAN DIEGO, CA, 92108</b></p>			

SCHEDULE "1"

**NAIIT SHIP CONSTRUCTION PLAN**

<p><b>CONSTRUCTION LEGEND:</b></p> <p>1. WALL FINISHES</p> <p>2. FLOOR FINISHES</p> <p>3. CEILING FINISHES</p> <p>4. DOOR FINISHES</p> <p>5. WINDOW FINISHES</p> <p>6. PAINT FINISHES</p> <p>7. METAL FINISHES</p> <p>8. GLASS FINISHES</p> <p>9. CERAMIC FINISHES</p> <p>10. CARPET FINISHES</p> <p>11. LINOLEUM FINISHES</p> <p>12. TILE FINISHES</p> <p>13. STONE FINISHES</p> <p>14. WOOD FINISHES</p> <p>15. OTHER FINISHES</p>	<p><b>CONSTRUCTION NOTES:</b></p> <p>1. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>2. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>3. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>4. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>5. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>6. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>7. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>8. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>9. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>10. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>11. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>12. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>13. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>14. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>15. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p>	<p><b>FINISH NOTES:</b></p> <p>1. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>2. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>3. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>4. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>5. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>6. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>7. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>8. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>9. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>10. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>11. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>12. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>13. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>14. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p> <p>15. ALL FINISHES SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SCAFFOLDING AND SHIPBUILDING CODES.</p>	<p style="text-align: center;"><b>ENCORE CAPITAL GROUP CENTERSIDE I 3111 CAMINO DEL RIO NORTH SUITES 1200 &amp; 1300 SAN DIEGO, CA, 92108</b></p> <p style="text-align: right;">EX-2</p>
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SCHEDULE "1"

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**SCHEDULE "2"**

**CENTERSIDE OFFICE BUILDING STANDARDS**  
**3111 Camino Del Rio North**  
**San Diego, CA 92108**

**1.0 GENERAL BUILDING INFORMATION**

Thirteen Story Office Building and Parking Structure.

Zoning: MV-CO

First floor: 8" to 12" on grade Poured slab with rebar reinforcing

Second to 13<sup>th</sup> Floor Framing: Poured pan concrete supported by steel I beam

Roof framing system: Poured pan concrete supported by steel I beam. Roofing membrane is built-up asphalt with a pea gravel protective coating. Walk pads to all major Mechanical components.

Design loads:

Floor Load Design: 50 psf live load; Corridors and Exits: 100 psf live load

Contact Building Management for general building conditions, construction policies and cabling standards.

**2.0 PARTITIONS**

**2.1 DEMISING PARTITIONS**

3-5/8" x 25 GA metal studs at 16" on center with 5/8" type 'X' gypsum board on each side from floor to structure above with polyethylene acoustical sealant at bottom of partitions and vertical joints at exterior mullions. Provide R-11 fiberglass batt insulation in cavity. Partition walls will have an opening for return air. See building engineer for size. Partitions to be taped smooth to receive paint or wall covering. Provide pertinent metal casing beads where applicable. Additionally provide sound reducing insulation with a plastic wrap above the ceiling 24" on each side of a demising wall. See Demising wall drawings.

**2.2 INTERIOR PARTITIONS**

3-5/8" x 25 GA metal studs at 24" on center with 5/8 type 'X' gypsum board on each side to penetrate the ceiling grid by approximately 6". Partitions to be taped smooth to receive paint or wall covering. Apply acoustical sealant to vertical joints at exterior mullions.

- (a.) Where sound dampening is an issue, Provide R-11 fiberglass batt insulation in wall cavity. In addition provide R-11 fiberglass batt insulation with plenum rated plastic wrap to extend 4' on both sides of adjoining walls.
- (b.) Insulation of interior offices is not a building standard

**2.3 WALL PAINTING/finishing**

- (a) New walls will receive at least two coats of primer and two coats of the finish paint.
- (b) Existing walls will be cleaned and patched/repared as needed to provide a smooth surface ready to receive paint. Existing walls will receive at least one coat of primer and two coats of the finish paint.

SCHEDULE "2"

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### 3.0 TENANT ENTRY DOOR ASSEMBLY

- 3.1 DOORS: Doors are 3' X8' 4" X1 3/4" 20 minute rated solid core plain sliced red oak with matching edge banding. Finish: One coat sanding sealer and two coats of a clear lacquer.
- 3.2 FRAMES: Western Integrated metal frames with factory black finish.
- 3.3 HARDWARE

ITEM:	DESCRIPTION:
Lockset:	Schlage AL Series Entry Saturn 626 passage Satin chrome finish Use 'C' 6-pin keyway on keyed doors
Hinges:	McKinney, TA2714, 4, match hardware finish
Wall Stops:	Quality, match hardware finish
Closers:	LCN, 152 AL
Note:	If Hardware in suite is not building standard or if the Architect or Designer specifies other than building standard, building management must approve in writing prior to installation.

### 4.0 TENANT INTERIOR DOOR ASSEMBLY

- 4.1 DOORS  
Doors are 3' X8' 4" X 13/4" Solid core plain sliced red oak with matching edge banding  
Finish: One coat sanding sealer and two coats of a clear lacquer.
- 4.2 FRAME: Standard Timely door frame assembly, black factory finish
- 4.3 HARDWARE

ITEM:	DESCRIPTION:
Lockset:	Schlage AL Series Entry Saturn 626 Entry Satin chrome finish Use 'C' 6-pin keyway on keyed doors
Hinges:	McKinney, TA2714, 4, match hardware finish
Wall Stops:	Quality, match hardware finish
Note:	If Hardware in suite is not building standard or if the Architect or Designer specifies other than building standard, building management must approve in writing prior to installation.

### 5.0 TENANT INTERIOR SIDE LITE/ WINDOW ASSEMBLY

#### 5.1 PARTITIONS

Interior window assembly will be a wrapped gypsum board opening with an aluminum channel concealed in the drywall both top and bottom sized to accept the glass pane. The sides will be secured with clear caulking bead 1/4" on each side of the glass. Where more than one pane is required the assembly will be the same with a 1/4" inch clear caulking joint between each pane. Typical opening will have a 6" section of wall below the opening and the top even with the top of the adjacent door (not frame).

- 5.2 GLAZING: Tempered 3/8" ' clear glass

SCHEDULE "2"

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## 6.0 CEILING SYSTEMS

- 6.1 GRID SYSTEM: White enamel steel, 15/16", 2' x 4' grid from Armstrong, intermediate duty system and meets seismic category installation requirements or approved equal. Accessories, including wall molding shall match grid where ceiling meets vertical partitions and existing walls. If repairing existing grid system, match existing type & color.
- 6.2 ACOUSTIC TILE MATERIAL: Armstrong, 2' x 4 - Cortega, Second Look II, Item # 2767

## 7.0 LIGHTING

- 7.1 FLUORESCENT LIGHT FIXTURES: There is a wide variety of fixtures in the building. Contact building management prior to offering any lighting for projects.

### TYPE A -

2' x 4" recessed fluorescent light fixtures: Lithonia, 'Avante', 2AV-G-2-32-MDR-MVOLT - GEB 101S of equivalent approved by building management.

Lamps: Sylvania FO32/741.

### Type B-

2' x 2" recessed fluorescent light fixtures: Lithonia, 'Avante', 2AV-G-2-17-MDR-MVOLT-GEB 101S or equivalent approved by building management

Lamps: Sylvania FO 17/741.

Note: 2X2 lighting should used only where space limits using a 2X4 fixture.

### TYPE C -

6" Recessed fluorescent can light fixture WITH clear specular diffuser: Lithonia LF6 2/13TT 277 GEB10 F602AZ or equivalent approved by building management.

Lamps: 4100 Kelvin in color

If dimming application is required use LF6 2/18TT ADEZ F602AZ or LF6 2/18TT 277 DMHL F6002AZF6002AZ or equivalent approved by building management.

Lamps: 4100 Kelvin in color

- 7.2 OTHER LIGHTING

Exit Signs: Lithonia Quantum LMQ S W 3 G

Specialty lighting per approved plans

- 7.3 LIGHTING WIRING

All exit lighting will be wired to an emergency panel 277-volt circuit.

Suites will have egress lighting at light levels required by building code, but not less than one fixture.

All lighting will be connected to the standard 277 volt source unless approved by the building management.

SCHEDULE "2"

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## **8.0 PAINT**

### **8.1 COATS**

Minimum two coats low VOC scrubable matte finish over manufacturer approved primer on all gypsum board surfaces unless otherwise approved. At damp locations, such as in break rooms or near sinks, vinyl acrylic eggshell finish over manufacturer approved primer on all gypsum board surfaces unless otherwise approved.

### **8.2 COLOR**

Building standard choices, as noted on plans unless otherwise approved by building management

### **8.3 TOUCH UP PAINT**

At the conclusion project the contractor will provide the tenant with one quart of each paint color used on the project. The paint will be in sealed one quart metal cans. Each can will be labeled with the manufactures name, the sheen, the paint color or name and any identifying numbers. There will be no objects in the can such as paint rollers. Contractor will provide the two copies of the MSDS sheets for paint used. One to be left with the tenant and one included in the close out package

## **9.0 CARPET**

As specified by designer from approved building standard carpet samples. If other than building standard carpet is selected then Building Management must approve choice in writing prior to ordering carpet.

## **10.0 BASE**

As specified by designer from approved building standard base samples. If other than building standard carpet is selected then Building Management must approve choice in writing prior to ordering base.

## **11.0 RESILIENT FLOORING**

FLOOR TILE: As specified by designer from approved building standard tile samples. If other than building standard tile is selected then Building Management must approve choice in writing prior to ordering tile.

## **12.0 LIGHTING CONTROL AND SWITCH ASSEMBLY**

277v, 20A; two gang switches where Title 24 requires A/B switching

All new (and existing if different color) switches and covers to be Ivory. Switches are to be specification grade.

### **12.1 Lighting Control**

Interior Office and open area lighting will be controlled by a time clock. Contractor will provide and install a 7 day programmable electronic time clock Intermatic Model # ET715C or equal, and lighting contactor(s) as needed to control lighting circuits. The contactors will be mounted in a NEMA1 rated enclosure with a hinged door. The time clock and the contactors will be located in the main electrical room for that floor. There will also be a 6-hour, Intermatic Model # FD6H, spring wound by-pass timer at each suite entrance to override the time clock for after-hours lighting. The size for the lighting zone for each by-pass-timer will meet all code requirements, but will not exceed 3500 square feet without management approval.

SCHEDULE "2"

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All wiring in the electrical room will be in emt conduit.

Exterior office will receive a wall mounted Watt Stopper motion detector with A/B switching and manual override.

### **13.0 ELECTRICAL**

Wall and Floor Outlets: 120v, 15A receptacle. All new (and existing if different color) outlets and covers to be White. Otherwise, all Wall and Floor outlets to be provided as described in the Plans attached as Schedule "1" to the Work Letter.

Electrical conduit: All conduit in the electrical rooms will be in EMT. All other conduit can be EMT, BX or MX.

### **14.0 COMMUNICATIONS**

Wall and Floor Outlets: Color to match electrical trim color, White.

Telephone Board: Provide new painted fire-retardant treated plywood backboard. Verify size with tenant's equipment. Do not paint over fire label on plywood.

Wiring: All wiring blocks in main phone room to have plastic hinged covers that identify the suite, tenant's name, and installation date.

Home run wiring must use a single multi-paired cable adequate to service current needs and allow for 25% expansion.

Unless communication wiring is in continuous, conduit, all wire penetrations through a fire wall will be sheathed with a section of EMT conduit extending 6" on both sides. The conduit will be sealed at the wall penetration as well as the opening at each end with an approved fire stop caulking. See Section 17 for approved fire caulking.

All communication/data wiring must be rated for use in a plenum ceiling.

All communication/data wiring must be properly supported as per the current code. In no instance will the wiring lie on the ceiling tile or grid or be supported by a ceiling support wire.

Old Wiring: Remove old data / telephone cabling in suite not reused in new improvements. Provide cost to remove cabling under a separate "line item"

### **15.0 WINDOW COVERING**

Horizontal mini blinds: Black anodized 1" aluminum construction

### **16.0 FIRE SPRINKLERS**

Semi-recessed with bright chrome cover plate and sprinkler head to match existing system.

Head Spacing:

As required by code or as drawn on approved plans.

Head Placement will be centered in a 2x2 section of the ceiling tile. If obstruction does not allow center placement consult building management for resolution

SCHEDULE "2"

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## 17.0 FIRE, LIFE AND SAFETY SYSTEM

Consult with building management regarding any work on these systems:

All Fire Alarm System modifications and extensions to be done by factory trained Technicians.

**Strobe only:** Strobe only device will be Wheelock RSS-24MCC-FW multi candela strobe the strobe(s) will be installed as listed on plans approved by the building department and/or the Fire Martial

**Speakers only:** Speakers will be Wheelock ET Eight Inch Speaker. The speaker(s) will be installed as listed on plans approved by the building department and/or the Fire Martial

**Strobe/Speakers; Strobe/speaker combination units:** Will be Wheelock ET90-24MCC-FW multi candela speaker/strobe. The strobe speaker(s) will be installed as listed on plans approved by the building department and/or the Fire Martial

**Booster Panel:** Booster panel will be Wheelock Power path PS-12/24-8. Or Notifier FCPS-24S6. The booster panel will be installed as listed on plans approved by the building department and/or the Fire Marshal. The power for the panel will be serviced from an the emergency electrical panel servicing the floor where the panel is located. The batteries for the panel will sized as recommended by the manufacture and the date noted on the side of the batteries as to the month and year they were placed in service.

**Wiring:** All low voltage wire must be plenum rated. Low voltage wire will be installed in a manner that the wire will be attached to a support at the highest point possible and drop down at each device. The wiring will be installed to meet or exceed the current building, electrical and/or fire codes. All wiring in the electrical rooms will be in emt conduit including low and line voltage. Wire for strobes should be 14/2 FPLP fire alarm wire. Wire for Speakers should be 18/4 FPLP.

**Drawings:** The close out package will include a hard copy of the approved alarm plans as well as CAD version submitted on CD

### 17.01 Fire Extinguisher

Standard fire extinguisher is a five-pound ABC rated extinguisher with hanging bracket. A copy of receipt for purchase of the extinguisher will be attached to the extinguisher and an additional copy placed in the close out documents.

### 17.02 Fire Caulking

Caulking at fire rated structure penetrations - elastomeric intumescent sealant, use one of the following:

1. Hilti, FS-ONE, 3MCP25, high performance
2. W. R. Grace, Flame Safe, FS1900
3. 3M, Fire Barrier, CP25WB+ caulk

## 18.0 PLUMBING FIXTURES, PIPING AND ACCESSORIES

**SINKS:** Small hand sink - Elkay stainless, LR-1716, 18 Ga.

Kitchen sink (single compartment) - Elkay stainless, LR-2219, 18 Ga.

Hand sink faucet - Chicago Faucets Model #895-317CP.

Kitchen sink faucet - Moen Single handle model # 67425

Disposal - ISE "Badger 5", 1/2 H.P., 120-1-60 (or equal)

Angle stops- angle stops will be 1/4 turn type.

Hoses- Hoses will be steel braided type with a minimum rating of 125 psi.

Shut off valves- Install full port ball valve in ceiling above sink for shut off to isolate system if future repairs are required (if not already existing).

SCHEDULE "2"

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GENERAL REQUIREMENTS:

All new or existing drain pipes servicing suite to be “snaked” clean of debris prior to turning over suite to tenant. All “Tees” will be sweep “tee” with the sweep in the direction of the flow. All drains will be taken individually to the main stack connection. Drain lines will be cast iron with no hub connections and fittings.

All cold water lines will be type M copper. Cold water lines for sink or other use will be supplied from the same floor as the point of use.

## 19.0 MECHANICAL

GENERAL REQUIREMENTS:

Modifications to suite’s mechanical systems to be reviewed and approved by building’s Engineer prior to construction.

**Ducting:** All rigid ductwork will be spiral type. Connections in ridged duct will be made with collars not crimped connection. Flexible duct will be limited to 8’ tail connecting rigid duct to the diffuser. All turns in flexible duct will be a minimum of two duct diameters.

Duct work will be installed 8” above the ceiling grid. When going under a beam duct should be offset at the beam location and then return to 8” above the grid. Square to round beam boxes should be use if duct diameter is too large to fit between beam and finished ceiling or lighting.

**Insulation:** Spiral ducts will be wrapped with FSK type insulation. All joints will be to seal with tape approved by the insulation manufacture. Insulation will be secured with galvanized wire every four feet and twice at each installed elbow.

**Sealing:** Contractor will apply duct sealer to all connection on the system to create airtight seal. In addition to ductwork this will include S & drive connection at the vav and coil. Contractor will use Hardecast-Carlisle DS 321 duct or equal for all duct sealing. No duct tape or sealing tape will be allowed. Connection at joint between flexible and rigid duct will be made as approved by the flexible duct manufacture.

**Diffusers:** Whenever possible supply diffusers will be placed in the center of the room, where areas where multiple supply diffusers are located, diffusers will be spaces evenly and if possible 3’ or more from an adjacent wall. If this is not possible consult Chief Building Engineer prior to placement. If a return registers is in room a room with a thermostat it shall be placed as close to possible to the thermostat. In rooms without thermostats return register shall be placed adjacent to the latch side of the door.

Supply Vents: Titus PCS 24X 24 Lay in diffusers

Return Vents: Titus PXP 24 X 24 Lay in perforated panel

**Dampers:** Dampers will be sized to fit the duct and installed at the connection between the flex and the rigid duct. The damper adjustment arm will receive a brightly colored ribbon 12” inches in length to identify its location.

**VAV Terminal Units:** Titus or Krueter single duct with field fabricated transition to heating coil one size larger than the vav unit. VAV will have KMC CSC 3111-10 reset volume controller and air velocity pick up ports. All boxes shall be adjusted for normally closed operation. VAV Terminal Units will be hung at least 8” above the suspended ceiling line.

**Heating Coil:** Coil will be a 2-pass coil from the same manufacture as the vav unit. The coil will be one size larger than the vav unit and have field-fabricated transition between the vav and the coil.

**Plenums:** Plenums will be designed to allow proper duct connection Duct connections to plenums will be made with spin in type collars or collars with a 3/4 inch flange. Dovetail connection will not be allowed. Plenums will be hung at least 8” above the suspended ceiling line.

**Thermostats:** Honeywell TP970A2145 4 with blank insert installed on cover. Thermostats will be mounted to on the side of the light switch on the opposite side from the door latch, and centered on the switch.

## SCHEDULE “2”

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**Heating Valve:** Heating valves will be Honeywell normally open two-way valve with a 2-5 psi spring range. Contractor will select the proper size and Cv rating for the application. All new or relocated VAV boxes will receive a new heating valve.

**Heating Water Piping:** Piping will be type L copper with wrought copper fittings. Piping will be insulated with one-inch thick molded fiberglass insulation with a vapor barrier. Each VAV will have an individual shut off valves on the supply and return lines placed within 2.5 feet of the heating control valve. There will be a 3/8" vent installed at the highest point on each line and a brass ball valve and pipe plug installed to remove air from the system.

SCHEDULE "2"

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## EXHIBIT C

### BUILDING RULES AND REGULATIONS

1. The sidewalks, entrances, passages, courts, elevators, vestibules, stairways and corridors of halls shall not be obstructed or used for any purpose other than ingress and egress. The halls, passages, entrances, elevators, stairways, balconies and roof are not for the use of the general public, and the Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence, in the judgment of the Landlord, shall be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom the Tenant normally deals only for the purpose of conducting its business in the Premises (such as clients, customers, office suppliers and equipment vendors, and the like) unless such persons are engaged in illegal activities. No tenant and no employees of any tenant shall go upon the roof of the Building without the written consent of Landlord.

2. No awnings or other projections shall be attached to the outside walls of the Building. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises other than Landlord standard window coverings. All electrical ceiling fixtures hung in offices or spaces along the perimeter of the Building must be fluorescent, of a quality, type, design and bulb color approved by Landlord. Neither the interior nor the exterior of any windows shall be coated or otherwise sunscreened without the written consent of Landlord. At any time during the Lease Term, upon thirty (30) days prior written notice to the tenants of the Building, Landlord can designate the Building as a "no smoking building", and enforce a no smoking rule within the Building and Project.

3. No sign, advertisement, notice or handbill shall be exhibited, distributed, painted or affixed by any tenant on, about or from any part of the Premises, the Building or the Project without the prior written consent of the Landlord. If the Landlord shall have given such consent at the time, whether before or after the execution of this Lease, such consent shall in no way operate as a waiver or release of any of the provisions hereof or of this Lease, and shall be deemed to relate only to the particular sign, advertisement or notice so consented to by the Landlord and shall not be construed as dispensing with the necessity of obtaining the specific written consent of the Landlord with respect to each and every such sign, advertisement or notice other than the particular sign, advertisement or notice, as the case may be, so consented to by the Landlord. In the event of the violation of the foregoing by any tenant, Landlord may remove or stop same without any liability, and may charge the expense incurred in such removal or stopping to such tenant. Interior signs on doors and the directory tablet shall be inscribed, painted or affixed for each tenant by the Landlord at the expense of such tenant, and shall be of a size, color and style acceptable to the Landlord. The directory tablet will be provided exclusively for the display of the name and location of tenants only and Landlord reserves the right to exclude any other names therefrom. Nothing may be placed on the exterior of corridor walls or corridor doors other than Landlord's standard lettering.

4. The sashes, sash doors, skylights, windows, and doors that reflect or admit light and air into halls, passageways or other public places in the Building shall not be covered or obstructed by any tenant, nor shall any bottles, parcels or other articles be placed on the window sills. Tenant shall see that the windows, transoms and doors of the Premises are closed and securely locked before leaving the Building and must observe strict care not to leave windows open when it rains. Tenant shall exercise extraordinary care and caution that all water faucets or water apparatus are entirely shut off before Tenant or Tenant's employees leave the Building, and that all electricity, gas or air shall likewise be carefully shut off, so as to prevent waste or damage. Tenant shall cooperate with Landlord in obtaining maximum effectiveness of the cooling system by closing window coverings when the sun's rays fall directly on the windows of the Premises. Tenant shall not tamper with or change the setting of any thermostats or temperature control valves.

5. The toilet rooms, water and wash closets and other plumbing fixtures shall not be used for any purpose other than those for which they were considered, and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by the tenant who, or whose subtenants, assignees or any of their servants, employees, agents, visitors or licensees shall have caused the same.

### SCHEDULE C

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6. No tenant shall mark, paint, drill into, or in any way deface any part of the Premises, the Building or the Project. No boring, cutting or stringing of wires or laying of linoleum or other similar floor coverings shall be permitted, except with the prior written consent of the Landlord and as the Landlord may direct.

7. No bicycles, vehicles, birds or animals of any kind shall be brought into or kept in or about the Premises, and no cooking shall be done or permitted by any tenant on the Premises, except that the preparation of coffee, tea, hot chocolate and similar items (including those suitable for microwave heating) for tenants and their employees shall be permitted, provided that the power required therefor shall not exceed that amount which can be provided by a 30 amp circuit. No tenant shall cause or permit any unusual or objectionable odors to be produced or permeate the Premises. Smoking or carrying lighted cigars, cigarettes or pipes in the Building is prohibited.

8. The Premises shall not be used for manufacturing or for the storage of merchandise except as such storage may be incidental to the permitted use of the Premises. No tenant shall occupy or permit any portion of the Premises to be occupied as an office for a public stenographer or typist, or for the manufacture or sale of liquor, narcotics, or tobacco (except by a cigarette vending machine for use by Tenant's employees) in any form, or as a medical office, or as a barber or manicure shop, or as an employment bureau, without the express written consent of Landlord. No tenant shall engage or pay any employees on the Premises except those actually working for such tenant on the Premises nor advertise for laborers giving an address at the Premises. The Premises shall not be used for lodging or sleeping or for any immoral or illegal purposes.

9. No tenant shall make, or permit to be made any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring buildings or premises or those having business with them, whether by the use of any musical instrument, radio, phonograph, unusual noise, or in any other way. No tenant shall throw anything out of doors, windows or skylights or down the passageways.

10. No tenant, subtenant or assignee nor any of their servants, employees, agents, visitors or licensees shall at any time bring or keep upon the Premises any inflammable, combustible or explosive fluid, chemical or substance.

11. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any tenant, nor shall any changes be made in existing locks or the mechanisms thereof. Each tenant must, upon the termination of its tenancy, restore to Landlord all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, such tenant and in the event of the loss of keys so furnished, such tenant shall pay to Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such changes.

12. All removals, or the carrying in or out of any safes, freight, furniture, or bulky matter of any description must take place during the hours which Landlord shall determine from time to time, without the express written consent of Landlord. The moving of safes or other fixtures or bulky matter of any kind must be done upon previous notice to the Project Management Office and under its supervision, and the persons employed by any tenant for such work must be acceptable to the Landlord. Landlord reserves the right to inspect all safes, freight or other bulky articles to be brought into the Building and to exclude from the Building all safes, freight or other bulky articles which violate any of these Rules and Regulations or the Lease of which these Rules and Regulations are a part. Landlord reserves the right to prescribe the weight and position of all safes, which must be placed upon supports approved by Landlord to distribute the weight.

13. No tenant shall purchase spring water, ice, towel, janitorial maintenance or other similar services from any person or persons not approved by Landlord.

14. Landlord shall have the right to prohibit any advertising by any tenant which, in Landlord's opinion, tends to impair the reputation of the Building or the Project or its desirability as an office location, and upon written notice from Landlord, any tenant shall refrain from or discontinue such advertising.

15. Landlord reserves the right to exclude from the Building between the hours of 6:00 P.M. and 7:00 A.M. and at all hours on Saturday, Sunday and legal holidays all persons who do not present a pass or card key

## EXHIBIT C



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to the Building approved by the Landlord. Each tenant shall be responsible for all persons who enter the Building with or at the invitation of such tenant and shall be liable to Landlord for all acts of such persons. Landlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of an invasion, mob riot, public excitement or other circumstances rendering such action advisable in Landlord' s opinion, Landlord reserves the right, without abatement of Rent, to require all persons to vacate the Building and to prevent access to the Building during the continuance of the same for the safety of the tenants, the protection of the Building, and the property in the Building.

16. Any persons employed by any tenant to do janitorial work shall, while in the Building and outside of the Premises, be subject to and under the control and direction of the Project Management Office (but not as an agent or servant of said Office or of the Landlord), and such tenant shall be responsible for all acts of such persons.

17. All doors opening onto public corridors shall be kept closed, except when in use for ingress and egress.

18. The requirements of Tenant will be attended to only upon application to the Project Management Office.

19. Canvassing, soliciting and peddling in the Building are prohibited and each tenant shall report and otherwise cooperate to prevent the same.

20. All office equipment of any electrical or mechanical nature shall be placed by Tenant in the Premises in settings approved by Landlord, to absorb or prevent any vibration, noise or annoyance.

21. No air conditioning unit or other similar apparatus shall be installed or used by any tenant without the written consent of Landlord.

22. There shall not be used in any space, or in the public halls of the Building, either by any tenant or others, any hand trucks, except those equipped with rubber tires and rubber side guards.

23. No vending machine or machines of any description shall be installed, maintained or operated upon the Premises without the written consent of Landlord.

24. The scheduling of tenant move-ins shall be subject to the reasonable discretion of Landlord.

25. If the Tenant desires telephone or telegraph connections, the Landlord will direct electricians as to where and how the wires are to be introduced. No boring or cutting for wires or otherwise shall be made without direction from the Landlord.

26. The term "personal goods or services vendors" as used herein means persons who periodically enter the Building of which the Premises are a part for the purpose of selling goods or services to a tenant, other than goods or services which are used by the Tenant only for the purpose of conducting its business in the Premises. "Personal goods or services" include, but are not limited to, drinking water and other beverages, food, barbering services and shoeshining services. Landlord reserves the right to prohibit personal goods and services vendors from access to the Building except upon Landlord' s prior written consent and upon such reasonable terms and conditions, including, but not limited to, the payment of a reasonable fee and provision for insurance coverage, as are related to the safety, care and cleanliness of the Building, the preservation of good order thereon, and the relief of any financial or other burden on Landlord or other tenants occasioned by the presence of such vendors or the sale by them of personal goods or services to the Tenant or its employees. If necessary for the accomplishment of these purposes, Landlord may exclude a particular vendor entirely or limit the number of vendors who may be present at any one time in the Building.

27. The Building is a non-smoking building. Smoking is prohibited at all times within the entire Building, including all leased premises, as well as all public/common areas and parking areas for the Building, including any attached parking garage structure. This prohibition applies during business and non-business hours to

#### EXHIBIT C

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restrooms, elevators, elevator lobbies, first floor lobby, stairwells, common hallways, the lunch room and any other public/common area, as well as to all areas within the leased premises by tenants. Smoking is only permitted in the designated smoking area outside the Building and away from the entrances to the Building.

28. The Building and Project is a weapons free environment. No tenant, owner of a tenant, officer or employee of a tenant, visitor of tenant, contractor or subcontractor of tenant, or any other party shall carry weapons (concealed or not) of any kind in the building, or parking areas. This prohibition applies to all public areas, including without limitation, restrooms, elevators, elevator lobbies, first floor lobby, stairwells, common hallways, all areas within the leased premises of tenants, all surface parking areas and the surrounding land related to the building.

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**EXHIBIT D**

**FORM OF ESTOPPEL CERTIFICATE**

The undersigned, \_\_\_\_\_ (“Tenant”), the tenant under that certain Office Lease dated \_\_\_\_\_, between Tenant and TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA FOR THE BENEFIT OF ITS SEPARATE REAL ESTATE ACCOUNT, a New York corporation, as landlord (“Landlord”) hereby certifies as follows:

1. The Premises (the “Premises”) under the Lease is Suite \_\_\_\_\_.
2. The Lease is in full force and effect and has not been modified or amended in any respect except by amendments dated \_\_\_\_\_ (copies of which are attached).
3. The Lease has not been assigned, encumbered, subleased or transferred in any manner other than:

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4. The Commencement Date of the Lease is \_\_\_\_\_ and the expiration date of the Lease is \_\_\_\_\_. There are no options to extend the term of the Lease beyond such expiration date other than \_\_\_\_\_.

5. The present monthly rental under the Lease is \$ \_\_\_\_\_. The sum of \$ \_\_\_\_\_, representing \_\_\_\_\_ month’s Rent has been paid in advance.

6. The security deposit held by Landlord under the Lease is \$ \_\_\_\_\_.

7. Rent under the Lease has been paid through the month of \_\_\_\_\_. Tenant’s estimated share of Operating Expenses payments have been paid through \_\_\_\_\_.

8. The Premises are presently occupied by Tenant.

9. Tenant has accepted the Premises without condition or qualification under the Lease and Landlord has completed and complied with all conditions of such acceptance.

10. To the best knowledge of Tenant, neither it nor the Landlord is in default (or will be in default following the delivery of notice, the passage of time, or both) or claims a default by the other under the Lease, or has any claims, defenses, or rights of offset against payment of Rent under the Lease, except as follows:

11. Tenant acknowledges that Landlord has the right to assign the Lease and the Rent thereunder and to sell, assign, transfer, mortgage or otherwise encumber the Project without the consent of Tenant.

12. Tenant makes this statement for the benefit and protection of \_\_\_\_\_ with the understanding that \_\_\_\_\_ intends to rely on this statement in connection with \_\_\_\_\_.

**[SIGNATURE PAGE TO FOLLOW]**

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IN WITNESS WHEREOF, this certificate has been executed and delivered by the authorized officers or representatives of the undersigned as of \_\_\_\_\_ .

“TENANT”

\_\_\_\_\_  
a \_\_\_\_\_

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

Name: \_\_\_\_\_

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

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**EXHIBIT E**

**FORM OF TENANT' S INITIAL CERTIFICATE**

To: \_\_\_\_\_ (“Landlord”)

Date: \_\_\_\_\_

Tenant' s Initial Certificate

\_\_\_\_\_

The undersigned, as the Tenant under that certain Lease (the “Lease”) dated \_\_\_\_\_, made and entered into between TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA FOR THE BENEFIT OF ITS SEPARATE REAL ESTATE ACCOUNT, a New York corporation, as Landlord, and the undersigned, as Tenant, hereby certifies that:

1. The undersigned has accepted possession and entered into occupancy of the Premises described in the Lease.
2. The Commencement Date of the Lease was \_\_\_\_\_.
3. The expiration date of the Lease is \_\_\_\_\_.
4. The Lease is in full force and effect and has not been modified or amended.
5. Landlord has performed all of its obligations to improve the Premises for occupancy by the undersigned.

Very truly yours,

\_\_\_\_\_  
a \_\_\_\_\_

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

Name: \_\_\_\_\_

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

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**EXHIBIT F**

**LEASE GUARANTY**

THIS LEASE GUARANTY (“**Guaranty**”) is made by ENCORE CAPITAL GROUP, INC. (“**Guarantor**”), in favor of TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA FOR THE BENEFIT OF ITS SEPARATE REAL ESTATE ACCOUNT, a New York corporation (“**Landlord**”), in connection with that certain Office Lease dated March 4, 2011 (the “**Lease**”) pursuant to which Landlord is to lease to Midland Credit Management, Inc., a Kansas corporation (“**Tenant**”), those premises generally referred to as the 12th and 13th floors of the building commonly known as 3111 Camino del Rio North, San Diego, California 92108 (the “**Premises**”).

A. Landlord requires this Guaranty as a condition to Landlord’s execution of the Lease and the performance of the obligations to be performed under the Lease by Landlord.

B. Guarantor has agreed to provide this Guaranty to induce Landlord to enter into the Lease with Tenant and perform its obligations under the Lease.

In consideration of Landlord’s agreement to execute the Lease and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor does hereby agree with Landlord as follows:

1. The Lease is hereby incorporated into and made a part of this Guaranty by this reference.
2. Guarantor hereby unconditionally guarantees, as a primary obligor and not as a surety, without deduction by reason of setoff, defense or counterclaim, the full and punctual payment of all sums of rent and other amounts payable under the Lease and the full and punctual performance of all terms, covenants and conditions in the Lease to be kept, performed and/or observed by Tenant. Guarantor’s obligations under this Guaranty are continuing and unconditional. The foregoing obligations are sometimes referred to hereinafter as the “Guaranty Obligations.”
3. Guarantor hereby agrees that, without the consent of or notice to Guarantor and without affecting any of the obligations of Guarantor hereunder: (a) the Lease may be extended and any other term, covenant or condition of the Lease may be amended, compromised, released or otherwise altered by Landlord and Tenant, and Guarantor does guarantee and promise to perform all the obligations of Tenant under the Lease as so extended, amended, compromised, released or altered; (b) any guarantor or party to the Lease may be released, substituted or added; (c) any right or remedy under the Lease may be exercised, not exercised, impaired, modified, limited, destroyed, or suspended; (d) Landlord or any other person may deal in any manner with Tenant, any guarantor, any party to the Lease or any other person; (e) Landlord may permit Tenant to holdover the Premises beyond the Lease Term; and (f) all or any part of the Premises or of Tenant’s rights or liabilities under the Lease may be sublet, assigned or assumed. Without in any way limiting the foregoing, Guarantor agrees not to unreasonably withhold its consent to any sublease, assignment of the Lease or other modification of the Lease which is agreed to by Landlord and Tenant.
4. Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require Landlord to proceed against Tenant, or any other guarantor or person or to pursue any other security or remedy before proceeding against Guarantor; (b) any defense based on the genuineness, validity, regularity or enforceability of the Lease; (c) any right or defense that may arise by reason of the incapacity, lack of authority, death or disability of Tenant or any other person; and (d) any right or defense arising by reason of the absence, impairment, modification, limitation, destruction or cessation (in bankruptcy, by an election of remedies, or otherwise) of the liability of Tenant, of the subrogation rights of Guarantor or of the right of Guarantor to proceed against Tenant for reimbursement. Guarantor waives any right, statutory, or otherwise, for itself to require or for Tenant to require Landlord to apply rents received toward the Guaranty Obligations, or to otherwise prioritize the receipt of rents as against the Guaranty Obligations.
5. Guarantor hereby waives and agrees not to assert or take advantage of (a) any right or defense based on the absence of any or all presentments, demands (including demands for performance), notices (including notices of any adverse change in the financial status of Tenant, notices of any other facts which increase the risk to Guarantor,

EXHIBIT F



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notices of non-performance and notices of acceptance of this Guaranty) and protests of each and every kind; or (b) any right or defense based on a lack of diligence or failure or delay by Landlord in enforcing its rights under this Guaranty or the Lease.

6. Guarantor hereby waives and agrees not to assert or take advantage of any right to (a) exoneration if Landlord's actions shall impair any security or collateral of Guarantor; (b) any security or collateral held by Landlord; (c) require Landlord to proceed against or exhaust any security or collateral before proceeding against Guarantor; (d) require Landlord to pursue any right or remedy for the benefit of Guarantor.

7. Guarantor shall not, without the prior written consent of Landlord, commence, or join with any other person in commencing, any bankruptcy, reorganization or insolvency proceeding against Tenant. Guarantor's obligations under this Guaranty shall in no way be affected by any bankruptcy, reorganization or insolvency of Tenant or any successor or assignee of Tenant or by any disaffirmance or abandonment of the Lease or any payment under this Guaranty by a trustee of Tenant in any bankruptcy proceeding including, without limitation, any impairment, limitation, or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease resulting from the operation of any present or future provision of any federal or state bankruptcy or insolvency law or other statute or from the decision of any court. Guarantor shall file in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law all claims which Guarantor may have against Tenant relating to any indebtedness of Tenant to Guarantor and will assign to Landlord all rights of Guarantor thereunder. Landlord shall have the sole right to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Landlord the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor hereby assigns to Landlord all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Landlord receives cash by reason of any such payment or distribution. If Landlord receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

8. Until all the Tenant's obligations under the Lease are fully performed, Guarantor: (a) shall have no right of subrogation or reimbursement against the Tenant by reason of any payments or acts of performance by Guarantor under this Guaranty; (b) subordinates any liability or indebtedness of the Tenant now or hereafter held by Guarantor to the obligations of the Tenant under, arising out of or related to the Lease or Tenant's use of the Premises; and (c) acknowledges that the actions of Landlord may affect or eliminate any rights of subrogation or reimbursement of Guarantor as against Tenant without any liability or recourse against Landlord.

9. Prior to the execution of this Guaranty and at any time during the Term of the Lease upon ten (10) days prior written notice from Landlord, Guarantor agrees to provide Landlord with a current financial statement for Guarantor and financial statements for Guarantor for the two (2) years prior to the current financial statement year to the extent not previously delivered to Landlord. Guarantor's financial statements are to be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Guarantor, audited by an independent certified public accountant. Guarantor represents and warrants that all such financial statements shall be true and correct statements of Guarantor's financial condition.

10. The liability of Guarantor and all rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor relating to the Lease shall be cumulative and not alternative and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord by law.

11. This Guaranty applies to, inures to the benefit of and binds all parties hereto, their heirs, devisees, legatees, executors, administrators, representatives, successors and assigns. This Guaranty may be assigned by Landlord voluntarily or by operation of law.

12. This Guaranty shall constitute the entire agreement between Guarantor and the Landlord with respect to the subject matter hereof. No provision of this Guaranty or right of Landlord hereunder may be waived nor may any guarantor be released from any obligation hereunder except by a writing duly executed by an authorized officer,

#### EXHIBIT F

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director or trustee of Landlord. The waiver or failure to enforce any provision of this Guaranty shall not operate as a waiver of any other breach of such provision or any other provisions hereof. No course of dealing between Landlord and Tenant shall alter or affect the enforceability of this Guaranty or Guarantor's obligations hereunder.

13. Except to the extent of the gross negligence or willful misconduct of Landlord or any Landlord Indemnities, Guarantor hereby agrees to indemnify, protect, defend and hold Landlord harmless from and against, all losses, costs and expenses including, without limitation, all interest, default interest, post-petition bankruptcy interest and other post-petition obligations, late charges, court costs and attorneys' fees, which may be suffered or incurred by Landlord in enforcing or compromising any rights under this Guaranty or in enforcing or compromising the performance of Tenant's obligations under the Lease.

14. The term "Landlord" whenever hereinabove used refers to and means the Landlord in the foregoing Lease specifically named and also any assignee of said Landlord, whether by outright assignment or by assignment for security, and also any successor to the interest of said Landlord or of any assignee of such Lease or any part thereof, whether by assignment or otherwise. The term "Tenant" whenever hereinabove used refers to and means the Tenant in the foregoing Lease specifically named and also any assignee or sublessee of said Lease and also any successor to the interests of said Tenant, assignee or sublessee of such Lease or any part thereof, whether by assignment, sublease or otherwise including, without limitation, any trustee in bankruptcy and any bankruptcy estate of Tenant, Tenant's assignee or sublessee.

15. If Guarantor shall become bankrupt or insolvent, or any application shall be made to have Guarantor declared bankrupt or insolvent, or if Guarantor shall make an assignment for the benefit of creditors, or shall enter into a proceeding for the dissolution of marriage, notice of such occurrence or event shall be promptly furnished to Landlord by Guarantor. This Guarantee shall extend to and be binding upon Guarantor's successors and assigns, including, but not limited to, trustees in bankruptcy and Guarantor's estate.

16. Any notice, request, demand, instruction or other communication to be given to any party hereunder shall be in writing and sent by registered or certified mail, return receipt requested in accordance with the notice provisions of the Lease. The Tenant shall be deemed Guarantor's agent for service of process and notice to Guarantor delivered to the Tenant at the address set forth in the Lease shall constitute proper notice to Guarantor for all purposes. Notices to Landlord shall be delivered to Landlord's address set forth in the Lease. Landlord, at its election, may provide an additional notice to Guarantor at the address provided under Guarantor's signature below.

17. If either party hereto participates in an action against the other party arising out of or in connection with this Guaranty, the prevailing party shall be entitled to have and recover from the other party reasonable attorneys' fees, collection costs and other costs incurred in and in preparation for the action. Guarantor hereby waives any right to trial by jury and further waives and agrees not to assert or take advantage of any defense based on any claim that any arbitration decision binding upon Landlord and Tenant is not binding upon Guarantor.

18. Guarantor agrees that all questions with respect to this Guaranty shall be governed by, and decided in accordance with, the laws of the State of California.

19. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

20. Time is strictly of the essence under this Guaranty and any amendment, modification or revision hereof.

21. If more than one person signs this Guaranty, each such person shall be deemed a guarantor and the obligation of all such guarantors shall be joint and several. When the context and construction so requires, all words used in the singular herein shall be deemed to have been used in the plural. The word "person" as used herein shall include an individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

22. If Guarantor is a corporation, each individual executing this Guaranty on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Guaranty on behalf of said corporation,

## EXHIBIT F



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in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the by-laws of said corporation, and that this Guaranty is binding upon said corporation in accordance with its terms. If Guarantor is a corporation, Landlord, at its option, may require Guarantor to concurrently, with the execution of this Guaranty, deliver to Landlord a certified copy of a resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Guaranty.

23. Without limiting the generality of any of the covenants and agreements of the Guarantor set forth above in this Guaranty, Guarantor hereby waives any and all rights or defenses that are or may become available to Guarantor under the provisions of Sections 2787 to 2855, inclusive, of the California Civil Code and any similar or analogous statutes of California or any other jurisdiction.

24. In the event any payment by Tenant to Landlord is held to constitute a preference under the bankruptcy laws, such payment by Tenant to Landlord shall not constitute a release of Guarantor from any liability hereunder, but Guarantor agrees to pay such amount to Landlord upon demand and this Guaranty shall continue to be effective or shall be reinstated, as the case may be, to the extent of any such payment or payments.

25. Guarantor specifically agrees that it shall not be necessary or required, and that Guarantor shall not be entitled to require, that Landlord mitigate damages, or file suit or proceed to obtain or assert a claim for personal judgment against Tenant for the Guaranty Obligations, or make any effort at collection of the Guaranty Obligations from Tenant, or foreclose against or seek to realize upon any security or collateral now or hereafter existing for the Guaranty Obligations, or file suit or proceed to obtain or assert a claim for personal judgment against any other party (whether maker, guarantor, endorser or surety) liable for the Guaranty Obligations, or make any effort at collection of the Guaranty Obligations from any such other party, or exercise or assert any other right or remedy to which Landlord is or maybe entitled in connection with the Guaranty Obligations or any security or collateral or other guaranty therefor, or assert or file any claim against the assets or estate of Tenant or any other guarantor or other person liable for the Guaranty Obligations, or any part thereof, before or as a condition of enforcing the liability of Guarantor under this Guaranty or requiring payment of the Guaranty Obligations by Guarantor hereunder, or at any time thereafter.

[NO FURTHER TEXT ON THIS PAGE]

EXHIBIT F

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**THE UNDERSIGNED HAS READ AND UNDERSTANDS THE TERMS AND CONDITIONS CONTAINED IN THIS GUARANTY INCLUDING, WITHOUT LIMITATION, ALL WAIVERS CONTAINED IN THIS GUARANTY.**

Executed on this 4th day of March, 2011.

Address of Guarantor:

\_\_\_\_\_  
\_\_\_\_\_

ENCORE CAPITAL GROUP, INC.,  
a Delaware corporation

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

Name: \_\_\_\_\_

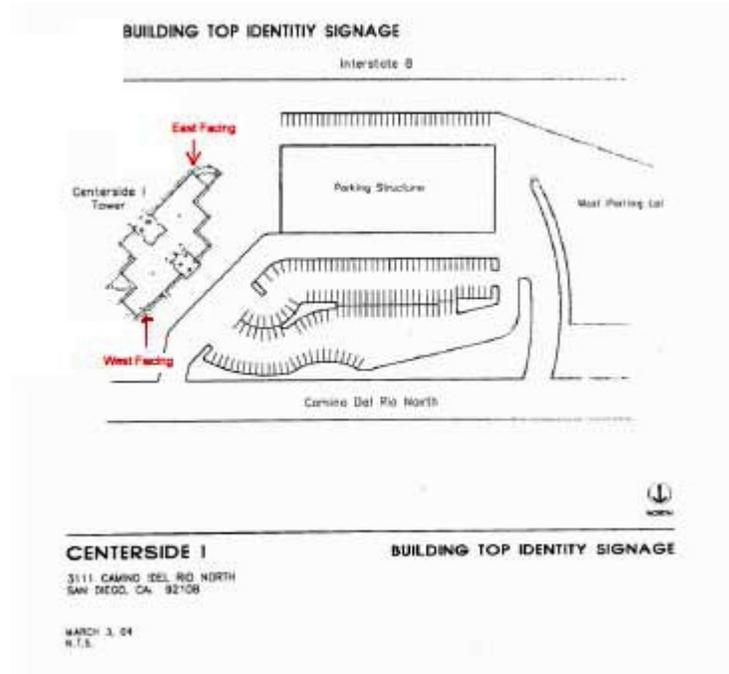
Title: \_\_\_\_\_

EXHIBIT F

-5-

**EXHIBIT G**

**LOCATION OF BUILDING TOP SIGNAGE**



1.

**EXHIBIT G**

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**EXTENSION OPTION RIDER**

**RIDER NO. 1 TO LEASE**

This Rider No. 1 is made and entered into by and between TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA FOR THE BENEFIT OF ITS REAL ESTATE ACCOUNT, a New York corporation (“**Landlord**”), and MIDLAND CREDIT MANAGEMENT, INC., a Kansas corporation (“**Tenant**”), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the “Lease” shall be construed to mean the Lease (and all exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. Subject to Rider No. 5 entitled, “Options In General”, Landlord hereby grants to Tenant one (1) option (the “**Extension Option**”) to extend the Term of the Lease for an additional period of five (5) years (the “**Option Term**”), on the same terms, covenants and conditions as provided for in the Lease during the initial Term, except for the Base Rent, which shall initially be equal to the “fair market rental rate” for the Premises for the Option Term as defined and determined in accordance with the provisions of the Fair Market Rental Rate Rider attached to the Lease as Rider No. 2, subject to fair market annual rent adjustments during the Option Term.

2. An Extension Option must be exercised, if at all, by written notice (“**Extension Notice**”) delivered by Tenant to Landlord no sooner than that date which is twelve (12) months and no later than that date which is nine (9) months prior to the expiration of the then current Term of the Lease. Provided Tenant has properly and timely exercised the Extension Option, the then current Term of the Lease shall be extended by the Option Term, and all terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect, except that the Base Rent shall be as set forth above and in Rider No. 2, and except that Tenant shall have no remaining Extension Option during the Option Term.

RIDER NO. 1

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## FAIR MARKET RENTAL RATE RIDER

### RIDER NO. 2 TO LEASE

This Rider No. 2 is made and entered into by and between TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA FOR THE BENEFIT OF ITS REAL ESTATE ACCOUNT, a New York corporation (“**Landlord**”), and MIDLAND CREDIT MANAGEMENT, INC., a Kansas corporation (“**Tenant**”), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the “Lease” shall be construed to mean the Lease (and all exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. The term **fair market rental rate**” as used in the Lease and any Rider attached to the Lease shall mean the annual amount per square foot, projected during the Option Term (including annual adjustments), that a willing, non-equity renewal tenant (excluding sublease and assignment transactions) would pay, and a willing, institutional landlord of a comparable quality Class A office building located in the Mission Valley (San Diego), California area would accept, in an arm’s length transaction (what Landlord is accepting in then current transactions for the Building may be used for purposes of projecting rent for the Option Term), for space of comparable size, quality and floor height as the Premises, taking into account the age, quality and layout of the existing improvements in the Premises, and taking into account items that professional real estate brokers or professional real estate appraisers customarily consider, including, but not limited to, rental rates, space availability, tenant size, tenant improvement allowances, parking charges and any other lease considerations, if any, then being charged or granted by Landlord or the lessors of such similar office buildings. All economic terms other than Base Rent, such as tenant improvement allowance amounts, if any, operating expense allowances, parking charges, etc., will be reasonably established by Landlord and will be factored into the determination of the fair market rental rate for the Option Term. Accordingly, the fair market rental rate will be an effective rate, not specifically including, but accounting for, the appropriate economic considerations described above.

2. In the event where a determination of fair market rental rate is required under the Lease Landlord shall provide written notice of Landlord’s reasonable determination of the fair market rental rate not later than ninety (90) days after the last day upon which Tenant may timely exercise the right giving rise to the necessity for such fair market rental rate determination. Tenant shall have ten (10) days (“**Tenant’s Review Period**”) after receipt of Landlord’s notice of the fair market rental rate within which to accept such fair market rental rate or to reasonably object thereto in writing. Failure of Tenant to so object to the fair market rental rate submitted by Landlord in writing within Tenant’s Review Period shall conclusively be deemed Tenant’s approval and acceptance thereof. If within Tenant’s Review Period Tenant reasonably objects to or is deemed to have disapproved the fair market rental rate submitted by Landlord, Landlord and Tenant will meet together with their respective legal counsel to present and discuss their individual determinations of the fair market rental rate for the Premises under the parameters set forth in Paragraph 1 above and shall diligently and in good faith attempt to negotiate a rental rate on the basis of such individual determinations. Such meeting shall occur no later than ten (10) days after the expiration of Tenant’s Review Period. The parties shall each provide the other with such supporting information and documentation as they deem appropriate. At such meeting if Landlord and Tenant are unable to agree upon the fair market rental rate, they shall each submit to the other their respective best and final offer as to the fair market rental rate. If Landlord and Tenant fail to reach agreement on such fair market rental rate within five (5) business days following such a meeting (the “**Outside Agreement Date**”), Tenant’s Extension Option will be deemed null and void unless Tenant demands appraisal, in which event each party’s determination shall be submitted to appraisal in accordance with the provisions of Section 3 below.

3. (a) Landlord and Tenant shall each appoint one (1) independent appraiser who shall by profession be an M.A.I. certified real estate appraiser who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of similar commercial (including office) properties in the Mission Valley (San Diego), California area. The determination of the appraisers shall be limited solely to the issue of whether

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Landlord' s or Tenant' s last proposed (as of the Outside Agreement Date) best and final fair market rental rate for the Premises is the closest to the actual fair market rental rate for the Premises as determined by the appraisers, taking into account the requirements specified in Section 1 above. Each such appraiser shall be appointed within fifteen (15) days after the Outside Agreement Date.

(b) The two (2) appraisers so appointed shall within fifteen (15) days of the date of the appointment of the last appointed appraiser agree upon and appoint a third appraiser who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two (2) appraisers.

(c) The three (3) appraisers shall within thirty (30) days of the appointment of the third appraiser reach a decision as to whether the parties shall use Landlord' s or Tenant' s submitted best and final fair market rental rate, and shall notify Landlord and Tenant thereof. During such thirty (30) day period, Landlord and Tenant may submit to the appraisers such information and documentation to support their respective positions as they shall deem reasonably relevant and Landlord and Tenant may each appear before the appraisers jointly to question and respond to questions from the appraisers.

(d) The decision of the majority of the three (3) appraisers shall be binding upon Landlord and Tenant and neither party shall have the right to reject the decision or to undo the exercise of the applicable Option. If either Landlord or Tenant fails to appoint an appraiser within the time period specified in Section 3(a) hereinabove, the appraiser appointed by one of them shall within thirty (30) days following the date on which the party failing to appoint an appraiser could have last appointed such appraiser reach a decision based upon the same procedures as set forth above (i.e., by selecting either Landlord' s or Tenant' s submitted best and final fair market rental rate), and shall notify Landlord and Tenant thereof, and such appraiser' s decision shall be binding upon Landlord and Tenant and neither party shall have the right to reject the decision or to undo the exercise of the applicable Option.

(e) If the two (2) appraisers fail to agree upon and appoint a third appraiser, either party, upon ten (10) days written notice to the other party, can apply to the Presiding Judge of the Superior Court of San Diego County to appoint a third appraiser meeting the qualifications set forth herein. The third appraiser, however, selected shall be a person who has not previously acted in any capacity for ether party.

(f) The cost of each party' s appraiser shall be the responsibility of the party selecting such appraiser, and the cost of the third appraiser (or arbitration, if necessary) shall be shared equally by Landlord and Tenant.

(g) If the process described hereinabove has not resulted in a selection of either Landlord' s or Tenant' s submitted best and final fair market rental rate by the commencement of the applicable lease term, then the fair market rental rate estimated by Landlord will be used until the appraiser(s) reach a decision, with an appropriate rental credit and other adjustments for any overpayments of Base Rent or other amounts if the appraisers select Tenant' s submitted best and final estimate of the fair market rental rate. The parties shall enter into an amendment to this Lease confirming the terms of the decision.

RIDER NO. 2

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## RIGHT OF FIRST OFFER RIDER

### RIDER NO. 3 TO LEASE

This Rider No. 3 is made and entered into by and between TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA FOR THE BENEFIT OF ITS REAL ESTATE ACCOUNT, a New York corporation (“**Landlord**”), and MIDLAND CREDIT MANAGEMENT, INC., a Kansas corporation (“**Tenant**”), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the “Lease” shall be construed to mean the Lease (and all exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. Grant of Option; Conditions. Tenant shall have the one time right of first offer (the “Right of First Offer”) with respect to either or both of the 9,487 square feet of Rentable Area known as Suite No. 1150 and the 4,000 square feet of Rentable Area known as Suite No. 1100 on the eleventh (11<sup>th</sup>) floor of the Building shown on the demising plan attached hereto as *Exhibit A-4* (each, a “ROFO Space”). Tenant’s Right of First Offer as to each ROFO Space shall be exercised as follows: at any time after Landlord has determined that the existing tenant in any such ROFO Space will not extend or renew the term of its lease for such ROFO Space (but prior to leasing such ROFO Space to a party other than the existing tenant), Landlord shall deliver written notice to Tenant (the “ROFO Notice”) of the terms under which Landlord is prepared to lease the ROFO Space in question to Tenant for the remainder of the Term, which terms shall reflect the Prevailing Market (hereinafter defined) rate for such ROFO Space as reasonably determined by Landlord. Tenant may lease such ROFO Space in its entirety only, under such terms, by delivering written notice of exercise to Landlord (the “Notice of Exercise”) within ten (10) days after the date of the ROFO Notice, subject to Rider No. 5 entitled “Options in General”, and except that Tenant shall have no such Right of First Offer and Landlord need not provide Tenant with a ROFO Notice, if the existing tenant in the ROFO Space is interested in extending or renewing its lease for the ROFO Space or entering into a new lease for such ROFO Space.

2. Terms for ROFO Space.

a. The term for the ROFO Space shall commence upon the commencement date stated in the ROFO Notice and thereupon such ROFO Space shall be considered a part of the Premises, provided that all of the terms stated in the ROFO Notice shall govern Tenant’s leasing of the ROFO Space and only to the extent that they do not conflict with the ROFO Notice, the terms and conditions of this Lease shall apply to the ROFO Space.

b. Tenant shall pay Base Rent and Additional Rent for the ROFO Space in accordance with the terms and conditions of the ROFO Notice, which terms and conditions shall reflect the Prevailing Market rate for the ROFO Space as determined in Landlord’s reasonable judgment pursuant to this Rider No. 3.

c. The ROFO Space (including improvements and personalty, if any) shall be accepted by Tenant in its condition and as-built configuration existing on the earlier of the date Tenant takes possession of the ROFO Space or as of the date the term for such ROFO Space commences, unless the ROFO Notice specifies any work to be performed by Landlord in the ROFO Space, in which case Landlord shall perform such work in the ROFO Space. If Landlord is delayed delivering possession of the ROFO Space due to the holdover or unlawful possession of such space by any party, Landlord shall use reasonable efforts to obtain possession of the space, and the commencement of the term for the ROFO Space shall be postponed until the date Landlord delivers possession of the ROFO Space to Tenant free from occupancy by any party.

3. Termination of Right of First Offer. The rights of Tenant hereunder with respect to the ROFO Space shall terminate upon Tenant’s failure to exercise its Right of First Offer within the ten (10) day period provided in Section 1 above; and (ii) the date Landlord would have provided Tenant a ROFO Notice if Tenant had not been in violation of one or more of the conditions set forth in Section 1 above or if Tenant is unable to exercise its Right of First Offer for any of the reasons provided in Rider No. 5.

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4. Offering Amendment. If Tenant exercises its Right of First Offer, Landlord shall prepare an amendment (the "Offering Amendment") adding the ROFO Space to the Premises on the terms set forth in the ROFO Notice and reflecting the changes in the Base Rent, Rentable Square Footage of the Premises, Tenant's Pro Rata Share and other appropriate terms. A copy of the Offering Amendment shall be sent to Tenant within a reasonable time after Landlord's receipt of the Notice of Exercise executed by Tenant, and Tenant shall execute and return the Offering Amendment to Landlord within 15 days thereafter, but an otherwise valid exercise of the Right of First Offer shall be fully effective whether or not the Offering Amendment is executed.

5. Definition of Prevailing Market. For purposes of this Right of First Offer provision, "Prevailing Market" shall mean the annual rental rate per square foot for space comparable to the ROFO Space in the Building and Class A office buildings comparable to the Building in the Mission Valley (San Diego), California area under leases and renewal and expansion amendments being entered into at or about the time that Prevailing Market is being determined, giving appropriate consideration to tenant concessions, brokerage commissions, tenant improvement allowances, existing improvements in the space in question, and the method of allocating operating expenses and taxes. Notwithstanding the foregoing, space leased under any of the following circumstances shall not be considered to be comparable for purposes hereof: (i) the lease term is for less than the lease term of the ROFO Space, (ii) the space is encumbered by the option rights of another tenant, or (iii) the space has a lack of windows and/or an awkward or unusual shape or configuration. The foregoing is not intended to be an exclusive list of space that will not be considered to be comparable.

6. Subordination. Notwithstanding anything herein to the contrary, Tenant's Right of First Offer is subject and subordinate to the expansion rights (whether such rights are designated as a right of first offer, right of first refusal, expansion option or otherwise) of any tenant of the Building existing on the date hereof.

RIDER NO. 3

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## RIGHT OF FIRST REFUSAL RIDER

### RIDER NO. 4 TO LEASE

This Rider No. 4 is made and entered into by and between TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA FOR THE BENEFIT OF ITS REAL ESTATE ACCOUNT, a New York corporation (“**Landlord**”), and MIDLAND CREDIT MANAGEMENT, INC., a Kansas corporation (“**Tenant**”), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the “Lease” shall be construed to mean the Lease (and all exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. Tenant shall have a one time right of first refusal (the “Right of First Refusal”) with respect to that certain space containing approximately 2,772 square feet of Rentable Area known as Suite No. 1125 on the eleventh (11<sup>th</sup>) floor of the Building, as shown on *Exhibit A-4* attached hereto (the “ROFR Space”) as provided in this Rider No. 4. If Landlord receives and desires to accept a third-party offer to lease the ROFR Space, then Tenant shall have five (5) business days following receipt from Landlord of a written itemization of the relevant economic terms relating to such third-party offer (the “Terms Sheet”) in which to agree in writing to lease the ROFR Space on the terms set forth on the Terms Sheet and the noneconomic terms set forth in the Lease. If Tenant timely elects to lease the ROFR Space on the terms set forth in the Terms Sheet, and if, within five (5) business days following such election, Tenant does not enter into an amendment to the Lease formalizing the terms of Tenant’s lease of the ROFR Space, then Landlord shall thereafter be entitled to lease the ROFR Space to such third party or any other person or entity on the terms set forth in the Terms Sheet or any other terms more favorable to Landlord. If for any reason Tenant fails to appropriately respond to the Terms Sheet within such five (5) business day period of time, or if for any reason (including, without limitation, the parties’ failure to agree on the form of the Lease amendment or any of the terms contained therein after their good faith efforts to do so), Tenant does not execute and deliver to Landlord, within the next five (5) business day period of time, a Lease amendment acceptable to Landlord containing the terms set forth in the Terms Sheet, then in either such event Tenant will be deemed to have elected not to lease the ROFR Space on the terms contained in the Terms Sheet.

2. Notwithstanding anything herein to the contrary, Tenant’s Right of First Refusal is subject and subordinate to (i) the renewal or extension rights of any tenant leasing all or any portion of the ROFR Space, and (ii) the expansion rights (whether such rights are designated as a right of first offer, right of first refusal, expansion option or otherwise) of any tenant of the Building existing on the date hereof.

RIDER NO. 4

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**OPTIONS IN GENERAL**

**RIDER NO. 5 TO LEASE**

This Rider No. 5 is made and entered into by and between TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA FOR THE BENEFIT OF ITS SEPARATE REAL ESTATE ACCOUNT, a New York corporation (“**Landlord**”), and MIDLAND CREDIT MANAGEMENT, INC., a Kansas corporation (“**Tenant**”), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the “Lease” shall be construed to mean the Lease (and all exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. **Definition.** As used in this Lease and any Rider or Exhibit attached hereto, the word “Option” has the following meaning:

- (i) The Extension Option pursuant to Rider No. 1 herein;
- (ii) The Right of First Offer pursuant to Rider No. 3 herein; and
- (iii) The Right of First Refusal pursuant to Rider No. 4 herein.

2. **Options Personal.** Each Option granted to Tenant is personal to the original Tenant executing this Lease and may be exercised only by the original Tenant executing this Lease while occupying and leasing the entire Premises and without having assigned this Lease or having sublet any portion of the Premises, and may not be exercised or be assigned, voluntarily or involuntarily, by any person or entity other than the original Tenant executing this Lease. The Options, if any, granted to Tenant under this Lease are not assignable separate and apart from this Lease, nor may any Option be separated from this Lease in any manner, either by reservation or otherwise.

3. **Effect of Default on Options.** Tenant will have no right to exercise any Option, notwithstanding any provision of the grant of option to the contrary, and Tenant’s exercise of any Option may be nullified by Landlord and deemed of no further force or effect, if (i) Tenant is in default of any monetary obligation or material non-monetary obligation under the terms of this Lease beyond any applicable notice and cure period as of Tenant’s exercise of the Option in question, or (ii) Landlord has given Tenant two (2) or more notices of default, whether or not such defaults are subsequently cured, during any twelve (12) consecutive month period of this Lease.

4. **Options as Economic Terms.** Each Option is hereby deemed an economic term which Landlord, in its sole and absolute discretion, may or may not offer in conjunction with any future extensions of the Term.

RIDER NO. 5

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**LIST OF EXHIBITS**

Exhibit A-1	Floor Plan of the Premises
Exhibit A-2	Legal Description of the Project
Exhibit A-3	Floor Plan of Temporary Space
Exhibit A-4	ROFO Space (Suite 1150 and Suite 1100), and ROFR Space (Suite 1125)
Exhibit B	Work Letter
Exhibit C	Building Rules and Regulations
Exhibit D	Form of Estoppel Certificate
Exhibit E	Form of Tenant' s Initial Certificate
Exhibit F	Lease Guaranty
Exhibit G	Signage

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Rider No. 1	Extension Option Rider
Rider No. 2	Fair Market Rental Rate Rider
Rider No. 3	Right of First Offer
Rider No. 4	Right of First Refusal
Rider No. 5	Options in General

**LEASE GUARANTY**

THIS LEASE GUARANTY (“**Guaranty**”) is made by ENCORE CAPITAL GROUP, INC. (“**Guarantor**”), in favor of TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA FOR THE BENEFIT OF ITS SEPARATE REAL ESTATE ACCOUNT, a New York corporation (“**Landlord**”), in connection with that certain Office Lease dated March 4, 2011 (the “**Lease**”) pursuant to which Landlord is to lease to Midland Credit Management, Inc., a Kansas corporation (“**Tenant**”), those premises generally referred to as the 12<sup>th</sup> and 13<sup>th</sup> floors of the building commonly known as 3111 Camino del Rio North, San Diego, California 92108 (the “**Premises**”).

A. Landlord requires this Guaranty as a condition to Landlord’s execution of the Lease and the performance of the obligations to be performed under the Lease by Landlord.

B. Guarantor has agreed to provide this Guaranty to induce Landlord to enter into the Lease with Tenant and perform its obligations under the Lease.

In consideration of Landlord’s agreement to execute the Lease and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor does hereby agree with Landlord as follows:

1. The Lease is hereby incorporated into and made a part of this Guaranty by this reference.
2. Guarantor hereby unconditionally guarantees, as a primary obligor and not as a surety, without deduction by reason of setoff, defense or counterclaim, the full and punctual payment of all sums of rent and other amounts payable under the Lease and the full and punctual performance of all terms, covenants and conditions in the Lease to be kept, performed and/or observed by Tenant. Guarantor’s obligations under this Guaranty are continuing and unconditional. The foregoing obligations are sometimes referred to hereinafter as the “Guaranty Obligations.”
3. Guarantor hereby agrees that, without the consent of or notice to Guarantor and without affecting any of the obligations of Guarantor hereunder: (a) the Lease may be extended and any other term, covenant or condition of the Lease may be amended, compromised, released or otherwise altered by Landlord and Tenant, and Guarantor does guarantee and promise to perform all the obligations of Tenant under the Lease as so extended, amended, compromised, released or altered; (b) any guarantor of or party to the Lease may be released, substituted or added; (c) any right or remedy under the Lease may be exercised, not exercised, impaired, modified, limited, destroyed, or suspended; (d) Landlord or any other person may deal in any manner with Tenant, any guarantor, any party to the Lease or any other person; (e) Landlord may permit Tenant to holdover the Premises beyond the Lease Term; and (f) all or any part of the Premises or of Tenant’s rights or liabilities under the Lease may be sublet, assigned or assumed. Without in any way limiting the foregoing, Guarantor agrees not to unreasonably withhold its consent to any sublease, assignment of the Lease or other modification of the Lease which is agreed to by Landlord and Tenant.
4. Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require Landlord to proceed against Tenant, or any other guarantor or person or to pursue any other security or remedy before proceeding against Guarantor; (b) any defense based on the genuineness, validity, regularity or enforceability of the Lease; (c) any right or defense that may arise by reason of the incapacity, lack of authority, death or disability of Tenant or any other person; and (d) any right or defense arising by reason of the absence, impairment, modification, limitation, destruction or cessation (in bankruptcy, by an election of remedies, or otherwise) of the liability of Tenant, of the subrogation rights of Guarantor or of the right of Guarantor to proceed against Tenant for reimbursement. Guarantor waives any right, statutory, or otherwise, for itself to require or for Tenant to require Landlord to apply rents received toward the Guaranty Obligations, or to otherwise prioritize the receipt of rents as against the Guaranty Obligations.
5. Guarantor hereby waives and agrees not to assert or take advantage of (a) any right or defense based on the absence of any or all presentments, demands (including demands for performance), notices (including notices of any adverse change in the financial status of Tenant, notices of any other facts which increase the risk to Guarantor,



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notices of non-performance and notices of acceptance of this Guaranty) and protests of each and every kind; or (b) any right or defense based on a lack of diligence or failure or delay by Landlord in enforcing its rights under this Guaranty or the Lease.

6. Guarantor hereby waives and agrees not to assert or take advantage of any right to (a) exoneration if Landlord's actions shall impair any security or collateral of Guarantor; (b) any security or collateral held by Landlord; (c) require Landlord to proceed against or exhaust any security or collateral before proceeding against Guarantor; (d) require Landlord to pursue any right or remedy for the benefit of Guarantor.

7. Guarantor shall not, without the prior written consent of Landlord, commence, or join with any other person in commencing, any bankruptcy, reorganization or insolvency proceeding against Tenant. Guarantor's obligations under this Guaranty shall in no way be affected by any bankruptcy, reorganization or insolvency of Tenant or any successor or assignee of Tenant or by any disaffirmance or abandonment of the Lease or any payment under this Guaranty by a trustee of Tenant in any bankruptcy proceeding including, without limitation, any impairment, limitation, or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease resulting from the operation of any present or future provision of any federal or state bankruptcy or insolvency law or other statute or from the decision of any court. Guarantor shall file in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law all claims which Guarantor may have against Tenant relating to any indebtedness of Tenant to Guarantor and will assign to Landlord all rights of Guarantor thereunder. Landlord shall have the sole right to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Landlord the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor hereby assigns to Landlord all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Landlord receives cash by reason of any such payment or distribution. If Landlord receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

8. Until all the Tenant's obligations under the Lease are fully performed, Guarantor: (a) shall have no right of subrogation or reimbursement against the Tenant by reason of any payments or acts of performance by Guarantor under this Guaranty; (b) subordinates any liability or indebtedness of the Tenant now or hereafter held by Guarantor to the obligations of the Tenant under, arising out of or related to the Lease or Tenant's use of the Premises; and (c) acknowledges that the actions of Landlord may affect or eliminate any rights of subrogation or reimbursement of Guarantor as against Tenant without any liability or recourse against Landlord.

9. Prior to the execution of this Guaranty and at any time during the Term of the Lease upon ten (10) days prior written notice from Landlord, Guarantor agrees to provide Landlord with a current financial statement for Guarantor and financial statements for Guarantor for the two (2) years prior to the current financial statement year to the extent not previously delivered to Landlord. Guarantor's financial statements are to be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Guarantor, audited by an independent certified public accountant. Guarantor represents and warrants that all such financial statements shall be true and correct statements of Guarantor's financial condition.

10. The liability of Guarantor and all rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor relating to the Lease shall be cumulative and not alternative and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord by law.

11. This Guaranty applies to, inures to the benefit of and binds all parties hereto, their heirs, devisees, legatees, executors, administrators, representatives, successors and assigns. This Guaranty may be assigned by Landlord voluntarily or by operation of law.

12. This Guaranty shall constitute the entire agreement between Guarantor and the Landlord with respect to the subject matter hereof. No provision of this Guaranty or right of Landlord hereunder may be waived nor may any guarantor be released from any obligation hereunder except by a writing duly executed by an authorized officer,

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director or trustee of Landlord. The waiver or failure to enforce any provision of this Guaranty shall not operate as a waiver of any other breach of such provision or any other provisions hereof. No course of dealing between Landlord and Tenant shall alter or affect the enforceability of this Guaranty or Guarantor's obligations hereunder.

13. Except to the extent of the gross negligence or willful misconduct of Landlord or any Landlord Indemnities, Guarantor hereby agrees to indemnify, protect, defend and hold Landlord harmless from and against, all losses, costs and expenses including, without limitation, all interest, default interest, post-petition bankruptcy interest and other post-petition obligations, late charges, court costs and attorneys' fees, which may be suffered or incurred by Landlord in enforcing or compromising any rights under this Guaranty or in enforcing or compromising the performance of Tenant's obligations under the Lease.

14. The term "Landlord" whenever hereinabove used refers to and means the Landlord in the foregoing Lease specifically named and also any assignee of said Landlord, whether by outright assignment or by assignment for security, and also any successor to the interest of said Landlord or of any assignee of such Lease or any part thereof, whether by assignment or otherwise. The term "Tenant" whenever hereinabove used refers to and means the Tenant in the foregoing Lease specifically named and also any assignee or sublessee of said Lease and also any successor to the interests of said Tenant, assignee or sublessee of such Lease or any part thereof, whether by assignment, sublease or otherwise including, without limitation, any trustee in bankruptcy and any bankruptcy estate of Tenant, Tenant's assignee or sublessee.

15. If Guarantor shall become bankrupt or insolvent, or any application shall be made to have Guarantor declared bankrupt or insolvent, or if Guarantor shall make an assignment for the benefit of creditors, or shall enter into a proceeding for the dissolution of marriage, notice of such occurrence or event shall be promptly furnished to Landlord by Guarantor. This Guarantee shall extend to and be binding upon Guarantor's successors and assigns, including, but not limited to, trustees in bankruptcy and Guarantor's estate.

16. Any notice, request, demand, instruction or other communication to be given to any party hereunder shall be in writing and sent by registered or certified mail, return receipt requested in accordance with the notice provisions of the Lease. The Tenant shall be deemed Guarantor's agent for service of process and notice to Guarantor delivered to the Tenant at the address set forth in the Lease shall constitute proper notice to Guarantor for all purposes. Notices to Landlord shall be delivered to Landlord's address set forth in the Lease. Landlord, at its election, may provide an additional notice to Guarantor at the address provided under Guarantor's signature below.

17. If either party hereto participates in an action against the other party arising out of or in connection with this Guaranty, the prevailing party shall be entitled to have and recover from the other party reasonable attorneys' fees, collection costs and other costs incurred in and in preparation for the action. Guarantor hereby waives any right to trial by jury and further waives and agrees not to assert or take advantage of any defense based on any claim that any arbitration decision binding upon Landlord and Tenant is not binding upon Guarantor.

18. Guarantor agrees that all questions with respect to this Guaranty shall be governed by, and decided in accordance with, the laws of the State of California.

19. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

20. Time is strictly of the essence under this Guaranty and any amendment, modification or revision hereof.

21. If more than one person signs this Guaranty, each such person shall be deemed a guarantor and the obligation of all such guarantors shall be joint and several. When the context and construction so requires, all words used in the singular herein shall be deemed to have been used in the plural. The word "person" as used herein shall include an individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

22. If Guarantor is a corporation, each individual executing this Guaranty on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Guaranty on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the



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by-laws of said corporation, and that this Guaranty is binding upon said corporation in accordance with its terms. If Guarantor is a corporation, Landlord, at its option, may require Guarantor to concurrently, with the execution of this Guaranty, deliver to Landlord a certified copy of a resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Guaranty.

23. Without limiting the generality of any of the covenants and agreements of the Guarantor set forth above in this Guaranty, Guarantor hereby waives any and all rights or defenses that are or may become available to Guarantor under the provisions of Sections 2787 to 2855, inclusive, of the California Civil Code and any similar or analogous statutes of California or any other jurisdiction.

24. In the event any payment by Tenant to Landlord is held to constitute a preference under the bankruptcy laws, such payment by Tenant to Landlord shall not constitute a release of Guarantor from any liability hereunder, but Guarantor agrees to pay such amount to Landlord upon demand and this Guaranty shall continue to be effective or shall be reinstated, as the case may be, to the extent of any such payment or payments.

25. Guarantor specifically agrees that it shall not be necessary or required, and that Guarantor shall not be entitled to require, that Landlord mitigate damages, or file suit or proceed to obtain or assert a claim for personal judgment against Tenant for the Guaranty Obligations, or make any effort at collection of the Guaranty Obligations from Tenant, or foreclose against or seek to realize upon any security or collateral now or hereafter existing for the Guaranty Obligations, or file suit or proceed to obtain or assert a claim for personal judgment against any other party (whether maker, guarantor, endorser or surety) liable for the Guaranty Obligations, or make any effort at collection of the Guaranty Obligations from any such other party, or exercise or assert any other right or remedy to which Landlord is or maybe entitled in connection with the Guaranty Obligations or any security or collateral or other guaranty therefor, or assert or file any claim against the assets or estate of Tenant or any other guarantor or other person liable for the Guaranty Obligations, or any part thereof, before or as a condition of enforcing the liability of Guarantor under this Guaranty or requiring payment of the Guaranty Obligations by Guarantor hereunder, or at any time thereafter.

[NO FURTHER TEXT ON THIS PAGE]

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**THE UNDERSIGNED HAS READ AND UNDERSTANDS THE TERMS AND CONDITIONS CONTAINED IN THIS GUARANTY INCLUDING, WITHOUT LIMITATION, ALL WAIVERS CONTAINED IN THIS GUARANTY.**

Executed on this 4th day of March, 2011.

Address of Guarantor:

8875 Aero Dr. Ste 200

San Diego, CA 92123

ENCORE CAPITAL GROUP, INC.,

a Delaware corporation

By: /s/ J. Brandon Black

Name: J. Brandon Black

Title: President and CEO

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**AMENDMENT TO LEASE AGREEMENT**

This AMENDMENT TO LEASE AGREEMENT (this "Amendment") is made as of October 20, 2011, by and between B.T. CONSULTING AND SERVICES, S.A. ("Lessor") and TRES – CIENTO DOS – SEISCIENTOS TREINTA Y CUATRO MIL DOSCIENTOS CUARENTA Y TRES, SOCIEDAD DE RESPONSABILIDAD LIMITADA ("Lessee").

**RECITALS**

WHEREAS, Lessor and Lessee are parties to that certain Lease Agreement, dated as of September 27, 2011 (the "Agreement");

WHEREAS, it was contemplated under the Agreement that Lessee would change its name in the corporate registry to Midland Credit Management CR, S.r.L.;

WHEREAS, effective as of October 12, 2011, Lessee changed its name in the corporate registry to MCM Midland Management Costa Rica, S.r.L.; and

WHEREAS, the parties desire to reflect the new registered name of Lessee in the Agreement.

NOW, THEREFORE, the parties agree as follows:

Section 1. *References to Lessee.* Effective as of October 12, 2011, all references to Lessee in the Agreement shall refer to MCM Midland Management Costa Rica, S.r.L.

Section 2. *Ratification of Agreement; Incorporation by Reference.* Except as specifically provided for in this Amendment, the Agreement is hereby confirmed and ratified in all respects and shall be and remain in full force and effect in accordance with its terms. This Amendment is subject to all of the terms, conditions and limitations set forth in the Agreement.

Section 3. *Counterparts.* This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement. All signatures of the parties may be transmitted by facsimile or electronic delivery, and each such facsimile signature or electronic delivery signature (including a pdf signature) will, for all purposes, be deemed to be the original signature of such party.

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

**LESSEE:**

MCM MIDLAND MANAGEMENT  
COSTA RICA, S.R.L.

/s/ James Syran

\_\_\_\_\_  
Name: James Syran

Title: Manager

ENCORE CAPITAL GROUP, INC.

/s/ J. Brandon Black

\_\_\_\_\_  
Name: J. Brandon Black

Title: Chief Executive Officer

Attn: Director, Legal Affairs and Contracts

3111 Camino Del Rio North, Suite 1300

San Diego, CA 92108

**Approved by Legal**

**LESSOR:**

B.T. CONSULTING AND SERVICES, S.A.

/s/ Carlos Piedra J.

\_\_\_\_\_  
Name: Carlos Piedra J.

Title: General Manager

GRUPO ULTRA, S.A.

/s/ Carlos Piedra J.

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Name: Carlos Piedra J.

Title: Legal Representative

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**LEASE AGREEMENT**

THIS AGREEMENT is entered into this 27<sup>th</sup> day of September, two thousand and eleven (2011) (“Effective Date”), BETWEEN:

AS OF ONE PART:

B.T. CONSULTING AND SERVICES, S.A. a corporation organized and existing under the laws of the Republic of Costa Rica, corporate identification number 3-101-277-443 (hereinafter and for the purposes of the present contract referred to as LESSOR), herein represented by CARLOS PIEDRA J., adult, married, bearer of identity card number 3-212-142, whose powers as representative of LESSOR are duly recorded in the Costa Rican Registry of Commercial Concerns, book 573 entry, 80047.

AS OF THE OTHER,

TRES – CIENTO DOS – SEISCIENTOS TREINTA Y CUATRO MIL DOSCIENTOS CUARENTA Y TRES, SOCIEDAD DE RESPONSABILIDAD LIMITADA to be named MIDLAND CREDIT MANAGEMENT CR, S.R.L., a corporation organized and existing under the laws of the Republic of Costa Rica, corporate identification number 3-102-634243 (hereinafter and for the purposes of the present contract referred to as LESSEE) herein represented by CAROLINA FLORES BEDOYA, of legal age, married once, lawyer, bearer of the identification card number 1-860-509, whose powers of attorney as representative of LESSEE are duly recorded in the Cost Rican Registry of Commercial Concerns under book 2011, entry 109645, consecutive one;

WHEREAS, LESSOR wishes to lease to LESSEE an office unit, and LESSEE wishes to lease an office unit from LESSOR;

NOW, THEREFORE, THIS AGREEMENT WITNESSES that in consideration of the premises and the respective agreements herein set forth, LESSOR and LESSEE hereto agree in the following OFFICE UNIT LEASE AGREEMENT:

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## 1. DEFINITION OF TERMS.

**1.1 Definitions:** The following words and expressions shall have the meanings hereby assigned to them, except where otherwise stated or where context so requires:

Lease: The present lease agreement;

The Park: shall mean the Free Zone Park known as ULTRAPARK 2, located in LAGUNILLA DE HEREDIA;

The Unit or "Original Space": shall mean the office space which is the object of this contract, which has the following description: A finished office area as defined in Exhibit One with a gross area of approximately one thousand nine hundred forty six (1,946) square meters including approximately a 15% loss of usable area, as agreed per Exhibit One to this contract, located in Building 3 Level 1, in the Free Zone Park known as ULTRAPARK 2, in a property belonging to B.T. CONSULTING AND SERVICES, S. A. duly recorded at the Costa Rican Property Registry, Province of Heredia, under the "Folio Real" System, with the number 4-081688-f-000 located inside The Park off Main Street.

## 2. OBJECT AND ADDITIONAL FACILITIES.

LESSOR hereby agrees to lease The Unit to LESSEE, and LESSEE agrees to lease The Unit from LESSOR, under the terms and conditions herein established.

**2.1. Permitted Use:** Use for the Unit is approved for executive and administrative offices of the LESSEE, including call center and customer account support, marketing, sales, consulting, and customer services, engineering, education and training, and all other uses incidental and related to the foregoing business of the LESSEE. The LESSEE shall not alter the purpose of the Unit, without the express written authorization of the LESSOR. Nevertheless, if the modification of use of the Unit is consistent with the permitted office usage, the LESSEE will not require the LESSOR' s written authorization.

In accordance with the lease agreement, LESSEE shall at all times comply with all applicable national, municipal and other governmental regulations in the carrying out and execution of its activities, including, without limitation, Health Ministry, Free Zone regime, and customs regulations or resolutions approved in

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accordance with bylaws. The LESSOR shall cooperate with LESSEE and shall execute all applications, authorizations and other instruments reasonably required to enable the LESSEE to fulfill its responsibilities under this article.

## **2.2. Additional Facilities**

In addition to any other facility specifically included in this Lease Agreement, the Leased Real Estate shall comprise:

**2.2.1 Parking.** The Unit includes 56 parking spaces included in the rent plus maintenance costs of \$15.45 per space per month and may be located exterior to the building. As of and starting on the thirteenth month the monthly maintenance charge shall undergo a six percent (6%) yearly increase, using as basis for such increase the maintenance paid in the last month of the previous twelve month period. Under section 15.4 "Option on Contiguous Space and Right of first Refusal" in the event LESSEE exercises this option LESSEE is entitled to an additional 30 parking spaces included in the rent plus maintenance charges. Additionally, LESSEE has the right to rent additional parking spaces at the current rate of \$85.00 per space per month plus applicable maintenance fees.

**2.2.2 Common areas.** This Lease includes the right of LESSEE to use the Common Facilities or common areas in common with other tenants of the Building. The words "Common Facilities" shall mean all of the facilities in or around the Building, designed and intended for common use by the tenants of the Building. Furthermore, the Lessee can make use of the Industrial Park' s common areas according to the regulations and specifications included in the By-laws in its current form, and including any subsequent amendments, including but not limited to vehicular access ways and on-site concrete or paved roads, sidewalks and authorized garbage disposal areas.

**2.3 Special systems, equipment and additional constructions.** The LESSEE may request, and at its own expense, install certain special systems and equipment in the Leased Real Estate in accordance

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with the By-laws. If LESSEE decides to carry out any additional Structural, Electrical, Mechanical, and common area works in the premises; and, before commencing an such activities, it shall submit to the LESSOR all the required construction permits, pay the costs for the LESSOR' s engineering and consultants review if required, and comply with the By-laws rules. Furthermore, LESSEE shall be responsible to cover any costs associated with obtaining such permits, including but not limited to any applicable taxes

### **3. TERM**

This agreement shall have a term of five years as of January 2nd, 2012

### **4. RENTAL PRICE AND PAYMENT CONDITIONS**

**4.1 Rent.** The monthly rent to be paid for the Leased Real Estate (the "Rent") by the LESSEE, per square meter, shall be eighteen dollars and fifty cents (US\$18.50), legal currency of the United States of America. The Rent has been calculated at the monthly rate of thirty six thousand and one dollar (\$36,001.00) for total gross area.

The LESSEE shall begin making such payments on January 2nd, 2012 in accordance with the terms and conditions stated herein in this Agreement, subject to the following:

The monthly Rent in each period shall be paid in advance within the first five (5) calendar days of each month. In the event that the beginning or end of the term of this Lease is not the first of a month, rent shall be prorated such that LESSEE shall only pay the portion of the rent allocated to the portion of the month the Leased Real Estate is occupied by the LESSEE. Also, if for causes attributable to LESSOR the Unit cannot be made ready for occupancy prior to January 2nd, 2012 rent shall be prorated such that LESSEE shall only pay the portion of the rent allocated to the portion of the month the LESSOR has delivered the space in the Required Delivery Conditions as defined within this agreement. If the Unit

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cannot be made ready for occupancy prior to January 15th, 2012 for causes attributable to LESSEE rent shall begin on January 15, 2012.

As of and starting on the thirteenth month of the Term, and until the expiration of the present contract, the monthly Rent shall undergo a five percent (5%) yearly increase, using as basis for such increase the Rent paid in the last month of the previous twelve month period.

Payments can be made in dollars, legal tender of the United States of America in cash, check at the offices of ULTRAPARK, or electronic transfer to the LESSOR' s account. The validity of any form of payment different than cash remains subject to its final credit in favor of LESSOR. In case of wire transfers, the LESSEE shall notify in writing to the LESSOR, the date in which the transfer was executed, with a written communication of the SWIFT, or similar, transfer sequence and references.

For purposes of this Agreement, the LESSOR' s address shall be the address in effect where payments should be made.

#### **4.2 Maintenance Fees and Building Fees.**

**4.2.1** LESSEE shall pay monthly building Maintenance Fees. Maintenance Fees are currently two dollars twenty five cents (US\$2.25) per rentable square meter, for a total amount of four thousand three hundred seventy eight dollars and fifty cents (US\$4,378.50). As of and starting on the thirteenth month of the Term, and until the expiration of the present contract, the Maintenance Fee shall undergo a six percent (6%) yearly increase, using as basis for such increase the Maintenance Fee paid in the last month of the previous twelve month period.

**4.2.2** LESSEE shall be responsible for any costs of utilities including: the total cost of electricity, potable water and telecommunications providing service to its Premises Additionally, potable water and electricity

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cost in common areas of the Building, shall be calculated and paid in a pro rata basis. Such calculation will be the result from dividing the Leased Real Estate usable area by Building usable area. Likewise, LESSEE shall be responsible to pay any other installations or services not provided by the LESSOR. Utilities shall be paid by LESSEE in accordance with applicable fees and usage shall be determined by the meters specifically installed for such purpose by the carriers of these services, or installed by LESSOR, if necessary.

The totality of the monetary obligations contained herein this article four shall be considered part of LESSEE' s basic obligation to pay rent, in accordance with articles twenty five and sixty four of the General Urban and Suburban Lease Law in effect in Costa Rica.

**4.3 Term of the Lease.** The term of occupancy of the Unit shall commence as of January 2nd, 2012 (as defined in section 4.1, 6.1. hereof, and subject to section 6.2. hereof), and shall remain in effect for FIVE YEARS thereafter (the "Termination Date"), subject to extension and earlier termination as hereinafter provided.

**4.4 Extended Term.** Before expiration, the term can be extended for consecutive periods by mutual agreement in writing between the parties. Notice of request for renewal shall be at least (180) natural days prior to the expiration date.

The Term of the Lease may be extended or reduced by mutual agreement between the parties. The rights, obligations, terms, conditions and stipulations contained in this agreement, shall be understood as valid and executable for the extended periods if any, unless the parties decide otherwise in writing.

## 5. SECURITY DEPOSIT

**5.1 Deposit.** LESSEE hereby deposits with LESSOR the amount of one hundred eighty thousand and five dollars currency of legal tender of the United States of America (US\$180,005.00) corresponding to five (5) months of rent, as security for the faithful performance by LESSEE of all the terms and conditions

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of the Lease, plus the amount of twenty one thousand eight hundred ninety two dollars and fifty cents currency of legal tender of the United States of America (\$21,892.50) corresponding to the maintenance for five (5) months.

**5.2 Use of deposit:** Such deposit may be used by LESSOR, at any time during the term of the Lease, in any of the following cases:

- a) To cover for expenses incurred in the reparation of any material damages to The Unit attributable to LESSEE, which are not due to the normal handling and use of The Unit.
- b) To pay for any monthly rent not paid by LESSEE. In this sense, the LESSOR reserves the right of using all or part of the security deposit, as the case may be, as payment for unpaid rent, but is not in any case obliged to do so. Also, even in the event that the LESSOR chooses to use all or part of the security deposit to cover for rents not paid by LESSEE, LESSEE shall remain liable for the totality of those unpaid rents and responsible to replenish the security deposit to its original amount. Consequently, the existence of the security deposit or the use thereof by the LESSOR to cover for unpaid rents, shall not in any way hinder or preclude the LESSOR from undertaking eviction proceedings against LESSEE for default in payment or other legal remedies available at the time to the LESSOR. In any case, the use of this exclusive prerogative by the LESSOR shall never be assumed or interpreted unless there is specific written communication from the LESSOR in this sense.
- c) To cover for any other amount owed by LESSEE to the LESSOR by virtue of the Lease.

**5.3 Replenishment of deposit:** If at any moment during the term of the Lease, the use of the deposit were necessary in accordance with what is set forth in section five two (5.2) above, the amount used shall be, within eight (8) natural days of written notice by the LESSOR, reimbursed by LESSEE to the LESSOR, so that the faithful performance of the present contract remains fully secured at all times. If LESSEE defaults in fulfilling the obligation to replenish the security deposit in the aforementioned term, the LESSOR is hereby expressly authorized by LESSEE to take all or part of the payment tendered by LESSEE for the following month' s rent, in order to fully replenish the security deposit, and to continue

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doing this until the security deposit has been fully replenished. In such event, LESSEE shall remain liable for whatever amounts are taken from the monthly rental payments and consequently the LESSOR shall have the right to initiate and execute eviction procedures against LESSEE and to demand the return of The Unit due to default in payment. In any case, the use of this exclusive prerogative by the LESSOR shall never be assumed or interpreted unless there is specific written communication from the LESSOR in this sense.

**5.4 Devolution of deposit:** Provided LESSEE has fully and faithfully carried out all of the terms, covenants and conditions of the Lease, the security deposit shall be returned to LESSEE after the expiration of the Lease. At that time, LESSEE shall vacate The Unit and deliver The Unit to the LESSOR in optimal conditions, as it hereby receives it, except for consequence of normal use of the Unit,, in which case the LESSOR shall deliver to LESSEE, no later than thirty (30) natural days after termination, the amount received as guarantee deposit, in the same currency, namely, official currency of legal tender of the United States of America. Nevertheless, if it were necessary to use the guarantee deposit to pay for any of the aforementioned expenses, the LESSOR shall only reimburse to LESSEE the remaining balance, if any.

## **6. DATE OF DELIVERY AND USE OF THE UNIT**

### **6.1 Date of Delivery and Legal Effect of the Agreement**

The LESSOR shall deliver the Unit substantially prior to the Commencement Date of this Agreement and ready for LESSEE' s improvements such as structured telecommunications cabling, UPS, and furniture installation. LESSEE and LESSEE' s subcontractors or suppliers for the improvements herein contained may be granted access to the unit in order to proceed with the design and construction. The access will have to be previously coordinated with LESSOR' s project manager or engineer. Management and coordination of vendors retained directly by LESSEE shall also be part of additional construction services, if the LESSEE requests, provided by the LESSOR including but not limited to Furniture, Cabling, and Security requirements. LESSEE agrees to pay an additional mark-up of 15% over the cost of invoices provided by vendors for the aforementioned services if the LESSEE asks the LESSOR to provide such services. The

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construction schedule includes timeframes (including the delivery and/or approval by LESSEE of architectural plans, selection of finishes, workstation furniture, telecommunications structured cabling, etc.) that the LESSEE or its contractors, shall comply with to complete the works associated with the delivery of the Unit. LESSOR shall promptly notify LESSEE in writing of any delays on the schedule caused by the LESSEE or its contractors, in which case the agreed delivery date shall be extended one day for every day of LESSEE' s delay. If for causes attributable to LESSOR there is a delay in the delivery of Premises to LESSEE in the Required Delivery Condition by January 15, 2012, then LESSEE shall be entitled to a credit in the amount of two (2) days of Base Rent for every such day after the Commencement Date that LESSEE has failed to deliver the Premises in the Required Delivery Condition, to be applied against the Base Rent otherwise due and payable after such date, until said credits are fully realized by Tenant. If for causes attributable to the LESSEE there is a delay in the delivery of the Unit, the LESSEE shall begin to pay Rent as scheduled on January 15th, 2012.

**6.2 Work Letter:** LESSOR and LESSEE shall agree upon the Work Letter as an attachment as Exhibit Two to this Agreement that describes such specifications, finishes, materials and build out requirements to the Unit.

**6.3 Care of premises:** LESSEE shall take good care of The Unit and any fixtures which are and shall remain the property of the LESSOR, which may be located or situated on, in or made a part of The Unit, and shall at LESSEE' s own cost and expense, make all repairs to The Unit and fixtures caused by the abnormal or inappropriate use of The Unit, pursuant to section six eight (6.8) of this contract.

**6.4 Waste and sewage:** Engagement in activities which generate or may generate hazardous waste or pollution, or which require drainage or sewer systems other than those currently installed in The Unit, or which require special safety measures, is strictly forbidden.

**6.5 Insurance and liability:** LESSEE is solely responsible for the insurance of the LESSEE' S property, LESSEE' S improvements, equipment and inventory inside The Unit. LESSEE agrees to maintain in full force and effect during the entire term of the Lease, liability insurance including the LESSOR as an additional insured against any loss or damage sustained, or to which the LESSOR may be liable by reason

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of LESSEE' s occupancy and/or use of The Unit. The insurance policy obtained by LESSEE shall value The Unit in accordance with the value established by a qualified appraiser. Pursuant to this obligation, LESSEE agrees to furnish to the LESSOR, a certificate or other adequate document evidencing such insurance coverage, within thirty (30) calendar days of the date of occupancy.

The LESSOR is exempt from any and all liability for any damage or injury to person or property caused by or resulting from steam, electricity, gas, water, or rain, or leak or flow from or into any part of The Unit, or from any damage or injury caused by or due to the negligence of LESSEE, unless failure of the LESSOR to comply with its obligation under the applicable laws and this agreement.

**6.6 Type of activities allowed:** LESSEE is free to use The Unit within the aforementioned span of activities. Nevertheless, any and all changes in the specific use given to The Unit, shall have prior written authorization of the LESSOR.

**6.7 Modifications:** The LESSOR accepts that LESSEE may perform modifications on the premises necessary for the business activity of LESSEE in addition to those set forth in the Work Letter, namely, usual modifications for his line of business, provided those modifications do not damage or deteriorate The Unit, and no structural modifications are performed. The cost of these modifications shall be paid in full by LESSEE. The LESSOR will not pay nor recognize any amount for these modifications; consequently, upon termination of the present contract, such modifications or improvements shall remain the exclusive property of the LESSOR, unless it can be remove without damaging the Unit.

LESSEE will obtain any and all municipal permits and authorizations necessary for the activities carried out in The Unit, as well as those necessary for any modifications or improvements. Any modifications or alterations other than those specifically authorized herein, shall have the prior written consent of the LESSOR. In any case, the LESSOR may, at any time, appoint inspectors to make sure that the modifications or alteration carried out by LESSEE comply with these provisions and with general Park policy.

**6.8 Conditioning and basic services:** LESSEE acknowledges to know and to have inspected the premises of The Unit hereby delivered by the LESSOR, and to receive The Unit at this moment in full satisfaction. Likewise, LESSEE acknowledges that any expenses necessary to condition The Unit for initial

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operation, as well as expenses for the basic services of electricity, telecommunications, and water shall be paid by LESSEE.

**6.9 Damages:** Reparation of damages caused by abnormal or unauthorized use of The Unit, be these caused by officers, staff members or third parties in general, whether authorized or not, of LESSEE shall be paid by LESSEE.

**6.10 Inspections:** The LESSOR, or manager' s agents shall have the right to enter into and upon The Unit, or any part thereof, at all working hours for the purpose of examining The Unit, or making such repairs or alterations therein as may be necessary for the safety and preservation of The Unit duly coordinated with the LESSEE to reduce the impact on its operation, as well as to verify the full compliance with the provisions of the present contract, and of the LESSOR Bylaws of Operation. However, in emergency situations, the LESSOR shall have the right to inspect The Unit at any time it considers necessary.

**6.11 Legislation and internal bylaws:** LESSEE shall promptly execute and comply with the provisions of the Free Trade Zone Law, Number seven thousand two hundred and ten of November twenty three, nineteen ninety and its bylaws, and any other statutes, ordinances, rules, orders, regulations and requirements of any governmental or quasi-governmental authority, having jurisdiction applicable to The Unit or to The Park.

In addition, LESSEE hereby declares and acknowledges to have studied and understood the provisions of the LESSOR Bylaws of Operation, a true and exact copy of which is attached to and made an integral part of this contract as Exhibit Three. LESSEE shall at all times, promptly execute and comply with the provisions thereof.

LESSOR acknowledges that it holds all authorizations or permits required by government agencies applicable as owner of the Unit, and LESSOR complies with all applicable laws and bylaws thereof.

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## 7. OF THE LESSEE' S RIGHTS AND OBLIGATIONS

### 7.1. Restrictions of the UNIT

The LESSEE:

**7.1.1** Shall not modify the purpose of the Unit without prior authorization of the LESSOR.

**7.1.2** Shall not carry out, within the Unit, any type of activity that produces noises, smells or disturbing activities to other occupants of the premises, or other neighbors, of the area where the Unit is located, and the execution of such activities shall at all times comply with the Bylaws, and the local and national regulations;

**7.1.3.** Accepts that the activities performed in the Unit shall not produce emanations that can adversely affect the environment or people' s health, and that the execution of such activities shall at all times comply with the Bylaws, and the local and national regulations;

**7.1.4** Shall not use the Unit for the storage of flammable or dangerous substances, materials or chemicals unless such substances, materials or chemicals are used in facilities maintenance activities. In these cases, the LESSEE must communicate in writing such circumstance to LESSOR' s Manager, with copy to the LESSOR, including a list describing such items. The substances, materials, or chemicals should be properly stored in accordance with the applicable laws, regulations, and any other safety provisions.

**7.2. Park Regulation.** The LESSEE shall respect at all times ULTRAPARK' s Internal Regulations, and Bylaws, in its current text and its amendments. Said regulations, which the Lessee recognizes and accepts, are hereby attached to this Agreement as Exhibit Three.

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**7.3. Accidents.** Except to the extent resulting from misconduct of the LESSOR, the LESSOR does not assume civil, penal, labor, or any other type of responsibility, for damages or losses incurred to the LESSEE or third parties. Notwithstanding the foregoing, in no event shall the LESSEE or LESSOR be liable for business losses, motivated or as a consequence of accidents caused by the other party, its agents, contractors, employees or invitees, or resulting from fraud or fault, as well as due to force majeure, during the effective term of this lease agreement and its possible extensions.

**7.4. Notification of failures or accidents to the LESSOR.** The LESSEE shall notify the LESSOR of those failures or accidents occurred in the Unit that may generate civil, criminal, or tortuous liability, directly or indirectly, to the LESSOR. The notice of said failures or accidents should be made by the LESSEE within the ensuing twenty-four hours of its knowledge. The notification to the LESSOR shall not cause LESSOR to assume additional liabilities than those agreed to in this Agreement or those imposed by law.

**7.5. Transfer of Material, Machinery, or Heavy Equipment.** The LESSEE may not move any equipment, goods or heavy machinery in and outside the building without the suitable means to avoid damaging the constructions located in the Unit, and it must be done in coordination with the LESSOR. Any damage resulting from the movement of the goods mentioned in this clause must be repaired by the LESSEE.

**7.6. Compliance with the laws and applicable regulations.** The LESSOR and LESSEE shall comply and execute, at their own cost and expense, whenever the case, with the provisions of this Lease Agreement any laws, ordinances, rules, orders, acts, regulations, and legal requirements in effect applicable to the Unit and the activities that LESSEE will perform in the Unit. In particular, but not limited to, the LESSEE shall comply with the corresponding and applicable provisions of the Law of the Free Zone Regime and its regulations, as well as the Customs Law and its regulations. The LESSOR and LESSEE shall exclusively bear all expenses resulting from the compliance of this Lease Agreement and with any

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legal regulations in effect. The LESSEE shall be responsible to LESSOR, as determined by Law, for any non-compliance with this Lease Agreement and/or the laws and regulations in effect as defined in this Agreement. The LESSOR shall be responsible to LESSEE, as determined by Law, for any non-compliance with this Lease Agreement and/or the laws and regulations in effect as defined in this Agreement.

**7.7. Acquisition of Permits.** The LESSEE shall be responsible to process and acquire all those permits necessary for its operation, in addition to the performance of activities carried out within the Unit, such as, but not limited to, those permits and authorizations necessary for operating under a free zone regime.

In the event that the LESSEE request any renovations or improvements on the property and the LESSOR authorizes them, the LESSEE shall assume the costs, exclusively, for the permits, authorizations and other necessary acts for their execution.

The LESSOR shall cooperate with the LESSEE in the acquisition of the corresponding permits or authorizations whenever its assistance is required for such purpose.

**7.8.1. Release of liability in case of accidents.** The LESSEE releases the LESSOR from any responsibility for any accidents resulting from electricity, flood, gas or any other phenomena resulting or not from the Unit usage, unless such were caused by the failure of the LESSOR to comply with its obligations under the applicable laws and this agreement.

**7.8.2 Release of liability in case of robbery or theft.** The LESSEE discharges the LESSOR from any responsibility for robbery or theft in the Unit, unless the same was caused by failure of the LESSOR or the security company contracted by the LESSOR, to comply with their obligations under the applicable laws and this agreement.

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**7.8.3. Prohibition of Common Areas Obstruction.** The obstruction of common areas of the Industrial Park with equipment, vehicles, machinery, raw material or any other goods owned by the LESSEE or his/her contractors, employees, dependents or visitors, or any other person related with him/her, is expressly prohibited. The LESSEE must always supervise that common areas are free from obstructions caused by any of the persons mentioned in this clause. Particularly, the parking of vehicles owned by the LESSEE' s personnel or visitors in the main streets of the park is expressly prohibited.

**7.8.4. Prohibition of Transit Areas Obstruction.** Sidewalks, entrances, passageways, elevators, stairs, lobbies and other common transit areas may not be obstructed, used or occupied differently for the entrance or exit of machinery, material, equipment, vehicles or persons, depending on the case, related with the activities developed by the Lessee. The LESSEE must guarantee the compliance with this obligation on the part of his/her representatives, contractors, employees, dependents, visitors, and other related personnel.

**7.8.5. Signage.** The LESSEE shall not place, or allow the placement of signs or notices of any type, in any exterior area of the building or common areas of the park, other than the clearly designated sites by the LESSOR for these purposes. Moreover, the LESSEE shall comply with the signage specifications included in the Bylaws or other applicable documents to the LESSEE by virtue of the present agreement.

## **8. REPAIRS AND IMPROVEMENTS**

**8.1. Repairs.** The LESSOR shall be obligated to repair, maintain and restore, at its expense, the Unit in general, including but not limited to, the exterior as well to maintain, at its expense the interior of the Unit in general, including electrical, mechanical, plumbing and structural.

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**8.1.2.** If during the Term repairs, restoration work or replacements become necessary because of an emergency, LESSEE and LESSOR shall cooperate to have these repairs and replacements completed in a timely manner. The LESSEE shall bear the cost of any other repair such as broken glasses of internal windows, burnt light bulbs and internal painting. Any other damages or repairs caused or generated by the LESSEE' s negligence or willful misconduct shall run at the LESSEE' s expense.

**8.2. Improvements.** Notwithstanding the foregoing, the LESSEE shall not, without the prior written consent of the LESSOR, which consent shall not be unreasonably withheld or delayed, make changes or adjustments to the Unit, even if related to indoor or outdoor maintenance works. It shall not be necessary to obtain prior consent from the LESSOR to make indoor changes, adjustments or maintenance works whenever these do not affect the Unit' s structure or are permanently affixed to the same. The cost of the improvements shall be covered by LESSEE. All investments, non-removable improvements or the items that if removed may cause damage to the Unit' s structure, shall be for the benefit of the LESSOR, without giving rise to the LESSEE to request a deduction in the rent or an economic compensation for these, upon termination of the lease' s term.

If in any case the improvements, changes and adjustments introduced by LESSEE would alter the Maintenance Fees, which shall be modified in order to reflect the payment of the LESSEE of such increase.

**8.3. Responsibility for damages.** The LESSEE shall be liable for any damage or loss incurred to or suffered by the Unit, which is caused by or attributable to its employees, officers and/or agents, or by third parties or clients that visit or use the Unit, which does not include other decay caused by the normal use of the Unit.

The LESSEE shall be responsible for damages caused to the common areas of the premises through fault or negligence, or by its tenants, employees, salespeople, or visitors, and it will be liable to cover the costs

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incurred for such repairs. Also, the LESSEE shall abstain from all acts, even within the Unit, which impede or lessen the efficiency of the operation or use of the common areas.

Any form of damage caused by the LESSEE, or any of the aforementioned individuals mentioned in the second paragraph of this clause, shall be paid by the LESSEE, at its own expense, without the right to demand from the LESSOR or the Administration a reimbursement or cost deduction from the lease.

The repair of damages to the Unit shall be initiated by LESSEE within ten (10) business days from the date of occurrence.

If repairs, restoration work or replacements become necessary because of an emergency, LESSEE and LESSOR shall cooperate to have these repairs and replacements completed in a timely manner. In the event the LESSEE has not began repairs in ten days, LESSOR may perform them if, in its opinion, they are necessary to preserve the Unit' s safety or health of the occupants in it or the Building, or they are required by the Law, and submit an invoice to LESSEE which sets forth the costs incurred by LESSOR.

LESSEE shall reimburse LESSOR within thirty (30) days of LESSOR' s invoicing of LESSEE.

By virtue of this clause, the LESSEE' s liability is comprehensive and includes any violation acts to the legal system, caused by LESSEE' s activities performed in or by the use of the Leased Unit, whether by its employees, officers and/or agents or third parties or clients that visit or use the Unit, may these be civil, labor, environmental, health-related or any other sector, even when these acts are not subjected to an economic compensation.

## **9. OF THE LESSOR' S RIGHTS AND OBLIGATIONS**

### **9.1. Ownership of the Goods Left in the Unit**

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After fifteen (15) calendar days of the termination date of the present Agreement, for any cause imputable or not to the LESSEE or after eviction for non-compliance with the payment, any goods owned by the LESSEE found inside the Real Estate or in the common areas of the Park shall be considered abandoned by the LESSEE, unless otherwise agreed with the LESSOR. Therefore, the LESSOR may take possession of the same. The LESSEE waives any right to seek any compensation resulting from such circumstance.

**9.2. Entry Right on the part of the LESSOR to Repair Damages.** The LESSOR, its employees or contractors, shall have the right to enter the Unit in order to make repairs that might correspond to it, in accordance with this Agreement and the legislation in effect. Nevertheless, the LESSOR must previously coordinate with the LESSEE the time in which such repairs shall take place, trying as far as possible, and pursuant to the particularities of the repair, that its execution must be done on the less prejudicial moment for the normal functioning of the LESSEE' s activities.

**9.3. Non waiver of rights.** The fact that the LESSOR or the LESSEE do not require compliance with any of the terms and conditions herein established, may not be considered as a waiver to the rights and actions granted by means of the present Agreement or the legislation applicable to the case.

**9.4. Insurance.** The LESSEE shall have an All Risk insurance to protect the goods of his/her property inside the offices. The LESSOR, on the other hand, shall have All Risk insurance that includes the coverage against earthquake, fire, and any other damage resulting from nature to protect the Building. Neither the LESSOR nor the LESSEE shall cover the deductibles of the other party, in case of loss.

**9.5. Showing of facilities.** If the LESSEE notifies the LESSOR its intent of not extending the Term of this agreement, during the last six months of the Term or the extended Term then in effect, or the LESSOR notify the LESSEE their intention to sell, the LESSOR shall have the right to show the Unit to people interested in leasing or purchasing. The visits to show the Unit must be scheduled by the LESSOR within LESSEE' s working hours, with a previous communication to the LESSEE. Nevertheless, the LESSOR must previously coordinate with the LESSEE the time in which such visits shall take place, trying as far as

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possible, and pursuant to the particularities of the visit, that it takes place on the less prejudicial moment for the normal functioning of the LESSEE' s activities.

**9.6. Compliance with Law 7600.** The LESSOR acknowledges that the Unit complies with all applicable requirements of Law 7600 "Law for the equal opportunities of handicapped people". Any modification to the Unit, its accesses and parking spaces required to comply with the abovementioned law, shall be at LESSOR' s expense. LESSEE will be responsible at its expense that its internal design and its amendments comply with Law 7600.

## **10. ADVANCED TERMINATION OF THE CONTRACT**

The present contract may be terminated before the expiration of the term under the present terms and conditions:

**10.1 Bilateral advance termination:** Both parties may agree on terminating the lease at any time prior to its expiration date, for the purpose of which an addendum to the present contract shall be entered into by the parties, setting the conditions of such termination.

**10.2 Advanced termination by the Lessee:** Both parties agree that LESSEE may terminate this Lease before the expiration date, provided it gives Ninety (90) days prior written notice to the LESSOR in which case LESSEE will forfeit the security deposit corresponding to five (5) months of rent (US\$180,005.00) described in section five (5) above. Penalties will apply should the LESSEE terminate this contract before its term: 1. **TERMINATION BEFORE THE THIRD ANNIVERSARY:** should under any circumstances the LESSEE, terminate this contract before the THIRD anniversary of this lease, LESSEE shall be obligated for the rent and maintenance payments remaining through the end of the third year, plus 40% of the rent and maintenance payments for the fourth and fifth years. 2. **TERMINATION AFTER THE THIRD ANNIVERSARY:** should under any circumstances the LESSEE, terminate this contract after the third anniversary of this lease, LESSEE shall be obligated for 40% of the rent and maintenance payments remaining through the end of term. On the renewal or extension of the lease, the same terms and

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conditions will apply. Nevertheless, if LESSEE does not provide the required 90 day prior written notice, the rent for three additional months will be added to the fine.

If at the time of termination, LESSEE leaves The Unit showing damages that may prevent its regular use, and which are attributable to LESSEE, in addition to the aforementioned fines, LESSEE will be obliged to both cover the additional cost of repairs necessary to return The Unit to its original condition, and to pay for the monthly rent for as long as such repairs may extend. This period shall be agreed upon by the parties before commencing such repairs.

#### **11. GOODWILL RIGHTS.**

This Lease shall not give any goodwill right to LESSEE based on the development of The Unit, since such right is hereby expressly reserved for the LESSOR. LESSEE shall not be able to consider, as part of the goodwill of its establishment any of the rights derived from this Lease. Consequently, upon termination of the Lease, LESSEE shall not have any action against the LESSOR or its manager arising from such rights, or for the exploitation of commercial, mercantile or industrial rights.

#### **12. GOVERNING LAW**

This agreement shall be governed in all respects by, and shall be interpreted and construed in accordance with, the laws of the Republic of Costa Rica.

#### **13. STAMP TAX VALUE**

This contract is valued, for stamp tax purposes, at the amount of 0.5% of the amount of the lease payments of the term of the contract. Each party that registers the contract shall carry all expenses.

#### **14. ARBITRATION**

This Agreement shall be interpreted and governed in general by the laws of the Republic of Costa Rica and in particular by the General Urban and Suburban Lease Law in effect in Costa Rica. According to the Law "Ley sobre Resolución Alternativa de Conflictos y Promoción de la Paz Social" Number 8828, approved on December 4th., 1998 and published on January 14th, 1998 in the Official Newspaper "La Gaceta", particularly but not limited to article 22, it is accepted by the Parties that this Agreement shall be

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interpreted and governed by the laws of the Republic of Costa Rica. Any dispute or claim (“The Dispute”) with respect to the validity, construction or enforceability of this Agreement or arising out of or in relation to this Agreement, or for the breach hereof shall be initially resolved by the Parties in good faith within 30 Days (“the Initial Period”) from the day of notice by any of the Parties to the other Party as to the existence of a dispute or claim. If the Parties are unable to settle The Dispute within the period of time indicated before, the Dispute shall be finally settled by arbitration in Costa Rica by three arbitrators selected in accordance with the commercial arbitration rules of the Conciliation and Arbitration Center of the Costa Rican Chamber of Commerce. All rules of the Conciliation and Arbitration Center of the American Chamber of the of Commerce shall apply to the arbitration and the arbitration process and for purposes of article 19 of Law 8828 it is agreed that, under such Law, the arbitration shall be considered an arbitration of law. The arbitrators should decide which party should be liable for the payment of all costs, expenses and fees related to the arbitration. The arbitration award shall be well founded, in writing and shall be final and shall not be subject to appeals of any type, accepted by both parties. Such decision cannot be appealed, with the exemption of the revision and nullity appeals, according to the rules of the Costa Rican Chamber of Commerce.

## 15. MISCELLANEOUS

**15.1 Amendment:** Any and all agreements by the Parties to amend, change, extend, review or discharge this agreement, in whole or in part, shall be binding on the Parties, so long as such agreements shall be in writing and executed jointly by all the Parties.

**15.2 Generator:** LESSOR can provide a generator with capability to source emergency power to the Unit including all lighting and other electrical systems, life/safety systems, & VAC at a density ratio of approximately 1 (one) person per 9.3 (nine point three) square meters of office space. LESSEE will be responsible for proportionate management and fuel charges based upon size of the leased premise as a proportionate of the overall premises that may avail of the emergency power.

**15.3 VAC:** LESSOR will install air conditioning units to accommodate a density ratio of approximately 1 (one) person per 9.3 (nine point three) square meters of office space. The LESSEE will have control of

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VAC systems in the Unit. LESSOR will be responsible for maintenance of VAC equipment payable by LESSEE at \$0.68 per meter per month. LESSEE will pay the electric consumption. As of and starting on the thirteenth month of the Term, and until the expiration of the present contract, the monthly maintenance charge shall undergo a six percent (6%) yearly increase, using as basis for such increase the maintenance paid in the last month of the previous twelve month period.

#### **15.4 Option on Contiguous Space and Right of First Refusal**

Provided LESSEE is not in default beyond an applicable notice and cure period, LESSEE shall have the exclusive right to lease the remaining contiguous space on the first level of Building 3-1037 M2 (the Contiguous Space) during the first six months of the term of this lease at the current terms and conditions of the Original Space without cost to the LESSEE. During this six month period, LESSOR agrees to reserve the Contiguous Space and not lease the Contiguous Space to any third party. Beginning the seventh month of the term, LESSEE shall have the option to pay LESSOR \$8.75 M2 per month for the Contiguous Space during months seven through eighteen of the term of this lease to exclusively reserve the right to lease the Contiguous Space at the current terms and conditions of the Original Space. Should LESSEE choose not to exclusively reserve the space after the sixth month of the term, LESSEE will have the First Right of Refusal for the Contiguous Space during months seven through twelve of the term, which Tenant shall be required to exercise in the manner described as follows: Upon LESSOR' S delivery to LESSEE of a bona fide letter of intent to lease space to which LESSEE has a right of first refusal, LESSEE shall provide LESSOR written notice within three (3) business days of its intent to lease the same upon the same terms set forth in the letter of intent. Otherwise, the LESSEE' S right of first refusal as to the space set forth in the letter of intent shall be waived. Upon LESSEE' S exercise of its right of first refusal, this lease shall be amended to adjust the square footage and rent in accordance with the letter of intent;

Commencement of term and payment of Rent and Maintenance charges for the Contiguous Space shall begin when LESSEE exercises its right to lease the Contiguous Space. An addendum to the original lease

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with the current terms and conditions of the Original Space shall be executed extending the term of the Original Space to five years from the commencement date of the Contiguous Space to be coterminous with the Contiguous Space. Rent and Maintenance increment dates shall remain January 2<sup>nd</sup> through the new term.

LESSOR shall have the right at any time to show the Contiguous Space to prospective clients.

#### **15.4 Assignment of Lease Rights and Sublease**

Neither The Unit nor any portion of The Unit may be sublet, nor may this Lease be assigned or transferred, totally or partially, at any time by LESSEE, without the prior and express written consent of LESSOR, upon such terms and conditions that LESSOR may require.

LESSOR' S consent shall be required at all times and for any assignment or sublease (or permission granted for occupancy of the Unit) by LESSEE solely to a parent, subsidiary or successor corporation or any corporation with the same parent as LESSEE or any of the foregoing. In such case LESSOR must receive timely notice and a copy of the documentation thereof proving the same or a similar activity as performed by LESSEE and not prohibited by the Laws of Costa Rica and that in any way or manner will attempt or contradict the rulings of LESSOR, and LESSEE remains liable to LESSOR as in this Lease provided.

Whenever LESSOR' S consent, approval or other determination or promulgation is required or permitted under the Lease, LESSOR shall act reasonably and with due diligence in connection therewith.

**15.5 Entire Agreement:** This agreement constitutes and expresses the entire agreement of the Parties as to all the matters herein referred to. All previous discussions, promises, representations and understandings relative thereto among the Parties are thus inapplicable.

**15.6 Notices:** All notices or other communications required or permitted to be given hereunder shall

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be in writing and shall be delivered by hand in the main offices of each of the parties hereof, as follows:

- a) To LESSOR: at its management offices located in CCT Ultrapark, S.A. in La Aurora, Heredia. Nevertheless a copy thereof shall be delivered to:
- Lic. Luis Miguel Carballo  
Bufete Carballo & Carballo  
San José, Costa Rica
- b) To LESSEE: at The Unit located in The Park, in Lagunilla, Heredia. Nevertheless a copy thereof shall be sent by prepaid telex, cable or telecopy, or sent, postage prepaid, by registered, certified or express mail, or reputable overnight courier services and shall be deemed given when so telexed, cabled or telecopied, or if mailed, three days after mailing (one business day in the case of express mail or overnight courier services), to: \_\_\_\_\_.

**15.7 Schedules:** The schedules to this Agreement constitute an integral part hereof.

[remainder intentionally left blank]

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IN WITNESS WHEREOF, the Parties hereto have executed this agreement as of the date first above written.

**LESSEE:**

TRES – CIENTO DOS – SEISCIENTOS TREINTA Y CUATRO MIL DOSCIENTOS CUARENTA Y TRES, SOCIEDAD DE RESPONSABILIDAD LIMITADA to be named MIDLAND CREDIT MANAGEMENT CR, S.R.L.

/s/ Carolina Flores Bedoya

\_\_\_\_\_  
Name: Carolina Flores Bedoya

Title:

ENCORE CAPITAL GROUP, INC.

/s/ J. Brandon Black

\_\_\_\_\_  
Name: J. Brandon Black

Title: Chief Executive Officer

Attn: Director, Legal Affairs and Contracts  
3111 Camino Del Rio North, Suite 1300  
San Diego, CA 92108

**Approved by Legal**

**LESSOR:**

B.T. CONSULTING AND SERVICES, S.A.

/s/ Carlos Piedra J.

\_\_\_\_\_  
Name: Carlos Piedra J

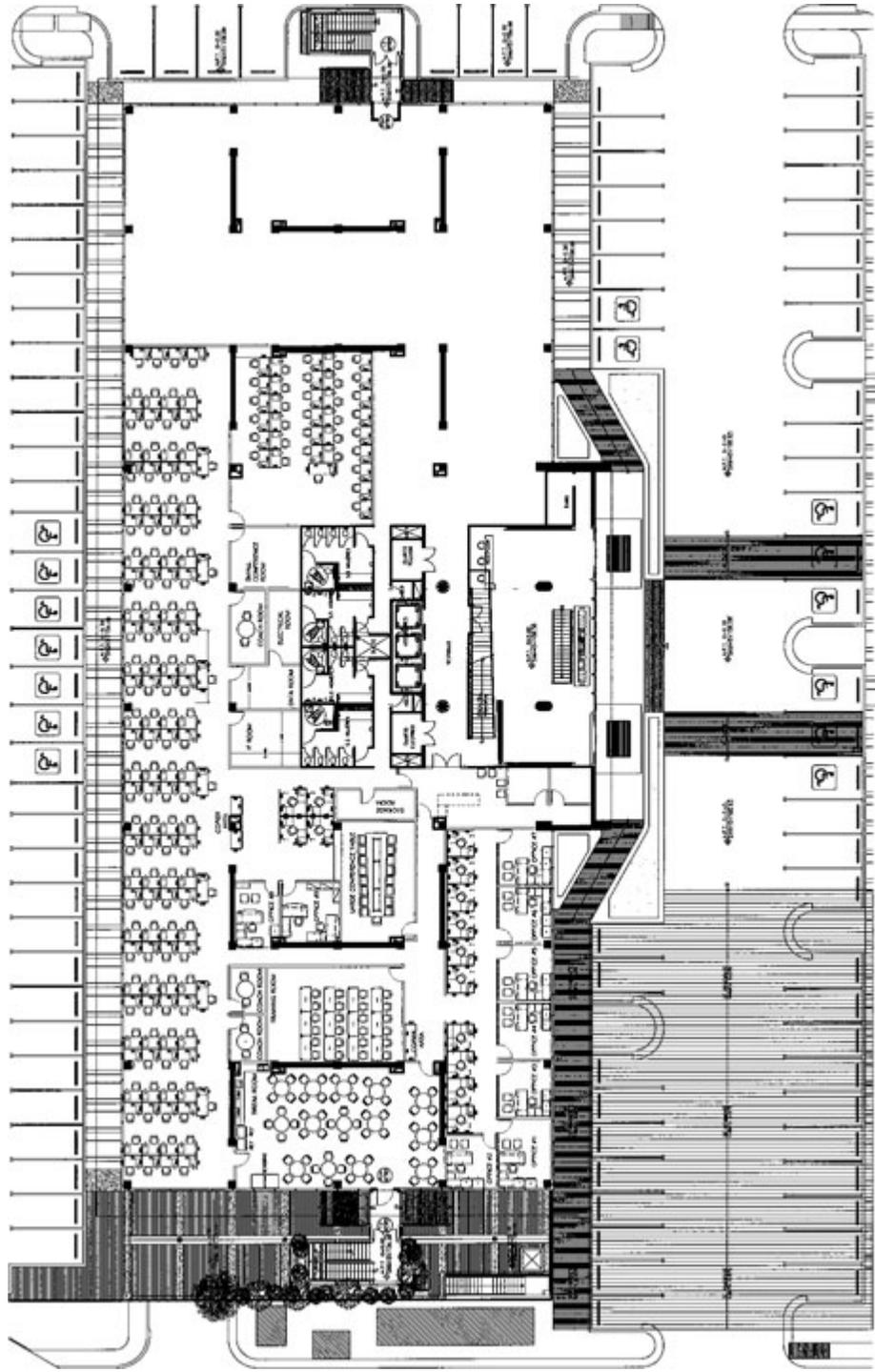
Title: General Manager

GRUPO ULTRA, S.A.

/s/ Carlos Piedra J.

\_\_\_\_\_  
Name: Carlos Piedra J.

Title: Legal Representative



ENCORE CAPITAL GROUP COSTA RICA  
PLANTA ARQUITECTONICA PRIMER NIVEL - EDIFICIO 3 Y 4

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## WORK LETTER

### General Conditions

All demising walls and restroom walls will be constructed by landlord and be continuous from floor to underside of structure above. These walls will be insulated.

All life safety and emergency code requirements shall be provided by landlord.

Landlord to provide access cards for pedestrian/car entry site access.

Open office areas shall have ceiling heights as high as possible but not to exceed 12' . Enclosed rooms ceiling height shall be 9.5' high.

Electrical and VAC density requirements based upon architectural and furniture layouts in Exhibit 1 will be charged to Tenant by Landlord should they be deemed above building density standards of 1 person for every 10 sq mtrs of rentable space, and Tenant shall bear the cost of such upgrades.

### **GENERAL REQUIREMENTS**

See space plan to validate counts, linear footages and areas of the items described below.

Doors–Entry doors are tempered glass with aluminum frames. Interior standard door with passage latch set.

Floor Finishes–Provide standard wood or rubber moulding wall base and building standard carpet.

Wall Finishes–All walls to be painted.

Ceiling System–Provide new 2' x 4' ceiling grid system and ceiling tiles.

Lighting–Provide standard 2' x 4' fluorescent light fixtures per lighting engineering plan as agreed upon by Tenant and Landlord.

Structural Bracing–structural bracing shall be plastered and painted.

Electrical Closets & I.T. rooms–Floors shall be polished and sealed concrete. Open ceilings. Standard doors

Break Room Area Casework–Provide plastic laminated lower cabinets as shown on plan.

### **OUTLINE SPECIFICATIONS**

#### **A. Guidelines for Proposed Landlord Improvement**

1. Contractor to comply with the current “general conditions” and building requirements as provided by the building owner.
2. Contractor shall be responsible for providing all work and materials in accordance with the latest local Building Codes and Ordinances.
3. The contractor shall immediately notify Tenant of any discrepancies in the Space Plan and of any field conditions, which may cause deviation from Space Plan
4. All materials to be new unless noted otherwise.
5. Contractor to provide all fire/emergency systems as required by all applicable codes. Fire/emergency systems include, but are not limited to, sprinkler modifications, fire extinguishers, audible alarms, sprinklers, smoke and heat detectors, strobes, and exit signs.

#### **B. Demolition**

1. Based on new construction, demolition will be kept to a minimum. Standard professional practice shall be maintained at all times.



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2. Any core drill drilling will require standard practices and safety measures for the construction and structural system.

### **C. Woodwork and Casework**

1. New casework to be of premium grade with flush overlay construction of wood and plastic laminate veneer.
2. Plastic laminate colors to be selected from Formica, Wilsonart, or Nevamar. Standard colors and patterns.
3. Provide all required bracing and blocking.

### **E. Partition Construction**

1. Framing @ Full Height Corridor Walls: Where walls run to the underside of the structure above provide 3-5/8" 25 Gauge steel studs at 16" o.c. with 1/2" type "X" GWB.
2. Framing @ Full Height Corridor Walls: Where walls run to the underside of the structure above provide 3-5/8" 25 Gauge steel studs at 16" o.c. with 1/2" type "X" GWB.
3. Framing @ Ceiling Height Walls: Where walls have suspended ceiling on both sides provide 3-5/8" 25 Gauge steel studs at 16" o.c. with 1/2" type "X" GWB to ACT ceiling unless noted otherwise.
4. Partial height wall bracing shall be 4 nested 20 Ga. studs as shown to structure above.
5. All partitions perpendicular to the exterior glass wall shall terminate at a vertical window mullion (if applicable per space plan) and if necessary returns will be 12" away from glass.
6. All Columns shall be plastered and painted.
7. Plumbing walls shall have correct stud width or furring for required drain and vent lines.

### **F. Ceilings**

1. Ceiling Suspension System: Landlord uses Armstrong ceiling system.
2. Ceiling Tiles: Landlord uses 1729 Armstrong fine finish.

### **G. Floor Finish**

1. Landlord standard is 26 oz. broad loop.
2. Landlord standard is ceramic tile.
3. Standard Base is wood or rubber molding.

### **H. Wall Finish**

1. Paint all walls, column and GWB ceiling/soffit surfaces. Steel columns and steel bracing will be left in primed and painted if found on site and not able to be enclosed in GWB.
2. Colors: Provide allowance for 1 neutral field color and up to 3 color accents.
3. Paint for the light surfaces to conform to the requirements of the "Architectural Specifications Manual" (AWS) for paint systems. Latex paint: AWS System 3-B "custom" (2 coat) grade light color paint finish on gypsum board surfaces.
4. Paint for the dark surfaces to conform to the requirements for the "Architectural Specifications Manual" (AWS) for paint systems. Latex paint: AWS System 3-B "custom" (2 coats) grade deep tone paint finish on gypsum board surfaces.
5. Provide semi-gloss sheen on all wet wall areas.
6. Landlord standard door frames are of natural wood finish.

**K. HVAC/ Mechanical/ Plumbing** (see General Conditions and 10:1 Ratio)

1. Provide a new tenant HVAC system with all materials, equipment and labor for complete and operable HVAC system. System shall be air balanced per building specifications.
2. Provide plumbing system for tenant requested kitchen area

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## **L. Lighting/ Electrical**

1. Provide occupancy as applicable by code and provide lighting override system controlled by Tenant operational hours at all open office areas.
2. Space shall be required within the office area for electrical equipment supporting the office.
3. Work stations shall be pre-wired.
4. Lighting
  - a. Standard Office Lighting at Ceiling Areas:  
2x4 recessed fluorescent parabolic fixtures shall be building standard.

## **M. Fire-Life Safety**

1. Building will have a fire sprinkler system in compliance with NFPA 13 per IBC 2003 Code Section 903.3.1.1. Tenant will be required to reconfigure fire sprinkler system as needed to complete their tenant improvement
2. Provide all emergency lighting, exit signs, fire alarm speakers, strobes and bells as required by code. Design and install the same in compliance with the Americans with Disabilities Act.
3. Provide fire rated doors and frames, fire extinguishers, etc. as required by applicable local codes and laws.

## **TENANT SPECIFIC UPGRADES**

### **General Conditions**

All life safety and emergency code requirements shall be provided by Landlord.

All doors within the Unit may be controlled by Tenant' s access control system.

Exterior windows shall have mini-blinds approved by Landlord.

All glass surfaces inside the unit may be covered in translucent film

Tenant shall be responsible for its internal voice and data communication cabling.

Tenant shall be responsible for furniture and installation thereof, along with hookup.

Tenant shall be responsible for its internal security system.

Tenant shall be responsible for any UPS (systems, cabling, & infrastructure) serving the Premises.

Tenant shall be responsible for electrical and VAC requirements within MDF, IDF, or other I.T. rooms within the Premises.

## **EXAMPLES OF SPACE UPGRADES AT TENANT EXPENSE**

See space plan to validate counts, linear footages and areas of the items described below. Costs associated with Tenant Specific Upgrades and upgrades requested from Landlord and costs for Electrical / VAC density upgrades shall be paid by Tenant to Landlord 50% in advance, 40% at mid-point of completion, and 10% balance upon delivery.

### **General**

Doors–Access card system. Steel Doors

Floor Finishes–Carpet tile or broadloom upgrades. Curved flooring patterns

Casework–Upper cabinets or furniture outside main break room

Ceilings–Gypsum ceiling affects

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Lighting–Decorative fixture(s) and down lighting. Dimmable lighting. Daylight sensors or other lighting controls

Sound insulation–Sound insulation in wall partitions.

Projector–Electrical conduit and cabling and mounting requirements for ceiling mount projectors, white boards, or wall mount flat screens. Tenant to provide projector, white boards, and flat screens.

Floor Boxes–Electrical conduit and cabling, hardware, and civil works for electrical / telecommunication floor boxes

HVAC–Separate zone(s) for any individual rooms

I.T. / Server Rooms–VAC and electrical requirements.

Furniture–Electrical connection of furniture from junction box above ceiling or on wall, and internal electrical cabling of furniture

**OUTLINE SPECIFICATIONS:** (Additions/upgrades that would be at Tenant' s expense.)

**A. Miscellaneous Requirements**

1. Tenant shall supply all furniture and system furniture. Contractor shall coordinate tenant and vendor as needed.
2. All tenant access control systems shall be installed by the tenant at the tenant' s expense.

**B. HVAC/ Mechanical/ Plumbing**

1. Final requirements for I.T. rooms to be designated and paid by Tenant.

**C. Lighting/Electrical**

1. Tenant shall supply all voice data cabling. Contractor shall coordinate tenant and vendor as needed and supply mud rings and pull strings.
2. Tenant may also require UPS (systems, cabling, & infrastructure), TVSS or emergency back up power in other locations.
3. Final requirements for I.T. rooms to be designated and paid by Tenant.

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**Exhibit Three–Ultrapark II Bylaws**

**INTERNAL REGULATIONS OF OPERATION OF THE  
B.T CONSULTING AND SERVICES S.A (ULTRAPARK II) FREE ZONE**

***CHAPTER I: GENERAL PROVISIONS***

**Article 1. Introduction**

The B.T CONSULTING AND SERVICES S.A (Ultrapark II) Free Zone is a complex composed of offices units to be sold or leased to companies beneficiaries under the Free Zone Regime, in accordance with Article 17, subsection ch) of Law number 7210 of November 23, 1990, and which can, in the case of Regime beneficiaries, introduce goods of national or foreign origin into that zone, without paying any duties or taxes during a process, a marketing procedure or a sale of services. It is also a space that has no resident population, and received authorization, in accordance with Executive Resolution number 505-2008, August 7, 2008, and Article 3 of Session number 177-2006 of the Board of Directors of Corporación de la Zona Franca de Exportation of October 30, 2006 to be managed by B.T CONSULTING AND SERVICES SOCIEDAD ANÓNIMA, corporate identification number 3-101-277443, and operate as such, this Park will establish commercial and service companies.

**Article 2. Generalities**

These Regulations sets forth the rules and procedures in connection with the operational functioning of the Park as well as the various obligations of management and the companies that own or lease industrial units.

**Article 3. Scope**

The application and interpretation of these Regulations must seek the best functioning and operation of the Park in all scopes, as well as the appropriate customs control for the entrance and exit of goods, vehicles and persons. These Regulations are an integral part of the leases or the sales agreements, and are binding to the companies established there now or which may be established there in the future, as well as to visitors who used the Park on a temporary or a

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permanent basis. The failure to comply with these Regulations shall be considered a breach of the leases or agreements.

#### **Article 4. Definitions**

**Customs:** The administrative technical office in charge of customs proceedings, control over the entrance, stay and exit of merchandises, and coordination of any customs activities developed in its zone of territorial jurisdiction.

**Control Customs Office:** Customs office that exercises control over the merchandises subject matter of the commercial movement.

**Public Function Aid:** Individual or legal entity that usually conducts operations of customs nature.

**General Customs Directorate:** National highest body with regard to customs matters.

**The Park:** The Ultrapark II Park and Free Zone, located in Lagunilla de Heredia.

**Companies:** The companies established within the Park, beneficiaries under the Free Zone Regime.

**Management:** The company B.T CONSULTING AND SERVICES S.A

**Free Zone Regime Law:** Law number 7210 of November 23, 1990, as amended, and it' s Regulations.

**General Customs Law:** Law number 7557 of November 8, 1995, and its Regulations.

**Materials and Merchandises:** All those that as a result of the activities of the companies may be incorporated to the Free Zone Regime.

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**Personnel:** The administrative personnel, executives and employees that work for the various companies established within the B.T. Consulting and Services S.A Industrial Park and Free Zone.

**PROCOMER:** Promotora de Comercio Exterior de Costa Rica.

**Regulations:** These Internal Regulations of Operation of the B.T. Consulting and Services S.A and Free Zone.

**Visitors:** Any individual who may visit the B.T. Consulting and Services S.A Park and Free Zone for any reason.

**Free Zone:** Geographical area of a country that is considered outside its customs territory, for the establishment of a group of companies that can introduce goods into that Zone without paying duties and taxes.

## ***CHAPTER II: OBLIGATIONS***

### **Article 5. Obligations of the Park**

The B.T. Consulting and Services S.A Park and Free Zone has the following obligations:

1. To give notice to the Control Customs Office and to PROCOMER of the occurrence of any change of location, lease of new warehouses or any abnormal movement of the companies installed within the Park.
2. To enforce the circular notes issued by the General Customs Directorate that may concern it as a Public Customs Function Aid.
3. Upon the cease of operations of a company installed within the Park, to give notice forthwith to the customs office, the General Customs Directorate and PROCOMER.

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4. To provide the General Customs Directorate with a customs office and also the facilities and assistance required by it to comply its responsibilities concerning the supervision and inspection of the materials and merchandises going in and out the Free Zone.
  5. To provide the customs office with any telephone lines required for communication.
  6. To provide the customs office with equipment, furniture and any services required for its normal operation.
  7. To establish the controls necessary for the entrance and exit of merchandises, persons, vehicles and contracting, as well as in connection with any other rules established by the applicable laws and regulations.
  8. To provide the Park with surveillance personnel to guarantee the safety of goods and persons within the Park as well as to enforce the aforesaid provisions.
  9. To issue Regulations to regulate the functioning and operation of the Park, as well as to communicate them to users and post them in a visible place within the Park. Likewise, to conduct training activities directed to the companies, beneficiaries or not, installed within the park and those in charge of surveillance.
  10. To maintain the access to the Park and the ways within the Park in adequate condition.
  11. To implement the project in strict compliance with the terms of the Executive Resolution.
  12. To efficiently provide to the companies, beneficiaries or not, installed within the Park, services that are basic to their operation (electric power, water, electric lighting, telephone, hydrants, sewerage system, etc.).
  13. To see to the correct application of the laws and regulations related to the management and operation of the Park.
  14. To abide by any other applicable legal and regulatory provisions as well as those issued by PROCOMER and the General Customs Directorate in their respective fields of competence.

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## **Article 6. Obligations of the Beneficiaries**

The Free Zone Regime beneficiaries established within the Park shall have the following obligations:

1. To report to the Management any change or situation that may affect the undertakings acquired with the country, PROCOMER, the General Customs Directorate, the Park Management and other authorities, as appropriate.
2. The Companies shall be responsible to maintain the industrial units in the best physical condition in accordance with their original design (painting, front, fences, signs, etc.), including the green areas of each land.
3. To report to Management, by means of a preliminary project, of any complementary work, modification or improvements that the Company may wish to build in the industrial units, in order to receive the approval and authorization of the Park Management.
4. To abide by the provisions of the Free Zone Regime Law, the General Customs Law, as well as all those Laws in force not previously regulated, which may be necessary in one way or the other to secure the adequate functioning and operation of the Regime beneficiary Company.
5. To comply with all the basic obligations of Public Function Aid.
6. Each Company shall provide, as deemed pertaining, a duly conditioned location for the employees to eat their meals. No person can take his/her food to sidewalks or to the streets or to green areas. The supervisors of the personnel of each Company shall see to the enforcement of and full compliance with this subsection.
7. To contribute to the maintenance of the environment by installing the equipment necessary to prevent atmospheric contamination and procure the welfare and health of the workers and persons installed within the Park.

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8. To abide by the provisions of Article 16 of Law 7210, as well as those of Chapter XIII of the Regulations with regard to the procedure for wastage, byproducts and waste generated by the productive process.
  9. To identify their personnel by means of identification cards. Such cards shall at least specify the name of the person, the logo of the Company and the picture of that individual. Likewise, the vehicles of the employees shall bear a special decal which shall be requested by the beneficiary companies to Management for the purpose of their identification at the surveillance post.

***CHAPTER III: SYSTEM OF CONTROL OF THE ENTRANCE AND  
EXIT OF GOODS, VEHICLES AND PERSONS***

**Article 7. Customs Control System**

In view of the fact that the Park is a Primary Customs Zone where a group of Companies are established and can introduce goods into that zone without paying duties or taxes on them, all Companies established shall be subject to customs controls over the entrance and exits of materials and merchandises, persons and vehicles, as set forth in Articles 14 and 19, subsection f) of Law 7210 and Article 22 of the General Customs Law. According to the geographical location of the Park, the Santamaria Customs Office shall have customs jurisdiction.

**Article 8. Entrance and Exit of Goods**

The entrance, arrival or exit of materials and merchandises into and from the Park shall take place at the locations allocated to that purpose. Transportation units and vehicles shall be taken to the Customs office for the appropriate Customs Control. The information required in accordance with Article 64 of the Regulations to the Law 7210 shall be provided, except for donations and local purchases, whether taxed or exempted.

The loading or unloading of the Merchandises shall proceed after the legal receipt of the transportation unit or vehicle.

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The Park shall have a surveillance force, in charge of guaranteeing the security and control of the Materials and Merchandises to be traded and which are within national territory without payment of duties and taxes.

**Article 9. Entrance and Exit of Vehicles**

The entrance, the arrival or the exit of the vehicles of visitors, transportation vehicles or vehicles of employees into and from the Park shall take place at the locations allocated to that purpose and in accordance with the appropriate schedule. In addition to the aspects indicated in Article 6 subsection 9 and in the foregoing Article, the drivers of the vehicles that are not members of the personnel of the companies shall identify themselves at the surveillance or control post, for purposes of the effective registration of the vehicles and to indicate the reasons or motive of the visit, indicating the following to the security officer: name of driver, vehicle' s plate number, number of identity card or passport of the driver, origin, address, reason for entrance, entrance and exit time, and Company being visited.

The following vehicles shall obtain a special permit and the authorization of the Park' s authorities before entering:

- any light or heavy vehicles necessary for the development or operation of the Park, that is, those required for transportation of raw materials, the components or the finished products under the Customs Control System of the Park,
- vehicles that belong to the government entities responsible for the Regime.

The heavy vehicles that provide the services of transportation of raw materials, the components or the finished products shall park in the loading zone or platform of the respective Company. The parking of heavy vehicles in public roads is prohibited. The demarcations for the parking of light vehicles do not apply to heavy vehicles. If there is any mass movement of vehicles at the loading platform of a Company, thus making it temporarily insufficient, Management shall indicate to the Companies the areas where heavy vehicles can park for the time in question.

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The surveillance post in accordance with Management' s direction reserves the right of admission whenever it may deem it convenient or any doubt arises. Likewise, Management can prevent any vehicle from leaving the Park after making the inspection, based on the aforesaid motives.

The vehicles entering the Park shall respect the transit signs stipulated by the Ministry of Public Works and Transportation, as well as those areas allocated to or exclusively demarked for parking.

Management will reserve the wright to tow-away a vehicle parked in unauthorized space, the owner of the vehicle should pay the expense charges plus a fine of fifty dollars, that can be charged it to the condominium, Lessee or owner of title of the condominium parcel who is a visitor or employee.

#### **Article 10. Entrance and Exit of Persons**

The entrance and exit of visitors or employees into and from the Industrial Park shall take place at the places allocated for the purpose and in accordance with the appropriate schedule. In addition to the aspects indicated in Article 6, subsection 9, visitors shall identify themselves at the surveillance or control post, for their effective registration and to indicate the reasons or motives of the visit.

The Companies installed within the Park and the Park Management shall provide their employees with an identification card containing at least the following information: name of the Company, full name of the worker, identity card number, recent photo, signature of bearer and signature of authorizing executive.

The personnel of the Companies shall have free access to the Park during the business hours established for the purpose by said Companies. However, when entering or exiting through the predetermined entrance and exit areas, they shall wear in a visible place their identification card, mentioned in the foregoing paragraph. The Companies shall be responsible of submitting the lists of their work schedules to the Park Management, as well as the names of the workers authorized to enter the Park.

Unless they have a specific authorization of the Park Management, street vendors within the Park shall be prohibited.

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The surveillance post in accordance with Management' s directions reserves the right of admission whenever it is deemed convenient or when any doubt may arise. Likewise, the post can prevent any person from leaving the Park after making the inspection, based on the aforesaid motives.

#### ***CHAPTER IV: PARK SERVICES***

##### **Article 11. Basic Services**

The Park shall provide the basic services of electric power, water, electric lighting, telephone, telecommunications, hydrants, sewerage system, and surveillance services, among others, which are necessary for the operation and good functioning of the Companies. In addition, the Park has a full network of streets and sidewalks for pedestrians, as well as the platforms for vehicles.

Management shall not be responsible for the interruption of those basic services specified in the foregoing paragraph which are provided by third parties, such as the case of such public utilities like electric power, water or telecommunications.

If the Park Management has previous knowledge that any of these services is going to be interrupted, it shall report this to the Companies in order that they may take the appropriate provisions.

Likewise, Management shall see to the maintenance and cleanliness of all the common areas, being understood as the main accesses to the Park and the recreational zones for the use of the workers.

##### **Article 12. Garbage Collection Service**

Management shall coordinate the acquisition of garbage and waste collection services by means of the services of the Municipal Government of Heredia or a private company.

The Companies established within the Park are required to use the system for collection of any waste that is not part of the productive process of the Companies. Therefore, it is absolutely

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prohibited to the Companies or to individuals:

1. to dump or accumulate solid waste at sites not specifically authorized for that purpose;
2. to use inadequate means to transport or accumulate solid waste; and
3. to proceed to use, treat or finally dispose of such waste by means of systems that are not approved by the Park Management, in accordance with the standards established by the Ministry of Health, the Municipal Government of Heredia, or by a private company, if this is the one providing said service.

The Park has provided containers for solid waste, which are located in common green areas and strategic sites. Management shall have the responsibility of keeping said containers in optimal condition. However, the Companies have to collaborate by promoting their use and care among their employees.

The waste generated by the operation of each Company shall be deposited in easily movable closed containers provided by the Companies themselves and located in the sidewalks only on garbage collection days.

### **Article 13. Industrial Waste**

The Park does not have a service of collection of industrial waste. Therefore, the Companies installed within the Park are solely and exclusively responsible for the collection of such waste.

Based on the above, the free flow of industrial waste waters is prohibited, in particular in the following cases:

- a) The discharge of industrial waste water to the sanitary sewerage system is prohibited. Management can authorize said discharge when previously authorized by the Health authorities, and following their instructions directed to make said discharge innocuous, prevent any damage to the draining system or prevent the contamination of water ways or sources, the soil and the air, or any other risk to human health that may be derived from an inadequate final drainage of the sewers.
- b) It is absolutely prohibited to discharge of sewage, waste waters and industrial residuals into

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the rainwater sewers.

**Article 14. Wastage, Waste and Byproducts**

Those Companies that dispose of wastage, byproducts and waste during their productive process shall follow the procedure established in Article 16 of Law 7210, as well as the provisions of Chapter XIII of the Regulations. Garbage cannot be accumulated or dump in areas not authorized for the purpose.

***CHAPTER V: CONSTRUCTIONS***

**Article 15. Constructions**

Before making any complementary construction, modifications, improvements or additional facilities (electrical, mechanical, etc.) at their respective industrial units, the Companies shall submit a preliminary project of said constructions for the approval of the Management. This preliminary project has to include all the relevant information, such as the architectural design, their location within the industrial unit or the land, connections to Park services, as well as all other requirements established by public regulatory agencies to grant the respective permits, in accordance with the applicable laws and regulations.

Management reserves the right to make suggestions and propose changes before approving the plans within a term of seven business days following the initial presentation of the plans for approval thereof.

The Companies can submit the construction plans to the public regulatory agencies to obtain the constructions permits only after receiving Management' s written approval of said plans.

Once the plans have been duly approved by the Park Management as well as the public regulatory agencies, the respective Company shall submit a final set of the plans to the Park Management, which shall be withheld by it for purposes of verification and supervision during the construction process.

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**Article 16. Fences**

The construction of mesh fences and live windbreaks up to three meters high in the perimeters of each lot shall be permitted with Management' s prior written consent. The construction of solid barriers is strictly prohibited and not permitted under any circumstance.

**Article 17. Signs**

The placement of any type of sign by the Companies established within the Park shall have the prior written consent of the Park Management. In any case, the signs shall be placed within the lots of each Company, and have the appropriate size and design.

The signs can be placed directly on the building and preferably on the upper portion of its facade.

**Article 18. Painting**

The Companies shall be responsible for the maintenance of the painting of their office units and expansions, in order to prevent the deterioration of the image of the Park.

The Companies cannot paint their office units in colors other than those originally used and approved by the Park Management, unless they have Management' s prior written consent for it. Likewise, the color of the painting used in any complementary constructions built by the Companies shall have Management' s prior written consent.

**Article 19. Facade of the Buildings**

The Companies cannot change the facade of the buildings, unless they have the prior written consent of the Park Management,

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## *CHAPTER VI: MAINTENANCE*

### **Article 20. Areas to be maintained by the Companies**

The maintenance of the industrial units occupied by each Company shall be the exclusive responsibility of the respective Company, including their service and administrative areas.

The Companies shall be responsible for the adequate maintenance of parking zones and the decoration of the industrial units occupied by them, in particular the areas of slopes and gardens, to prevent their deterioration or destruction.

## *CHAPTER VII: HEALTH AND ENVIRONMENTAL PROTECTION*

### **Article 21. Authorization of the Ministry of Health**

All individual or legal entities that wish to establish an industry within the Park shall have the appropriate authorization of the Ministry of Health to install, operate, and modify in any way the originally approved activity. They shall also be responsible for obtaining any other necessary authorization from the appropriate regulatory agencies to conduct their activities.

### **Article 22. Restrictions to Companies**

All the Companies are required to contribute to the promotion and maintenance of the conditions within natural and artificial environments that permit to meet the vital and health needs of the resident population, as well as to promote the good habits and hygiene practices of their workers.

The operation within the Park of establishments that constitute an inconvenient, dangerous or unhealthy element for the environment, due to the maintenance conditions of the industrial units, the systems employed in the performance of their operations, the procedure for disposal of waste materials and fumes, or the noise produced by the operation shall not be permitted. Therefore, no Company, which activities or the conditions under which they are conducted, or which materials or waste products employed, manufactured or released, or which storage of toxic, corrosive, flammable or explosive substances, may originate effects that may threaten or damage the health

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of the workers or the environment or other Companies, or which may effectively cause immediate and severe damage to the lives of the workers and neighbors, can be established or operate within the Park.

Those Companies, which activity may be inconvenient, unhealthy or dangerous, and those that operate in violation of the applicable environmental and health legislation and regulations, can be closed by the environmental and health authorities without liability for the Park Management.

The owners, managers and legal representatives of the Companies are required to follow the orders or instructions of the environmental and health authorities directed to end or mitigate any unhealthy, dangerous or inconvenient factors that may exist.

The Companies cannot undertake activities other than those originally proposed. In order to modify these activities, the Companies require the prior written consent of the Park Management.

#### **Article 23. Conditioning of the Industrial Units**

The Companies established within the Park shall be required to provide the industrial units occupied by them with the equipment or systems necessary to prevent discharges, emissions, fumes or noises produced by their industrial activities, which might contribute to atmospheric pollution.

Likewise, the Companies are required to have adequate systems to prevent the contamination of the work inner environment and prevent risks or hazards to the health and welfare of their personnel and those of third parties.

#### **Article 24. General Health Law**

All aspects related to the environmental protection and the health of the population shall be governed by the orders issued by the Ministry of Health and by the provisions of the General Health Law.

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## ***CHAPTER VIII: SOCIAL SECURITY AND WORK RELATIONSHIPS***

### **Article 25. The Reporting Duty of Companies**

Companies are required to submit to Management a complete list of their personnel and report any termination, resignation and employment of workers within five calendar days after they occur, providing the information necessary for their registration and control by Management, as well as to withdraw from circulation the identification cards of those employees terminated or who have resigned for any reason.

Companies shall also give to Management a list of the names of the persons within each Company that can authorize the entrance of vehicles of visitors or other persons into the Park.

### **Article 26. Work and Safety Standards**

Companies are required to comply with all the regulatory and legal provisions related to safety and hygiene at work, to strengthen as much as possible good work relationships. In particular, they are required to provide employees with the insurance coverage stipulated in our Labor Code.

The Companies shall comply with the applicable work standards and the provisions established by the appropriate agencies.

## ***CHAPTER IX: CONTROLS***

### **Article 27. Control of the Personnel of the Companies**

The Companies are required to establish the control systems they may deem convenient to prevent their employees to use or unduly remove equipment, materials, components, finished products, etc., at or from their industrial units, thus causing severe problems with Customs Control to the Company and the Park Management.

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Management recommends personnel to bring only their lunchbox in a small bag that can be easily inspected at the time they leave work, and the Company has to be very strict in complying with these provisions.

For this purpose, Management reserves the right to conduct additional inspections through its security personnel, if considered necessary.

The personnel of the Companies or the security personnel of the Park are required to report to Management any irregularity they may detect in this sense, for the good progress of the Companies, their prestige and that of the Park.

**Article 28. Surveillance and Control Posts**

Management shall provide general surveillance and security services for the Park twenty-four hours a day.

The Companies can freely retain the services of private security companies for the surveillance and protection of their facilities in particular, which shall be paid by the Companies themselves, and the procurement of the services and the operation shall be performed in coordination with Management to prevent accidents or duplications.

The Park shall have the surveillance and control posts and the surveillance personnel that may be required by Customs Management.

The Companies established within the Park shall comply with the regulations set forth by the Customs Management within its facilities.

Park surveillance shall be under the responsibility of Management, having the authority to supervise the following:

1. Compliance with the provisions on entrance, duration of stay and exit of individuals, vehicles and goods;
2. Protection of individuals;
3. Protection of the assets of the Park and the Companies;

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4. Compliance with the provisions on environmental protection and safety;
  5. Any other functions that the Management may assign to it in connection with surveillance and security activities.

## ***CHAPTER X: FINAL PROVISIONS***

### **Article 29. Amendments to the Regulations and Communication Thereof to the Companies**

These Regulations do not exclude the rest of the legal, regulatory or contractual obligations applicable to the Companies established within the Park.

These Regulations can be amended or added by Management in accordance with the needs of the Park to appropriately conduct the activities to be developed within the Park, provided, however, that said amendment or addition does not cause any damages to the Companies previously established within the Park.

The Companies that may consider themselves injured by the addition or amendment to the Regulations shall indicate this to Management within eight business days following written notice of the addition or amendment. If they fail to do it within said term, it shall be assumed that they are waiving this right and it shall be understood that no damages have been caused to the Company.

In the event of opposition to any addition or amendment by one or more Companies, the additions or amendments disputed shall not be implemented until the Companies that have expressed their opposition consent to their implementation.

The provisions of the foregoing paragraph shall not be applicable in the case that the addition or amendment does not arise out of the discretion of Management, but as consequence of a change in the applicable legislation or regulations, or as a result of general directions or orders mandatory for Management and/or the Companies.



**LUIS MIGUEL CARBALLO PEREZ, NOTARIO CON OFICINA ABIERTA EN LA CIUDAD DE SAN JOSE,**

**CERTIFICA:** Que con vista en la inscripción al Registro Público en la Sección Mercantil al tomo mil trescientos cuarenta y cinco, folio ciento cincuenta y nueve, asiento ciento setenta se encuentra inscrita la constitución de la compañía **ATARDECER OSCURO SOCIEDAD ANONIMA**, cédula jurídica número tres-ciento uno-doscientos setenta y siete mil cuatrocientos cuarenta y tres, domiciliada en La Aurora de Heredia Zona Franca Ultrapark, edificio seis B, oficina uno. Que en el mismo Registro y sección al tomo mil quinientos ochenta y cinco, folio ciento cincuenta y cuatro, asiento doscientos uno se encuentra inscrito el documento donde se modifica la razón social de la compañía para que en adelante se llame **B.T. CONSULTING AND SERVICES SOCIEDAD ANONIMA**, número de cédula jurídica tres-ciento uno-doscientos setenta y siete mil cuatrocientos cuarenta y tres. Que en el mismo Registro y sección al tomo mil seiscientos veintidós, folio ciento veintitrés, asiento ciento diecinueve, le corresponde al **Presidente y al Secretario la representación Judicial y Extrajudicial de la compañía con facultades de Apoderados Generalísimos sin limite de suma, de acuerdo a lo establecido en el artículo mil doscientos cincuenta y tres del Código Civil**, pudiendo actuar conjunta o separadamente, podrán otorgar o sustituir dichos poderes en personas que sean miembros o no de la Junta Directiva en forma parcial o total, general o especial, revocarlos y hacerlos de nuevo sin perderlos en ningún momento de la compañía **B.T. CONSULTING AND SERVICES SOCIEDAD ANONIMA**. Asimismo en el mismo Registro, Sección de personas jurídicas al tomo quinientos setenta y tres, asiento ochenta mil cuarenta y siete, consecutivo cero uno, el cargo de **PRESIDENTE** lo ejerce el señor **CARLOS PIEDRA JURADO**, mayor, casado una vez, Perito Agrícola, vecino de Curridabat, de Pops cien metros al este, trescientos al norte, cien al este y cincuenta al norte, cédula de identidad número tres-doscientos doce-ciento cuarenta y dos. El suscrito notario **da fe** tanto que la sociedad como los nombramientos están vigentes a esta fecha. Lo omitido no modifica, altera, condiciona, restringe ni desvirtúa lo transcrito. Certifico en relación. \*\*\*\*\*



Se extiende la presente certificación número **ciento treinta y cuatro-dos mil once**, a las nueve horas del día diecinueve de setiembre del dos mil once a solicitud del señor Carlos Piedra Jurado. Dada en la ciudad de San José. Se agregan y cancelan los timbres de ley.



/s/ Luis Miguel Carballo Perez

**LUIS MIGUEL CARBALLO PEREZ**



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**CERTIFICACIÓN NÚMERO CINCUENTA Y CINCO-DOS MIL ONCE: VICENTE AURELIO LINES FOURNIER, NOTARIO PÚBLICO CON OFICINA ABIERTA EN EL BUFETE ARIAS & MUÑOZ, CENTRO EMPRESARIAL FÓRUM, EDIFICIO C, OFICINA UNO C UNO, POZOS DE SANTA ANA, SAN JOSÉ, DE CONFORMIDAD CON EL CÓDIGO NOTARIAL CERTIFICO:** Con vista en el Registro de Personas Jurídicas del Registro Nacional de la República de Costa Rica, bajo la cédula de persona jurídica número tres-ciento dos-seiscientos treinta y cuatro mil doscientos cuarenta y tres, tomo dos mil once, asiento ciento nueve mil seiscientos cuarenta y cinco: **PRIMERO:** La existencia y vigencia actuales de la sociedad denominada **“TRES-CIENTO DOS-SEISCIENTOS TREINTA Y CUATRO MIL DOSCIENTOS CUARENTA Y TRES SOCIEDAD DE RESPONSABILIDAD LIMITADA”**, con cédula de persona jurídica número tres-ciento dos-seiscientos treinta y cuatro mil doscientos cuarenta y tres, con domicilio en Centro Empresarial Fórum, Edificio C, Oficina uno C uno, en Pozos, Santa Ana, San José. **SEGUNDO:** Que con vista en la referida cédula jurídica, la representación judicial y extrajudicial de la sociedad corresponde tanto al **GERENTE** como al **SUBGERENTE**, quienes tienen facultades de **APODERADOS GENERALÍSIMOS SIN LÍMITE DE SUMA**, conforme los dispone el artículo mil doscientos cincuenta y tres del Código Civil, pudiendo actuar conjunta o individualmente. El gerente y subgerente podrán además sustituir su mandato, reservándose siempre el ejercicio del mismo, revocar sustituciones y hacer otras de nuevo, sin perder nunca su poder, así como otorgar y revocar toda clase de fianzas y poderes incluyendo judiciales y los necesarios para operar cuentas bancarias, sin perjuicio de los poderes que por su parte podrá otorgar la Asamblea de Cuotistas. **TERCERO:** Que la señora **CAROLINA FLORES BEDOYA**, mayor de edad, casada una vez, abogada, cédula de identidad número uno-ochocientos sesenta-quinientos nueve, vecina de Escazú, ciento veinticinco metros norte del Restaurante Tiquicia es **GERENTE** de la compañía. El suscrito Notario advierte bajo su responsabilidad que lo anterior se trata de una transcripción en lo conducente y que lo omitido no modifica, altera, condiciona, restringe ni desvirtúa lo transcrito. **ES CONFORME.** Se agregan y cancelan las especies de ley. Expido la presente certificación a solicitud de **TRES-CIENTO DOS-SEISCIENTOS TREINTA Y CUATRO MIL DOSCIENTOS CUARENTA Y TRES SOCIEDAD DE RESPONSABILIDAD LIMITADA** San José, a las once horas del veintiocho de setiembre de dos mil once.



/s/ Vicente Aurelio Lines Fournier  
**VICENTE AURELIO LINES FOURNIER**



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**Subsidiaries**

<b>Name</b>	<b>Jurisdiction of Incorporation or Formation</b>
Midland Credit Management, Inc.	Kansas
MRC Receivables Corporation	Delaware
Midland Funding NCC-2 Corporation	Delaware
Midland Portfolio Services, Inc.	Delaware
Midland Funding LLC	Delaware
Ascension Capital Group, Inc.	Delaware
Midland India LLC	Minnesota
Midland Credit Management India Private Limited	Delhi, India
Midland International LLC	Delaware
Midland Credit Management (Mauritius) Ltd	Mauritius
MCM Midland Management Costa Rica, S.r.L.	Costa Rica

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-130362 and 333-167074) and Form S-8 (Nos. 333-125340, 333-125341, 333-125342 and 333-160042), pertaining to the Encore Capital Group, Inc. 1999 Equity Participation Plan, the Midland Credit Management, Inc. Executive Nonqualified Excess Plan and the Encore Capital Group 2005 Stock Incentive Plan, as well as our reports dated February 9, 2012, relating to the consolidated financial statements of Encore Capital Group, Inc. and the effectiveness of Encore Capital Group, Inc.' s internal control over financial reporting which appears in this Form 10-K.

/s/ BDO USA, LLP

San Diego, California  
February 9, 2012

SPECIAL POWER OF ATTORNEY

The undersigned constitutes and appoints J. Brandon Black and Paul Grinberg, and each of them, his true and lawful attorney-in-fact and agent with full power of substitution and re-substitution, for him and in his name, place and stead, in any and all capacities, to sign the Annual Report on Form 10-K for the fiscal year ended December 31, 2011, for filing with the Securities and Exchange Commission by Encore Capital Group, Inc., a Delaware corporation, together with any and all amendments to such Form 10-K, and to file the same with all exhibits thereto, and all documents in connection therewith, with the Securities and Exchange Commission, granting to such attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully and to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or each of them, may lawfully do or cause to be done by virtue hereof.

February 7, 2012	/S/ GEORGE LUND <hr/> <b>George Lund</b>
February 7, 2012	/S/ RICHARD A. MANDELL <hr/> <b>Richard A. Mandell</b>
February 7, 2012	/S/ WILLEM MESDAG <hr/> <b>Willem Mesdag</b>
February 7, 2012	/S/ FRANCIS E. QUINLAN <hr/> <b>Francis E. Quinlan</b>
February 7, 2012	/S/ NORMAN R. SORENSEN <hr/> <b>Norman R. Sorensen</b>
February 7, 2012	/S/ J. CHRISTOPHER TEETS <hr/> <b>J. Christopher Teets</b>
February 7, 2012	/S/ H RONALD WEISSMAN <hr/> <b>H Ronald Weissman</b>
February 7, 2012	/S/ WARREN WILCOX <hr/> <b>Warren Wilcox</b>

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER**

I, J. Brandon Black, certify that:

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

By:           /s/ J. BRANDON BLACK          

**J. Brandon Black**

**President and Chief Executive Officer**

Date: February 9, 2012



**ENCORE CAPITAL GROUP, INC.**

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

In connection with the Annual Report of Encore Capital Group, Inc. (the "Company") on Form 10-K for the year ended December 31, 2011 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of his knowledge:

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

/s/ J. BRANDON BLACK

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**J. Brandon Black**  
**President and Chief Executive Officer**

February 9, 2012

/s/ PAUL GRINBERG

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

February 9, 2012

This certification accompanies the above described Report and is being furnished pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not be deemed filed as part of the Report.

## Derivatives And Hedging Instruments

12 Months Ended  
Dec. 31, 2011

[Derivatives And Hedging  
Instruments \[Abstract\]](#)

[Derivatives And Hedging  
Instruments](#)

### **Note 3: Derivatives and Hedging Instruments**

The Company uses derivative instruments to manage risks related to interest rates and foreign currency. The Company's outstanding interest rate swap contracts and foreign currency exchange contracts qualify for hedge accounting treatment under the authoritative guidance for derivatives and hedging.

#### ***Interest Rate Swaps***

The Company may periodically enter into derivative financial instruments, typically interest rate swap agreements, to reduce its exposure to fluctuations in interest rates on variable interest rate debt and their impact on earnings and cash flows. As of December 31, 2011, the Company had six interest rate swap agreements outstanding with a total notional amount of \$150.0 million. Under the swap agreements, the Company receives floating interest rate payments based on one-month reserve-adjusted LIBOR and makes interest payments based on fixed interest rates. The Company intends to continue electing the one-month reserve-adjusted LIBOR as the benchmark interest rate on the debt being hedged through its term. No credit spread was hedged. The Company designates its interest rate swap instruments as cash flow hedges.

The authoritative accounting guidance requires companies to recognize derivative instruments as either an asset or liability measured at fair value in the statement of financial position. The effective portion of the change in fair value of the derivative instrument is recorded in other comprehensive income ("OCI"). The ineffective portion of the change in fair value of the derivative instrument, if any, is recognized in interest expense in the period of change. From the inception of the hedging program, the Company has determined that the hedging instruments are highly effective.

#### ***Foreign Currency Exchange Contracts***

The Company has operations in India, which exposes the Company to foreign currency exchange rate fluctuations due to transactions denominated in Indian rupees, such as employee salaries and rent expenditures. To mitigate this risk, the Company enters into derivative financial instruments, principally forward contracts, which are designated as cash flow hedges, to mitigate fluctuations in the cash payments of future forecasted transactions in Indian rupees for up to 36 months. The Company adjusts the level and use of derivatives as soon as practicable after learning that an exposure has changed and the Company reviews all exposures and derivative positions on an ongoing basis.

Gains and losses on cash flow hedges are recorded in accumulated other comprehensive income (loss) until the hedged transaction is recorded in the consolidated financial statements. Once the underlying transaction is recorded in the consolidated financial statements, the Company reclassifies the accumulated other comprehensive income or loss on the derivative into earnings. If all or a portion of the forecasted transaction was cancelled, this would render all or a portion of the cash flow hedge ineffective and the Company would reclassify the ineffective portion of the hedge into earnings. The Company generally does not experience ineffectiveness of the hedge

relationship and the accompanying consolidated financial statements do not include any such gains or losses.

As of December 31, 2011, the total notional amount of the forward contracts to buy Indian rupees in exchange for U.S. dollars was \$36.4 million. All outstanding contracts qualified for hedge accounting treatment as of December 31, 2011. The Company estimates that approximately \$1.7 million of net derivative loss included in OCI will be reclassified into earnings within the next 12 months. No gains or losses were reclassified from OCI into earnings as a result of forecasted transactions that failed to occur during the years ended December 31, 2011 and 2010.

The Company does not enter into derivative instruments for trading or speculative purposes.

The following table summarizes the fair value of derivative instruments as recorded in the Company's consolidated statements of financial position (*in thousands*):

	December 31, 2011		December 31, 2010	
	Balance Sheet		Balance Sheet	
	Location	Fair Value	Location	Fair Value
Derivatives designated as hedging instruments:				
Interest rate swaps	Other assets	\$—	Other assets	\$ 542
Interest rate swaps	Other liabilities	(1,014 )	Other liabilities	(485 )
Foreign currency exchange contracts	Other assets	168	Other assets	209
Foreign currency exchange contracts	Other liabilities	(2,371 )	Other liabilities	—

The following table summarizes the effects of derivatives in cash flow hedging relationships on the Company's statements of income for the years ended December 31, 2011 and 2010 (*in thousands*):

	Gain or (Loss) Recognized in OCI-Effective Portion		Location of Gain or (Loss) Reclassified from OCI into Income - Effective Portion		Location of Gain or (Loss) Recognized - Ineffective Portion and Amount Excluded from Effectiveness Testing		Amount of Gain or (Loss) Recognized - Ineffective Portion and Amount Excluded from Effectiveness Testing	
	2011	2010	2011	2010	2011	2010	2011	2010
Interest rate swaps	\$(1,071)	\$1,848	Interest expense	\$—	\$—	Other (expense) income	\$—	\$—
Foreign currency exchange contracts	(1,974)	448	Salaries and employee benefits	6	86	Other (expense) income	—	—

Foreign			General and			Other (expense)		
currency			administrative			income	—	—
exchange			expenses					
contracts	(426 )	111		6	19			

## Fair Value Measurements

12 Months Ended  
Dec. 31, 2011

### [Fair Value Measurements](#)

#### [\[Abstract\]](#)

### [Fair Value Measurements](#)

#### Note 2: Fair Value Measurements

The Company accounts for certain assets and liabilities at fair value. The authoritative guidance for fair value measurements defines fair value as the price that would be received upon sale of an asset or the price paid to transfer a liability, in an orderly transaction between market participants at the measurement date (*i.e.* the "exit price"). The guidance utilizes a fair value hierarchy that prioritizes the inputs used in valuation techniques to measure fair value into three broad levels. The following is a brief description of each level:

Level 1: Observable inputs such as quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2: Inputs other than quoted prices that are observable for the asset or liability, either directly or indirectly. These include quoted prices for similar assets or liabilities in active markets and quoted prices for identical or similar assets or liabilities in markets that are not active.

Level 3: Unobservable inputs that reflect the reporting entity's own assumptions.

The Company's assets and liabilities measured at fair value on a recurring basis are summarized below (*in thousands*):

	Fair Value Measurements as of			
	December 31, 2011			
	Level 1	Level 2	Level 3	Total
<b>Assets</b>				
Foreign currency exchange contracts	\$—	\$168	\$—	\$168
<b>Liabilities</b>				
Interest rate swap agreements	—	(1,014)	—	(1,014)
Foreign currency exchange contracts	—	(2,371)	—	(2,371)

	Fair Value Measurements as of			
	December 31, 2010			
	Level 1	Level 2	Level 3	Total
<b>Assets</b>				
Interest rate swap agreements	\$—	\$542	\$—	\$542
Foreign currency exchange contracts	—	209	—	209
<b>Liabilities</b>				
Interest rate swap agreements	—	(485)	—	(485)

Fair values of derivative instruments included in Level 2 are estimated using industry standard valuation models. These models project future cash flows and discount the future amounts to a present value using market-based observable inputs including interest rate curves, foreign exchange rates, and forward and spot prices for currencies. As of December 31, 2011, the Company did not have any financial instruments carried at fair value that required Level 3 measurement.

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

Borrowings under the Company's revolving credit facility are carried at historical cost, adjusted for additional borrowings less principal repayments, which approximates fair value. For investment in receivable portfolios, there is no active market or observable inputs for the fair value estimation. The Company does not consider it practical to attempt to estimate the fair value of such financial instruments due to the excessive costs that would be incurred in doing so.

**Consolidated Statements Of  
Financial Condition (USD \$)  
In Thousands, unless  
otherwise specified**

	<b>Dec. 31, 2011</b>	<b>Dec. 31, 2010</b>
<b><u>Assets</u></b>		
<u>Cash and cash equivalents</u>	\$ 8,047	\$ 10,905
<u>Accounts receivable, net</u>	3,265	3,331
<u>Investment in receivable portfolios, net</u>	716,454	644,753
<u>Deferred court costs, net</u>	38,506	32,158
<u>Property and equipment, net</u>	17,796	13,658
<u>Other assets</u>	11,968	14,930
<u>Goodwill</u>	15,985	15,985
<u>Identifiable intangible assets, net</u>	462	748
<u>Total assets</u>	812,483	736,468
<b><u>Liabilities and stockholders' equity</u></b>		
<u>Accounts payable and accrued liabilities</u>	29,628	26,539
<u>Deferred tax liabilities, net</u>	15,709	17,626
<u>Debt</u>	388,950	385,264
<u>Other liabilities</u>	6,661	4,342
<u>Total liabilities</u>	440,948	433,771
<u>Commitments and contingencies</u>		
<b><u>Stockholders' equity:</u></b>		
<u>Convertible preferred stock, \$.01 par value, 5,000 shares authorized, no shares issued and outstanding</u>		
<u>Common stock, \$.01 par value, 50,000 shares authorized, 24,520 shares and 24,011 shares issued and outstanding as of December 31, 2011 and 2010, respectively</u>	245	240
<u>Additional paid-in capital</u>	123,406	113,412
<u>Accumulated earnings</u>	249,852	188,894
<u>Accumulated other comprehensive (loss) income</u>	(1,968)	151
<u>Total stockholders' equity</u>	371,535	302,697
<u>Total liabilities and stockholders' equity</u>	\$ 812,483	\$ 736,468

**Consolidated Statements Of  
Cash Flows (USD \$)  
In Thousands, unless  
otherwise specified**

**12 Months Ended**

	<b>Dec. 31, 2011</b>	<b>Dec. 31, 2010</b>	<b>Dec. 31, 2009</b>
<b><u>Operating activities:</u></b>			
<u>Net income</u>	\$ 60,958	\$ 49,052	\$ 33,047
<b><u>Adjustments to reconcile net income to net cash provided by operating activities:</u></b>			
<u>Depreciation and amortization</u>	4,661	3,199	2,592
<u>Amortization of loan costs and debt discount</u>	1,833	3,682	4,080
<u>Stock-based compensation expense</u>	7,709	6,010	4,384
<u>Gain on repurchase of convertible notes, net</u>			(3,268)
<u>Deferred income tax (benefit) expense</u>	(1,917)	646	1,872
<u>Excess tax benefit from stock-based payment arrangements</u>	(5,101)	(3,249)	(729)
<u>Provision for allowances on receivable portfolios, net</u>	10,823	22,209	19,310
<b><u>Changes in operating assets and liabilities</u></b>			
<u>Other assets</u>	2,179	(1,390)	(1,668)
<u>Deferred court costs</u>	(6,348)	(6,201)	2,379
<u>Prepaid income tax and income taxes payable</u>	6,495	(1,782)	11,204
<u>Accounts payable, accrued liabilities and other liabilities</u>	3,287	3,299	3,316
<u>Net cash provided by operating activities</u>	84,579	75,475	76,519
<b><u>Investing activities:</u></b>			
<u>Purchases of receivable portfolios, net of forward flow allocation</u>	(386,850)	(361,957)	(246,330)
<u>Collections applied to investment in receivable portfolios, net</u>	301,474	217,891	168,416
<u>Proceeds from put-backs of receivable portfolios</u>	2,852	3,981	3,375
<u>Purchases of property and equipment</u>	(5,564)	(2,722)	(4,632)
<u>Net cash used in investing activities</u>	(88,088)	(142,807)	(79,171)
<b><u>Financing activities:</u></b>			
<u>Payment of loan costs</u>	(840)	(6,248)	
<u>Proceeds from senior secured notes</u>	25,000	50,000	
<u>Proceeds from revolving credit facility</u>	121,000	125,500	90,500
<u>Repayment of revolving credit facility</u>	(143,000)	(58,500)	(68,500)
<u>Repayment of convertible notes</u>		(42,920)	(22,262)
<u>Proceeds from net settlement of certain call options</u>		524	
<u>Proceeds from exercise of stock options</u>	1,263	2,118	1,175
<u>Taxes paid related to net share settlement of equity awards</u>	(3,891)	(2,024)	(403)
<u>Excess tax benefit from stock-based payment arrangements</u>	5,101	3,249	729
<u>Repayment of capital lease obligations</u>	(3,982)	(1,850)	(540)
<u>Net cash provided by financing activities</u>	651	69,849	699
<u>Net (decrease) increase in cash</u>	(2,858)	2,517	(1,953)
<u>Cash and cash equivalents, beginning of period</u>	10,905	8,388	10,341
<u>Cash and cash equivalents, end of period</u>	8,047	10,905	8,388
<b><u>Supplemental disclosures of cash flow information:</u></b>			
<u>Cash paid for interest</u>	19,038	15,652	12,521

<u>Cash paid for income taxes</u>	32,125	30,125	8,243
<b><u>Supplemental schedule of non-cash investing and financing activities:</u></b>			
<u>Fixed assets acquired through capital lease</u>	2,949	4,317	516
<u>Allocation of forward flow asset to acquired receivable portfolios</u>			\$ 10,302

**Ownership, Description Of  
Business, And Significant  
Accounting Policies**

**12 Months Ended  
Dec. 31, 2011**

**Ownership, Description Of  
Business, And Significant  
Accounting Policies**

**[Abstract]**

**Ownership, Description Of  
Business, And Significant  
Accounting Policies**

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

Encore Capital Group, Inc. ("Encore"), through its subsidiaries (collectively, the "Company"), is a leader in consumer debt buying and recovery. The Company purchases portfolios of defaulted consumer receivables and manages them by partnering with individuals as they repay their obligations and work toward financial recovery. Defaulted receivables are consumers' unpaid financial commitments to credit originators, including banks, credit unions, consumer finance companies, commercial retailers, auto finance companies and telecommunication companies, which the Company purchases at deep discounts. Defaulted receivables also include receivables subject to bankruptcy proceedings or consumer bankruptcy receivables.

The Company purchases receivables based on robust, account-level valuation methods and employs a suite of proprietary statistical and behavioral models across the full extent of its operations. These investments allow the Company to value portfolios accurately (and limit the risk of overpaying), avoid buying portfolios that are incompatible with its methods or goals and precisely align the accounts it purchases with its operational channels to maximize future collections. As a result, the Company has been able to realize significant returns from the receivables it acquires. The Company maintains strong relationships with many of the largest credit providers in the United States, and possesses one of the industry's best collection staff retention rates.

The Company expands upon the insights created during its purchasing process when building account collection strategies. The Company's proprietary consumer-level collectability analysis is the primary determinant of whether an account is actively serviced post-purchase. Throughout the Company's ownership period, it continuously refines this analysis to determine the most effective collection strategy to pursue for each account. After the Company's preliminary analysis, it seeks to collect on only a fraction of the accounts it purchases, through one or more of its collection channels. The channel identification process is analogous to a funneling system where the Company first differentiates those consumers who are not able to pay from those who are able to pay. Consumers who the Company believes are financially incapable of making any payments, are facing extenuating circumstances or hardships (such as medical issues), are serving in the military, or are currently receiving social security as their only means of financial sustenance are excluded from the next step of its collection process and are designated as inactive. The remaining pool of accounts in the funnel then receives further evaluation. At that point, the Company analyzes and determines a consumer's willingness to pay. Based on that analysis, the Company will pursue collections through letters and/or phone calls to its consumers. Despite its efforts to reach consumers and work out a settlement option, only a small number of consumers who are contacted choose to engage with the Company. Those who do are often offered deep discounts on their obligations, or are presented with payment plans which are better suited to meet their daily cash flow needs. The majority of contacted consumers, however, ignore

both the Company's calls and letters, and therefore the Company must then make the difficult decision to pursue collections through legal means.

In addition, the Company provides bankruptcy support services to some of the largest companies in the financial services industry through its wholly owned subsidiary, Ascension Capital Group, Inc. ("Ascension"). Leveraging a proprietary software platform dedicated to bankruptcy servicing, Ascension's operational platform integrates lenders, trustees, and consumers across the bankruptcy lifecycle.

### ***Basis of Consolidation***

Encore is a Delaware holding company whose principal assets are its investments in various wholly owned subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation.

### ***Reclassification***

Certain reclassifications have been made to the consolidated financial statements to conform to the current year's presentation.

### ***Recent Accounting Pronouncements***

In September 2011, the Financial Accounting Standards Board ("FASB") issued updated authoritative guidance to amend the standard for the goodwill impairment test. The amendments will allow companies to first assess qualitative factors to determine whether it is necessary to perform the two-step quantitative goodwill impairment test. Companies no longer will be required to calculate the fair value of a reporting unit unless the entity determines, based on a qualitative assessment, that it is more likely than not that its fair value is less than its carrying amount. The updated authoritative guidance will be effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011. Early adoption is permitted, including for annual and interim goodwill impairment tests performed as of a date before September 15, 2011. The Company adopted this standard in the third quarter of 2011.

### ***Use of Estimates***

The preparation of financial statements, in conformity with U.S. generally accepted accounting principles, requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could materially differ from those estimates.

Management has made significant estimates with respect to the rate of return established to recognize accretion revenue on its receivable portfolios and with respect to the provision for valuation allowances on its receivable portfolios. In connection with these estimates, management has made significant estimates with respect to the timing and amount of collections of future cash flows from receivable portfolios owned. Every quarter, since the fourth quarter of 2003, the Company has updated its collection forecasts of the remaining cash flows of its receivable portfolios utilizing its internally developed Unified Collection Score ("UCS") and Behavioral Liquidation Score ("BLS") forecasting models.

The Company utilizes its UCS and BLS models to project the remaining cash flows from its receivable portfolios, considering known data about its consumers' accounts. This data includes, among other things, the Company's collection experience and changes in external consumer factors, in addition to all data known when it acquired the accounts. The Company routinely evaluates and implements enhancements to its UCS and BLS models.

Significant estimates have also been made with respect to the Company's ability to realize its net deferred court costs (see Note 5 "Deferred Court Costs"), intangible assets (see "Goodwill and Other Intangible Assets" below), net deferred tax assets and tax reserves (see Note 10 "Income Taxes"), stock-based compensation (see Note 9 "Stock-Based Compensation") and the its potential liabilities with respect to its health benefit plans (see Note 12 "Commitments and Contingencies"). Actual results could materially differ from these estimates, making it possible that a material change in these estimates could occur within one year.

### ***Segment Reporting***

The authoritative guidance for segment reporting establishes standards in reporting information about a public business enterprise's operating segments. Operating segments are components of an enterprise about which separate financial information is available, that is evaluated regularly by the chief operating decision maker in deciding how to allocate resources and in assessing performance. For the year ended December 31, 2011, the Company has determined it operates in two segments: portfolio purchasing and recovery and bankruptcy servicing. However, based on the requirements of the authoritative guidance, the smaller operating segment does not meet the minimum requirement of 10% of combined revenues, reported profit or loss, or combined assets and accordingly, no segment disclosures have been made for the year ended December 31, 2011.

### ***Cash and Cash Equivalents***

Cash and cash equivalents consist of highly liquid investments with maturities of three months or less at the date of purchase. The Company invests its excess cash in bank deposits and money market instruments, which are afforded the highest ratings by nationally recognized rating firms. The carrying amounts reported in the consolidated statements of financial condition for cash and cash equivalents approximates its fair value.

### ***Investment in Receivable Portfolios***

In accordance with the authoritative guidance for loans and debt securities acquired with deteriorated credit quality, discrete receivable portfolio purchases during a quarter are aggregated into pools based on common risk characteristics. Once a static pool is established, the portfolios are permanently assigned to the pool. The discount (*i.e.*, the difference between the cost of each static pool and the related aggregate contractual receivable balance) is not recorded because the Company expects to collect a relatively small percentage of each static pool's contractual receivable balance. As a result, receivable portfolios are recorded at cost at the time of acquisition. The purchase cost of the portfolios includes certain fees paid to third parties incurred in connection with the direct acquisition of the receivable portfolios.

In compliance with the authoritative guidance, the Company accounts for its investments in consumer receivable portfolios using either the interest method or the cost recovery method. The interest method applies an internal rate of return ("IRR") to the cost basis of the pool, which

remains unchanged throughout the life of the pool, unless there is an increase in subsequent expected cash flows. Subsequent increases in expected cash flows are generally recognized prospectively through an upward adjustment of the pool's IRR over its remaining life. Subsequent decreases in expected cash flows do not change the IRR, but are recognized as an allowance to the cost basis of the pool, and are reflected in the consolidated statements of income as a reduction in revenue, with a corresponding valuation allowance, offsetting the investment in receivable portfolios in the consolidated statements of financial condition.

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

If the amount and timing of future cash collections on a pool of receivables are not reasonably estimable, the Company accounts for such portfolios on the cost recovery method ("Cost Recovery Portfolios"). The accounts in these portfolios have different risk characteristics than those included in other portfolios acquired during the same quarter, or the necessary information was not available to estimate future cash flows and, accordingly, they were not aggregated with other portfolios. See Note 4 "Investment in Receivable Portfolios, Net" for further discussion of investment in receivable portfolios.

### ***Deferred Revenue***

Ascension's services include, among others, negotiating bankruptcy plans, monitoring and managing the consumer's compliance with bankruptcy plans, and recommending courses of action to clients when there is a deviation from a bankruptcy plan. The Company accounts for post-acquisition revenue related to the bankruptcy account services provided by Ascension in accordance with the authoritative guidance for revenue recognition. Revenue for a given account is allocated between the servicing and litigation deliverables based on their relative fair values and recognized according to whether the referred account is the subject of a Chapter 7 or a Chapter 13 bankruptcy proceeding.

The servicing deliverable for Chapter 7 accounts is focused on the completion of the bankruptcy process as a whole, to the most favorable possible conclusion for the customer. As a result, revenue is deferred and not recognized until the bankruptcy case is closed (dismissal/discharge). The litigation deliverable is recorded as an "as incurred" event, with revenue recognized based on the historical percentage of accounts litigated over the average duration of an account. The average duration period used for Chapter 7 accounts is eight months. This estimate is periodically reviewed for changes.

Chapter 13 bankruptcy proceedings, also known as reorganizations, are generally designed to restructure an individual's debts and allow the consumer to propose a repayment plan detailing how his or her debts will be repaid over the plan period. The responsibility of Ascension is to ensure that its client's claim is recognized by the court to the maximum benefit of the client and to monitor and/or collect the consumer payments throughout the confirmed bankruptcy plan term. The average duration period used for Chapter 13 accounts is 33 months. Given the nature and duration of a Chapter 13 proceeding, the monthly servicing deliverable provided is considered "delivered" each month and revenue is recognized ratably, including any upfront fees received by

the Company, over the time the services are provided. The litigation deliverable is recorded as an "as incurred" event with revenue recognized based on the historical percentage of accounts litigated over the average duration of an account. The average duration period for Chapter 13 accounts is periodically reviewed for changes. Deferred revenue is included in "Other liabilities" in the Consolidated Statements of Financial Condition.

Ascension's bankruptcy services are provided under contract with its clients. The contracts for these services have initial terms of one or two years and either renew automatically or have options to renew annually. There are two types of fee arrangements for bankruptcy administration services. One is based on commissions; the other one consists of an upfront fee at the time of account referral, combined with either an ongoing monthly service fee or service specific fees based on a predetermined fee schedule. Some contracts utilize a combination of these two types.

### ***Goodwill and Other Intangible Assets***

In accordance with authoritative guidance on goodwill and other intangible assets, goodwill and other indefinite-lived intangible assets are tested at the reporting unit level annually for impairment and in interim periods if certain events occur indicating the fair value of a reporting unit may be below its carrying value.

Effective July 1, 2011, the Company adopted the amended standard for goodwill impairment testing. The amended standard allows companies to first assess qualitative factors to determine whether it is necessary to perform the two-step quantitative goodwill impairment test. The qualitative factors include economic environment, business climate, market capitalization, operating performance, competition and other factors.

The Company has two reporting units that carry goodwill: portfolio purchasing and recovery reporting unit and bankruptcy servicing reporting unit. Annual testing is performed on October 1<sup>st</sup> for the portfolio purchasing and recovery reporting unit and on August 31<sup>st</sup> for the bankruptcy servicing reporting unit. As of December 31, 2011, goodwill for the portfolio purchasing and recovery reporting unit and bankruptcy servicing reporting unit was approximately \$6.1 million and \$9.9 million, respectively. No goodwill impairment has been identified during the year ended December 31, 2011 for each reporting unit.

During the Company's annual goodwill impairment testing for its bankruptcy servicing reporting unit, the Company determined, after assessing various qualitative factors, that it was necessary to perform the quantitative two-step goodwill impairment testing. The Company completed the first step of its goodwill impairment testing using a discounted cash flow methodology and determined that the fair value of this reporting unit was higher than its respective carrying value, and therefore, no goodwill impairment was identified. The valuation technique involved significant judgments, including the estimation of future cash flows, which was dependent on internal forecasts, estimation of the long-term rate of growth, estimation of the useful life over which cash flows will occur, and determination of the proper weighted average cost of capital. The Company's bankruptcy servicing reporting unit experiences client turnover in the normal course of business. In the event that it loses clients that are not replaced, the goodwill assigned to this reporting unit may become impaired.

The Company applied qualitative analysis in testing its goodwill impairment at the portfolio purchasing and recovery reporting unit on October 1, 2011 and no impairment was identified at this reporting unit.

Future events could cause the Company to conclude that impairment indicators exist and that goodwill or other intangible assets are impaired.

The Company's identifiable intangible assets are recorded at cost and are amortized using an accelerated method, based on discounted cash flows over their estimated useful lives, which range from four to nine years. Acquired identifiable intangible assets are presented net of accumulated amortization of \$5.5 million and \$5.3 million as of December 31, 2011 and 2010, respectively. The estimated annual aggregate amortization of intangibles assets is \$0.2 million, \$0.1 million and \$0.1 million for the years ended December 31, 2012, 2013, and 2014, respectively. The Company's identifiable intangibles assets are summarized as follows (*in thousands*):

	December 31, 2011	December 31, 2010
Customer relationships	\$ 5,500	\$ 5,500
Other	500	500
Gross carrying amount	6,000	6,000
Less: accumulated amortization	(5,538 )	(5,252 )
Total identifiable intangible assets	<u>\$ 462</u>	<u>\$ 748</u>

#### ***Property and Equipment***

Property and equipment are recorded at cost, less accumulated depreciation and amortization. The provision for depreciation and amortization is computed using the straight-line method over the estimated useful lives of the assets as follows:

<u>Fixed Asset Category</u>	<u>Estimated Useful Life</u>
Leasehold improvements	Lesser of lease term, including periods covered by renewal options, or useful life
Furniture and fixtures	5 to 7 years
Computer hardware and software	3 to 5 years

Maintenance and repairs are charged to expense in the year incurred. Expenditures for major renewals that extend the useful lives of fixed assets are capitalized and depreciated over the useful lives of such assets.

#### ***Deferred Court Costs***

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

### ***Income Taxes***

The Company uses the liability method of accounting for income taxes in accordance with the authoritative guidance for Income Taxes. When the Company prepares its consolidated financial statements, it estimates income taxes based on the various jurisdictions where it conducts business. This requires the Company to estimate current tax exposure and to assess temporary differences that result from differing treatments of certain items for tax and accounting purposes. Deferred income taxes are recognized based on the differences between the financial statement and income tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. The Company then assesses the likelihood that deferred tax assets will be realized. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized. When the Company establishes a valuation allowance or increases this allowance in an accounting period, it records a corresponding tax expense in the consolidated statement of operations. The Company includes interest and penalties related to income taxes within its provision for income taxes. See Note 10 "Income Taxes" for further discussion of income taxes.

Management must make significant judgments to determine the provision for income taxes, deferred tax assets and liabilities and any valuation allowance to be recorded against the net deferred tax asset.

### ***Stock-Based Compensation***

The Company measures stock-based compensation cost at the grant date, based on the estimated fair value of the award, and is recognized as expense over the employee's requisite service period. See Note 9 "Stock-Based Compensation" for further discussion of the Company's stock-based compensation.

### ***Derivative Instruments and Hedging Activities***

The Company recognizes all derivative financial instruments in its consolidated financial statements at fair value. Changes in the fair value of derivative instruments are recorded in earnings unless hedge accounting criteria are met. The Company's interest rate swap and foreign currency contracts outstanding as of December 31, 2011 are designated as cash flow hedges. The effective portion of the changes in fair value of these cash flow hedges is recorded each period, net of tax, in accumulated other comprehensive income (loss) until the related hedged transaction occurs. Any ineffective portion of the changes in fair value of these cash flow hedges is recorded in earnings. In the event the hedged cash flow does not occur, or it becomes probable that it will not occur, the Company would reclassify the amount of any gain or loss on the related cash flow hedge to income (expense) at that time.

### ***Earnings Per Share***

Basic earnings per share is calculated by dividing net earnings available to common stockholders by the weighted average number of shares of common stock outstanding during the period. Diluted earnings per share is calculated on the basis of the weighted average number of shares of common stock plus the effect of dilutive potential common shares outstanding during the period using the treasury stock method. Dilutive potential common shares include outstanding stock options and restricted stock units. The components of basic and diluted earnings per share are as follows (*in thousands, except earnings per share*):

	Year Ended December 31,		
	2011	2010	2009
Net income available for common shareholders (A)	\$60,958	\$49,052	\$33,047
Weighted average outstanding shares of common stock (B)	24,572	23,897	23,215
Dilutive effect of stock-based awards	1,118	1,194	867
Common stock and common stock equivalents (C)	25,690	25,091	24,082
Earnings per share:			
Basic (A/B)	\$2.48	\$2.05	\$1.42
Diluted (A/C)	\$2.37	\$1.95	\$1.37

Employee stock options to purchase approximately 167,000, 229,000, and 1,177,000 shares of common stock as of December 31, 2011, 2010 and 2009, respectively, were outstanding but not included in the computation of diluted earnings per common share because the effect on diluted earnings per share would be anti-dilutive.

**Consolidated Statements Of  
Financial Condition  
(Parenthetical) (USD \$)  
In Thousands, except Per  
Share data, unless otherwise  
specified**

**Dec. 31, 2011 Dec. 31, 2010**

**Consolidated Statements Of Financial Condition [Abstract]**

<u>Convertible preferred stock, par value</u>	\$ 0.01	\$ 0.01
<u>Convertible preferred stock, shares authorized</u>	5,000	5,000
<u>Convertible preferred stock, shares issued</u>	0	0
<u>Convertible preferred stock, shares outstanding</u>	0	0
<u>Common stock, par value</u>	\$ 0.01	\$ 0.01
<u>Common stock, shares authorized</u>	50,000	50,000
<u>Common stock, shares issued</u>	24,520	24,011
<u>Common stock, shares outstanding</u>	24,520	24,011

## Purchase Concentrations

12 Months Ended  
Dec. 31, 2011

[Purchase Concentrations](#)

[\[Abstract\]](#)

[Purchase Concentrations](#)

### Note 11: Purchase Concentrations

The following table summarizes the concentration of initial purchase cost by seller sorted by total aggregate costs (*in thousands, except percentages*):

	Year Ended December 31, 2011	
	Cost	%
Seller 1	\$ 94,108	24.3 %
Seller 2	74,986	19.4 %
Seller 3	30,943	8.0 %
Seller 4	23,509	6.1 %
Seller 5	18,429	4.8 %
Other sellers	144,875	37.4 %
	<u>\$ 386,850</u>	<u>100.0 %</u>
Adjustments <sup>(1)</sup>	(505)	
Purchases, net	<u>\$ 386,345</u>	

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

**Document And Entity  
Information (USD \$)**

**12 Months Ended  
Dec. 31, 2011**

**Feb. 01, 2012 Jun. 30, 2011**

**Document And Entity Information [Abstract]**

<u>Document Type</u>	10-K		
<u>Amendment Flag</u>	false		
<u>Document Period End Date</u>	Dec. 31, 2011		
<u>Document Fiscal Year Focus</u>	2011		
<u>Document Fiscal Period Focus</u>	FY		
<u>Entity Registrant Name</u>	ENCORE CAPITAL GROUP INC		
<u>Entity Central Index Key</u>	0001084961		
<u>Current Fiscal Year End Date</u>	--12-31		
<u>Entity Filer Category</u>	Accelerated Filer		
<u>Entity Common Stock, Shares Outstanding</u>		24,521,576	
<u>Entity Well-known Seasoned Issuer</u>	No		
<u>Entity Public Float</u>			\$ 501,265,244
<u>Entity Current Reporting Status</u>	Yes		
<u>Entity Voluntary Filers</u>	No		

## Commitments And Contingencies

12 Months Ended  
Dec. 31, 2011

[Commitments And  
Contingencies \[Abstract\]](#)

[Commitments And  
Contingencies](#)

### Note 12: Commitments and Contingencies

#### *Litigation*

The Company is involved in disputes and legal actions from time to time in the ordinary course of business. The Company, along with others in its industry, is routinely subject to legal actions based on the Fair Debt Collection Practices Act ("FDCPA") comparable state statutes, the Telephone Consumer Protection Act ("TCPA"), state and federal unfair competition statutes and common law causes of action. The violations of law alleged in these actions often include claims that the Company lacks specified licenses to conduct its business, attempts to collect debts on which the statute of limitations has run, has made inaccurate assertions of fact in support of its collection actions and /or has acted improperly in connection with its efforts to contact consumers. These cases are frequently styled as supposed class actions. In addition, from time to time, the Company is subject to litigation and other actions by governmental bodies, including formal and informal investigations relating to its collection activities by the Federal Trade Commission, state attorneys general and other governmental bodies, with which the Company cooperates.

On May 19, 2008, an action captioned *Brent v. Midland Credit Management, Inc et. al* was filed in the United States District Court for the Northern District of Ohio Western Division, in which the plaintiff filed a class action counter-claim against two of the Company's subsidiaries (the "Midland Defendants"). The complaint alleged that the Midland Defendants' business practices violated consumers' rights under the FDCPA and the Ohio Consumer Sales Practices Act. The plaintiff sought actual and statutory damages for the class of Ohio residents, plus attorney's fees and costs of class notice and class administration. On August 12, 2011, the court issued an order granting final approval to the parties agreed upon settlement of this lawsuit, as well as two other pending lawsuits in the Northern District of Ohio entitled *Franklin v. Midland Funding LLC* and *Vassalle v. Midland Funding LLC*, on a national class basis, and dismissed the cases against the Midland Defendants with prejudice. That order has been appealed by certain objectors to the settlement, which appeals remain pending.

On November 2, 2010 and December 17, 2010, two national class actions entitled *Robinson v. Midland Funding LLC* and *Tovar v. Midland Credit Management*, respectively, were filed in the United States District Court for the Southern District of California. The complaints allege that the Company's subsidiaries violated the TCPA by calling consumers' cellular phones without their prior express consent. The complaints seek monetary damages under the TCPA, injunctive relief, and other relief, including attorney fees. On May 10, 2011 and May 11, 2011, two class actions entitled *Scardina v. Midland Credit Management, Inc. Midland Funding LLC and Encore Capital Group, Inc.* and *Martin v. Midland Funding, LLC*, respectively, were filed in the United States District Court for the Northern District of Illinois. The complaints allege on behalf of a putative class of Illinois consumers that the Company's subsidiaries violated the TCPA by calling consumers' cellular phones without their prior express consent. The complaints seek monetary damages under the TCPA, injunctive relief, and other relief, including attorney fees. On July 28, 2011, the Company filed a motion to transfer the *Scardina* and *Martin* cases to the United States District Court for the Southern District of California to be consolidated with the *Tovar* and

*Robinson* cases. On October 11, 2011, the United States Judicial Panel on Multidistrict Litigation granted the Company's motion to transfer.

In certain legal proceedings, the Company may have recourse to insurance or third party contractual indemnities to cover all or portions of its litigation expenses, judgments or settlements. In accordance with authoritative guidance, the Company records loss contingencies in its financial statements only for matters in which losses are probable and can be reasonably estimated. Where a range of loss can be reasonably estimated with no best estimate in the range, the Company records the minimum estimated liability. The Company continuously assesses the potential liability related to the Company's pending litigation and revises its estimates when additional information becomes available. The Company's legal costs are recorded to expense as incurred.

### ***Leases***

The Company leases office facilities in San Diego, California; Phoenix, Arizona; Arlington, Texas; St. Cloud, Minnesota; Gurgaon, India; and Costa Rica. The leases are structured as operating leases, and the Company incurred related rent expense in the amounts of \$5.8 million, \$4.5 million and \$4.3 million during the years ended December 31, 2011, 2010, and 2009, respectively.

The Company has capital lease obligations primarily for certain computer equipment. Refer to "Capital Lease Obligations" under Note 8 "Debt" for additional information on the Company's capital leases. The related amortization expense was \$5.2 million, \$2.4 million, and \$0.5 million, for the years ended December 31, 2011, 2010, and 2009, respectively. Amortization of assets under capital leases is included in depreciation and amortization expense.

Future minimum lease payments under lease obligations consist of the following for the years ending December 31 (*in thousands*):

	<b>Capital Leases</b>	<b>Operating Leases</b>	<b>Total</b>
2012	\$5,586	\$5,660	\$11,246
2013	2,731	5,943	8,674
2014	716	5,702	6,418
2015	302	5,057	5,359
2016	139	4,746	4,885
Thereafter	—	8,181	8,181
Total minimal leases payments	<u>9,474</u>	<u>\$35,289</u>	<u>\$44,763</u>
Less: Interest	(524 )		
Present value of minimal lease payments	<u>\$8,950</u>		

### ***Purchase Commitments***

In the normal course of business, the Company enters into forward flow purchase agreements and other purchase commitment agreements. As of December 31, 2011, the Company has entered into agreements to purchase receivable portfolios with a face value of approximately \$3.2 billion for a purchase price of approximately \$151.0 million. The Company has no purchase commitments extending past one year.

### ***Employee Benefit Plans***

The Company maintains a 401(k) Salary Deferral Plan (the "Plan") whereby eligible employees may voluntarily contribute up to a maximum percentage of compensation, as specified in Internal Revenue Code limitations. The Company may match a percentage of employee contributions at its discretion. Employer matching contributions and administrative costs relating to the Plan totaled \$1.1 million, \$1.2 million, and \$0.7 million for the years ended December 31, 2011, 2010, and 2009, respectively.

The Company maintains a non-qualified deferred compensation plan for its senior management. This plan permits deferral of a portion of compensation until a specified period of time. As of December 31, 2011, the plan assets and plan liabilities were \$0.7 million and \$0.5 million, respectively. As of December 31, 2010, the plan assets and plan liabilities were \$0.8 million and \$0.7 million, respectively. These amounts are included in the Company's consolidated statements of financial condition in other assets and accrued liabilities. The use of plan assets is legally restricted to distributions to participants or to creditors in the event of bankruptcy.

### ***Self-Insured Health Benefits***

The Company maintains a self-insured health benefit plan for its employees. This plan is administered by a third party. As of December 31, 2011, the plan had stop loss provisions insuring losses beyond \$150,000 per employee per year. As of December 31, 2011, the Company recorded a reserve for unpaid claims in the amount of \$0.4 million which is included in accrued liabilities in the Company's consolidated statement of financial condition. This amount represents the Company's estimate of incurred but not yet reported claims, as of December 31, 2011.

### ***Guarantees***

Encore's Certificate of Incorporation and indemnification agreements between the Company and its officers and directors provide that the Company will indemnify and hold harmless its officers and directors for certain events or occurrences arising as a result of the officer or director serving in such capacity. The Company has also agreed to indemnify certain third parties under certain circumstances pursuant to the terms of certain underwriting agreements, registration rights agreements and portfolio purchase and sale agreements. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited. The Company believes the estimated fair value of these indemnification agreements is minimal and, as of December 31, 2011, has no liabilities recorded for these agreements.

**Consolidated Statements Of  
Income (USD \$)**

**12 Months Ended**

**In Thousands, except Per  
Share data, unless otherwise  
specified**

**Dec. 31,  
2011      Dec. 31,  
2010      Dec. 31,  
2009**

**Revenues**

<u>Revenue from receivable portfolios, net</u>	\$ 448,714	\$ 364,294	\$ 299,732
<u>Servicing fees and other related revenue</u>	18,657	17,014	16,687
<u>Total revenues</u>	467,371	381,308	316,419

**Operating expenses**

<u>Salaries and employee benefits (excluding stock-based compensation expense)</u>	81,509	65,767	58,025
<u>Stock-based compensation expense</u>	7,709	6,010	4,384
<u>Cost of legal collections</u>	157,050	121,085	112,570
<u>Other operating expenses</u>	39,776	36,387	26,013
<u>Collection agency commissions</u>	14,162	20,385	19,278
<u>General and administrative expenses</u>	41,730	31,444	26,920
<u>Depreciation and amortization</u>	4,661	3,199	2,592
<u>Total operating expenses</u>	346,597	284,277	249,782
<u>Income from operations</u>	120,774	97,031	66,637

**Other (expense) income**

<u>Interest expense</u>	(21,116)	(19,349)	(16,160)
<u>Other (expense) income</u>	(394)	316	3,266
<u>Total other expense</u>	(21,510)	(19,033)	(12,894)
<u>Income before income taxes</u>	99,264	77,998	53,743
<u>Provision for income taxes</u>	(38,306)	(28,946)	(20,696)
<u>Net income</u>	\$ 60,958	\$ 49,052	\$ 33,047

**Weighted average shares outstanding:**

<u>Basic</u>	24,572	23,897	23,215
<u>Diluted</u>	25,690	25,091	24,082

**Earnings per share:**

<u>Basic</u>	\$ 2.48	\$ 2.05	\$ 1.42
<u>Diluted</u>	\$ 2.37	\$ 1.95	\$ 1.37

**Property And Equipment,  
Net**

**12 Months Ended  
Dec. 31, 2011**

[Property And Equipment, Net  
\[Abstract\]](#)

[Property And Equipment, Net](#)

**Note 6: Property and Equipment, Net**

Property and equipment consist of the following, as of the dates presented (*in thousands*):

	<b>December 31, 2011</b>	<b>December 31, 2010</b>
Furniture, fixtures and equipment	\$ 6,211	\$ 3,963
Computer equipment and software	27,328	23,067
Telecommunications equipment	4,321	3,520
Leasehold improvements	6,044	4,841
	<u>43,904</u>	<u>35,391</u>
Less: accumulated depreciation and amortization	<u>(26,108 )</u>	<u>(21,733 )</u>
	<u>\$ 17,796</u>	<u>\$ 13,658</u>

Depreciation expense was \$4.4 million and \$2.8 million for the years ended December 31, 2011 and 2010, respectively.

## Deferred Court Costs, Net

12 Months Ended  
Dec. 31, 2011

[Deferred Court Costs, Net](#)

[\[Abstract\]](#)

[Deferred Court Costs, Net](#)

### Note 5: Deferred Court Costs, Net

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

Deferred Court Costs for the three-year deferral period consist of the following as of the dates presented (*in thousands*):

	December 31, 2011	December 31, 2010
Court costs advanced	\$228,977	\$194,612
Court costs recovered	(60,017 )	(49,215 )
Court costs reserve	(130,454 )	(113,239 )
	<u>\$38,506</u>	<u>\$32,158</u>

## Quarterly Information

**12 Months Ended  
Dec. 31, 2011**

[Quarterly Information](#)

[\[Abstract\]](#)

[Quarterly Information](#)

### Note 13: Quarterly Information (Unaudited)

The following table summarizes quarterly financial data for the periods presented (*in thousands, except per share amounts*):

	Three Months Ended			
	March 31	June 30	September 30	December 31
<b>2011</b>				
Gross collections	\$ 191,073	\$ 195,081	\$ 189,058	\$ 185,946
Revenue	110,303	115,830	120,563	120,675
Total operating expenses	82,546	86,223	89,804	88,024
Net income	13,679	14,775	15,370	17,134
Basic earnings per share	0.56	0.60	0.62	0.69
Diluted earnings per share	0.54	0.58	0.60	0.67
<b>2010</b>				
Gross collections	\$ 141,267	\$ 156,789	\$ 157,372	\$ 149,181
Revenue	87,338	96,231	97,967	99,772
Total operating expenses	65,641	72,782	74,265	71,589
Net income	10,861	11,730	12,290	14,171
Basic earnings per share	0.46	0.49	0.51	0.59
Diluted earnings per share	0.44	0.47	0.49	0.56

## Stock-Based Compensation

12 Months Ended  
Dec. 31, 2011

### [Stock-Based Compensation](#)

#### [\[Abstract\]](#)

### [Stock-Based Compensation](#)

#### Note 9: Stock-Based Compensation

On March 9, 2009, the Board of Directors approved an amendment and restatement of the 2005 Stock Incentive Plan ("2005 Plan"), which was originally adopted on March 30, 2005, for Board members, employees, officers, and executives of, and consultants and advisors to, the Company. The amendment and restatement of the 2005 Plan increased by 2,000,000 shares the maximum number of shares of Encore's common stock that may be issued or be subject to awards under the plan, established a new 10-year term for the plan and made certain other amendments. The 2005 Plan amendment was approved by Encore's stockholders on June 9, 2009. The 2005 Plan provides for the granting of incentive stock options, nonqualified stock options, stock appreciation rights, restricted stock, restricted stock units and performance-based awards to eligible individuals. As amended, the 2005 Plan allows the granting of an aggregate of 3,500,000 shares of Encore's common stock for awards, plus the number of shares of stock that were available for future awards under the prior 1999 Equity Participation Plan ("1999 Plan"). In addition, shares subject to options granted under either the 1999 Plan or the 2005 Plan that terminate or expire without being exercised will become available for grant under the 2005 Plan. The benefit provided under these plans is compensation subject to authoritative guidance for stock-based compensation.

In accordance with authoritative guidance for stock-based compensation, compensation expense is recognized only for those shares expected to vest, based on the Company's historical experience and future expectations. Total compensation expense during the years ended December 31, 2011, 2010, and 2009 was \$7.7 million, \$6.0 million, and \$4.4 million, respectively.

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

#### *Stock Options*

The 2005 Plan permits the granting of stock options to employees, officers, executives and directors of, and consultants and advisors to, the Company. Option awards are generally granted with an exercise price equal to the market price of the Company's stock at the date of issuance. They generally vest over three to five years of continuous service, and have ten-year contractual terms.

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

The fair value for options granted was estimated at the date of grant using a Black-Scholes option-pricing model with the following weighted-average assumptions:

	Year Ended December 31,					
	2011		2010		2009	
Weighted average fair value of options granted	\$13.26		\$9.70		\$4.91	
Risk free interest rate	2.0	%	2.3	%	2.1	%

Dividend yield	0.0	%	0.0	%	0.0	%
Volatility factors of the expected market price of the Company's common stock	61.0	%	62	%	57	%
Weighted-average expected life of options	5 Years		5 Years		5 Years	

Unrecognized compensation cost related to stock options as of December 31, 2011, was \$2.7 million. The weighted-average remaining expense period, based on the unamortized value of these outstanding stock options was approximately 1.7 years.

A summary of the Company's stock option activity as of December 31, 2011, and changes during the year then ended, is presented below:

	Number of Shares	Option Price Per Share	Weighted Average Exercise Price	Aggregate Intrinsic Value (in thousands)
Outstanding at				
December 31, 2010	2,437,062	\$ 0.51 – \$20.09	\$ 10.74	
Granted	209,000	24.65	24.65	
Cancelled/forfeited	(36,498 )	2.89 – 17.90	11.50	
Exercised	(426,624 )	0.51 – 17.90	5.92	
Outstanding at				
December 31, 2011	<u>2,182,940</u>	<u>\$0.51 – \$24.65</u>	<u>\$ 13.00</u>	\$ 18,740
Exercisable at				
December 31, 2011	<u>1,275,945</u>	<u>\$ 0.51 – \$20.09</u>	<u>\$ 11.41</u>	\$ 12,567

The total intrinsic value of options exercised during the years ended December 31, 2011, 2010, and 2009 was \$10.5 million, \$6.2 million, and \$2.0 million, respectively. As of December 31, 2011, the weighted-average remaining contractual life of options outstanding and options exercisable was 5.81 years and 4.30 years, respectively.

### ***Non-Vested Shares***

Under the Company's 2005 Plan, employees, officers, executives and directors of, and consultants and advisors to, the Company are eligible to receive restricted stock units and restricted stock awards. In accordance with the authoritative guidance, the fair value of these non-vested shares is equal to the closing sale price of the Company's common stock on the date of issuance. The total number of these awards expected to vest is adjusted by estimated forfeiture rates. As of December 31, 2011, 37,662 of the non-vested shares are expected to vest over approximately one year based on certain performance goals ("Performance-Based Awards"). The fair value of the Performance-Based Awards is expensed over the expected vesting period, net of estimated forfeitures. If performance goals are not expected to be met, the compensation expense previously recognized would be reversed. No reversals of compensation expense related to the Performance-Based Awards have been made as of December 31, 2011. The remaining 551,455 non-vested shares are not performance-based, and will vest over approximately one to three years of continuous service.

A summary of the status of the Company's restricted stock units as of December 31, 2011, and changes during the year then ended, is presented below:

<u>Restricted Stock Units</u>	<u>Non-Vested Shares</u>	<u>Weighted Average Grant Date Fair Value</u>
Non-vested at December 31, 2010	614,370	\$ 13.08
Awarded	319,344	\$ 24.99
Vested	(302,344)	\$ 12.90
Cancelled/forfeited	(42,253 )	\$ 18.74
Non-vested at December 31, 2011	<u>589,117</u>	\$ 19.22

Unrecognized compensation cost related to restricted stock units as of December 31, 2011, was \$6.3 million. The weighted-average remaining expense period, based on the unamortized value of these outstanding restricted stock units was approximately 2.0 years. The fair value of restricted stock units vested for the years ended December 31, 2011, 2010, and 2009 was \$7.5 million, \$8.0 million, and \$1.7 million, respectively.

## Other Assets

12 Months Ended  
Dec. 31, 2011

[Other Assets \[Abstract\]](#)  
[Other Assets](#)

### Note 7: Other Assets

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

	December 31, 2011	December 31, 2010
Debt issuance costs, net of amortization	\$ 4,293	\$ 5,286
Prepaid expenses	5,232	5,052
Security deposit—India building lease	1,482	1,370
Deferred compensation assets	722	776
Prepaid income tax	53	1,629
Other	186	817
	<u>\$ 11,968</u>	<u>\$ 14,930</u>

Deferred compensation assets represent monies held in a trust associated with the Company's deferred compensation plan.

## Debt

12 Months Ended  
Dec. 31, 2011

[Debt \[Abstract\]](#)

[Debt](#)

### Note 8: Debt

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

	December 31, 2011	December 31, 2010
Revolving credit facility	\$ 305,000	\$ 327,000
Senior secured notes	75,000	50,000
Capital lease obligations	8,950	8,264
	<u>\$ 388,950</u>	<u>\$ 385,264</u>

#### Senior Secured Notes

On February 10, 2011, Encore issued \$25.0 million in senior secured notes (the "2011 Senior Secured Notes") to certain affiliates of Prudential Capital Group through an amended and restated note purchase agreement. These 2011 Senior Secured Notes bear an annual interest rate of 7.375% and mature in 2018. These notes require quarterly interest only payments through May 2013. Beginning in May 2013, the notes require a quarterly payment of interest plus \$1.25 million of principal.

On September 20, 2010, Encore issued \$50.0 million in senior secured notes (the "2010 Senior Secured Notes" and together with the 2011 Senior Secured Notes, the "Senior Secured Notes" ) to certain affiliates of Prudential Capital Group through a private placement transaction. The 2010 Senior Secured Notes bear an annual interest rate of 7.75% and mature in 2017 with principal amortization beginning in December 2012. These notes require quarterly interest only payments through December 2012. Beginning in December 2012, the notes require a quarterly payment of interest plus \$2.5 million of principal.

The proceeds from the Senior Secured Notes were used to reduce aggregate outstanding borrowings under the Company's existing revolving credit facility, including borrowings incurred to repay the remaining \$42.9 million of convertible notes that matured on September 20, 2010. Loan fees and other loan costs associated with the above transactions amounted to approximately \$0.4 million and \$0.7 million during the years ended December 31, 2011 and December 31, 2010. These costs are included in other assets in the Company's consolidated statements of financial condition and are being amortized over the term of the agreements.

The Senior Secured Notes are guaranteed in full by certain of Encore's subsidiaries and are collateralized by all assets of the Company. The Senior Secured Notes may be accelerated and become automatically and immediately due and payable upon certain events of default, including certain events related to insolvency, bankruptcy or liquidation. Additionally, the Senior Secured Notes may be accelerated at the election of the holder or holders of a majority in principal amount of the Senior Secured Notes upon certain events of default by the Company, including breach of affirmative covenants regarding guarantors, collateral, most favored lender treatment or minimum revolving credit facility commitment or the breach of any negative covenant. If the Company prepays the Senior Secured Notes at any time for any reason, payment will be at the higher of par

or the present value of the remaining scheduled payments of principal and interest on the portion being prepaid. The discount rate used to determine the present value shall be 50 basis points over the then current Treasury Rate corresponding to the remaining average life. The covenants are substantially similar to those in the revolving credit facility. Prudential Capital Group and the administrative agent for the lenders of the revolving credit facility have an intercreditor agreement related to collateral, actionable default, powers and duties and remedies, among other topics.

Pursuant to Securities and Exchange Commission rules, the Company has concluded that separate financial statements or condensed consolidating financial information are not required as the guarantees related to the Senior Secured Notes are full and unconditional and joint and severable, and the subsidiary of the parent company other than the subsidiary guarantors are minor.

### ***Revolving Credit Facility***

On February 11, 2011, the Company obtained an additional \$50.0 million in commitments from lenders and exercised a portion of its \$100.0 million accordion feature, thereby increasing its revolving credit facility to \$410.5 million from \$360.5 million.

Loan fees and other loan costs associated with the above transactions amounted to approximately \$0.5 million and \$5.7 million during the year ended December 31, 2011 and 2010, respectively. These costs are included in other assets in the Company's consolidated statements of financial condition and are being amortized over the term of the agreement.

Provisions of the revolving credit facility include:

Interest at a floating rate equal to, at the Company's option, either: (1) reserve adjusted LIBOR, plus a spread that ranges from 350 to 400 basis points, depending on the Company's leverage; or (2) Alternate Base Rate ("ABR"), plus a spread that ranges from 250 to 300 basis points, depending on the Company's leverage. ABR, as defined in the agreement, means the highest of (i) the rate of interest publicly announced by JPMorgan Chase Bank as its prime rate in effect at its principal office in New York City, (ii) the federal funds effective rate from time to time, plus 0.5% and (iii) reserved adjusted LIBOR for a one month interest period on the applicable date, plus 1.0%;

\$10.0 million sub-limits for swingline loans and letters of credit;

A borrowing base equal to (1) the lesser of (i) 30% of eligible estimated remaining collections and (ii) the product of the net book value of all receivable portfolios acquired on or after January 1, 2005 multiplied by 95%, minus (2) the aggregate principal amount outstanding of the senior secured notes;

Restrictions and covenants, which limit, among other things, the payment of dividends and the incurrence of additional indebtedness and liens;

Repurchases of up to \$50.0 million of Encore's common stock, subject to compliance with certain covenants and available borrowing capacity;

A change of control definition, which excludes acquisitions of stock by Red Mountain Capital Partners LLC, JCF FPK I LP and their respective affiliates of up to 50% of the outstanding shares of Encore's voting stock;

Events of default which, upon occurrence, may permit the lenders to terminate the revolving credit facility and declare all amounts outstanding to be immediately due and payable;

An annual capital expenditure maximum of \$12.5 million;

An annual rental expense maximum of \$12.5 million;

An outstanding capital lease maximum of \$12.5 million;

An acquisition limit of \$100.0 million; and

Collateralization by all assets of the Company.

At December 31, 2011, of the \$410.5 million borrowing capacity, the outstanding balance on the revolving credit facility was \$305.0 million, which bore a weighted average interest rate of 4.42% for the year ended December 31, 2011. The aggregate borrowing base was \$396.2 million, of which \$91.2 million was available for future borrowings.

Subject to compliance with the revolving credit facility, Encore is authorized by its Board of Directors to repurchase up to \$50.0 million of its common stock.

#### ***Capital Lease Obligations***

The Company has capital lease obligations primarily for certain computer equipment. As of December 31, 2011, the Company's combined obligations for these computer equipment leases were approximately \$7.5 million. These lease obligations require monthly or quarterly payments through July 2016 and have implicit interest rates that range from zero to approximately 7.7%.

#### ***Five-Year Maturity Schedule***

The following table summarizes the five-year maturity of the Company's debt and capital lease obligations (*in thousands*):

	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>Total</u>
Revolving credit facility	\$—	\$305,000	\$—	\$—	\$—	\$305,000
Senior secured notes	2,500	13,750	15,000	15,000	15,000	61,250
Capital lease obligations	5,586	2,731	716	302	139	9,474
Less: interest portion of capital lease	<u>(339 )</u>	<u>(125 )</u>	<u>(41 )</u>	<u>(17 )</u>	<u>(2 )</u>	<u>(524 )</u>
	<u>\$7,747</u>	<u>\$321,356</u>	<u>\$15,675</u>	<u>\$15,285</u>	<u>\$15,137</u>	<u>\$375,200</u>

## Income Taxes

**12 Months Ended  
Dec. 31, 2011**

[Income Taxes \[Abstract\]](#)

[Income Taxes](#)

### Note 10: Income Taxes

During the year ended December 31, 2011, the Company recorded an income tax provision of \$38.3 million, reflecting an effective rate of 38.6% of pretax income. The effective tax rate for the year ended December 31, 2011, primarily consisted of a provision for federal income taxes of 32.7% (which is net of a benefit for state taxes of 2.3%), a provision for state taxes of 6.5% and a benefit of 0.6%, due to permanent book versus tax differences. During the year ended December 31, 2010, the Company recorded an income tax provision of \$28.9 million, reflecting an effective rate of 37.1% of pretax income. The effective tax rate for the year ended December 31, 2010, primarily consisted of a provision for federal income taxes of 32.7% (which is net of a benefit for state taxes of 2.3%), a provision for state taxes of 6.7%, a 0.6% beneficial adjustment to the state and federal tax payable as a result of state and federal tax true-ups and a benefit of 1.7%, due to permanent book versus tax differences.

The pretax income consists of the following (*in thousands*):

	Year Ended December 31,		
	2011	2010	2009
Domestic	\$93,354	\$73,863	\$52,839
Foreign	5,910	4,135	904
	<u>\$99,264</u>	<u>\$77,998</u>	<u>\$53,743</u>

The provision for income taxes consists of the following (*in thousands*):

	Year Ended December 31,		
	2011	2010	2009
Current expense:			
Federal	\$31,011	\$23,922	\$15,734
State	6,688	4,585	3,551
Foreign	2,407	—	—
	<u>40,106</u>	<u>28,507</u>	<u>19,285</u>
Deferred expense:			
Federal	(814 )	369	1,212
State	90	70	199
Foreign	(1,076)	—	—
	<u>(1,800)</u>	<u>439</u>	<u>1,411</u>
	<u>\$38,306</u>	<u>\$28,946</u>	<u>\$20,696</u>

The components of deferred tax assets and liabilities consist of the following for the years presented (*in thousands*):

	December 31,	December 31,
	2011	2010
Deferred tax assets:		

State taxes	\$ 1,599	\$ 1,825
Stock option expense	7,266	5,995
Accrued expenses	2,069	876
Non-qualified plan	(151 )	(97 )
Deferred revenue	1,112	1,490
Interest rate swap	1,262	(104 )
State net operating losses	143	189
Other	(26 )	1,124
Valuation allowance	(12 )	(12 )
	<u>13,262</u>	<u>11,286</u>
Deferred tax liabilities:		
Deferred court costs	(15,900 )	(11,674 )
Difference in basis of amortizable assets	(5,621 )	(5,285 )
Difference in basis of depreciable assets	(4,387 )	(2,418 )
Differences in income recognition related to receivable portfolios	(1,854 )	(8,477 )
Deferred debt cancellation income	(1,222 )	(1,222 )
Other	13	164
	<u>(28,971 )</u>	<u>(28,912 )</u>
Net deferred tax liability	<u>\$ (15,709 )</u>	<u>\$ (17,626 )</u>

The differences between the total income tax expense and the income tax expense computed using the applicable federal income tax rate of 35% per annum were as follows (*in thousands*):

	Year Ended December 31,		
	2011	2010	2009
Computed "expected" Federal income tax expense	\$34,742	\$27,299	\$18,810
Increase (decrease) in income taxes resulting from:			
State income taxes, net	4,222	3,306	2,437
Foreign non-taxed income	(772 )	(1,447 )	(316 )
Other adjustments, net	114	(212 )	(235 )
	<u>\$38,306</u>	<u>\$28,946</u>	<u>\$20,696</u>

The Company has not provided for the United States income taxes or foreign withholding taxes on the undistributed earnings from continuing operations of its subsidiary operating outside of the United States. Undistributed earnings of the subsidiary for the year ended December 31, 2011, were approximately \$6.0 million. Such undistributed earnings are considered permanently reinvested. If the net earnings were to be distributed, it is estimated that taxes in the amount of approximately \$2.3 million would need to be reflected in the financial statements.

The Company's subsidiary in India was operating under a tax holiday through March 31, 2011, at which time the tax holiday expired. If there had been no tax holiday for the quarter ended March 31, 2011, the Company would have expensed an additional \$0.6 million in income taxes.

A reconciliation of the beginning and ending amount of the Company's unrecognized tax benefit is as follows (*in thousands*):

Amount

Balance at December 31, 2010	\$754
Additions based on tax positions related to current year	476
Balance at December 31, 2011	<u>\$1,230</u>

As of December 31, 2011, the Company has a net tax expense recorded for penalties and interest of approximately \$0.1 million. The penalties and interest are recorded as part of the provision for income taxes.

The Company has gross unrecognized tax benefits of \$1.9 million at December 31, 2011, related to the refund of state taxes previously paid that, if recognized, would result in a net tax benefit of \$1.2 million and would have a positive effect on the Company's effective tax rate. The Company believes that it is reasonably possible that its \$1.9 million gross unrecognized tax benefits will significantly decrease within the next 12 months or be eliminated entirely, as the Company is currently undergoing a state tax audit. The completion of the audit could significantly reduce or eliminate the unrecognized tax benefits. Accordingly, the Company has recorded a reserve on the net unrecognized tax benefits.

The Company files U.S. federal, state, and foreign income tax returns in jurisdictions with varying statutes of limitations. The 2008 through 2011 tax years remain subject to examination by federal taxing authorities, the 2000 through 2011 tax years generally remain subject to examination by state tax authorities, and the 2010 and 2011 tax years remain subject to examination by foreign tax authorities.

<b>Consolidated Statements Of Stockholders' Equity And Comprehensive Income (USD \$) In Thousands, unless otherwise specified</b>	<b>Common Stock [Member]</b>	<b>Additional Paid-In Capital [Member]</b>	<b>Accumulated Earnings [Member]</b>	<b>Accumulated Other Comprehensive (Loss) Income [Member]</b>	<b>Comprehensive Income (Loss) [Member]</b>	<b>Total</b>
<u>Balance at Dec. 31, 2008</u>	\$ 231	\$ 98,521	\$ 106,795	\$ (2,121)	\$ 12,720	\$ 203,426
<u>Balance, shares at Dec. 31, 2008</u>	23,053					
<u>Net income</u>			33,047		33,047	33,047
<b><u>Other comprehensive gain (loss):</u></b>						
<u>Unrealized gain (loss) on cash flow hedge, net of tax</u>				875	875	875
<u>Exercise of stock options and issuance of share-based awards, net of shares withheld for employee taxes, shares</u>	306					
<u>Exercise of stock options and issuance of share-based awards, net of shares withheld for employee taxes</u>	3	769				772
<u>Stock-based compensation</u>		4,384				4,384
<u>Tax benefit from convertible notes interest expense</u>		95				95
<u>Tax benefit related to stock- based compensation</u>		468				468
<u>Tax benefit from repurchase of convertible notes</u>		24				24
<u>Balance at Dec. 31, 2009</u>	234	104,261	139,842	(1,246)	33,922	243,091
<u>Balance, shares at Dec. 31, 2009</u>	23,359					
<u>Net income</u>			49,052		49,052	49,052
<b><u>Other comprehensive gain (loss):</u></b>						
<u>Unrealized gain (loss) on cash flow hedge, net of tax</u>				1,397	1,397	1,397
<u>Exercise of stock options and issuance of share-based awards, net of shares withheld for employee taxes, shares</u>	652					
<u>Exercise of stock options and issuance of share-based awards, net of shares withheld for employee taxes</u>	6	(41)				(35)

<u>Stock-based compensation</u>		6,010				6,010
<u>Settlement of call options and warrants associated with convertible notes, net</u>		524				524
<u>Reversal of previously established tax benefit related to convertible notes</u>		(115)				(115)
<u>Tax benefit related to stock-based compensation</u>		2,773				2,773
<u>Balance at Dec. 31, 2010</u>	240	113,412	188,894	151	50,449	302,697
<u>Balance, shares at Dec. 31, 2010</u>	24,011					
<u>Net income</u>			60,958		60,958	60,958
<b><u>Other comprehensive gain (loss):</u></b>						
<u>Unrealized gain (loss) on cash flow hedge, net of tax</u>				(2,119)	(2,119)	(2,119)
<u>Exercise of stock options and issuance of share-based awards, net of shares withheld for employee taxes, shares</u>	509					
<u>Exercise of stock options and issuance of share-based awards, net of shares withheld for employee taxes</u>	5	(2,405)				(2,400)
<u>Stock-based compensation</u>		7,709				7,709
<u>Tax benefit related to stock-based compensation</u>		4,690				4,690
<u>Balance at Dec. 31, 2011</u>	\$ 245	\$ 123,406	\$ 249,852	\$ (1,968)	\$ 58,839	\$ 371,535
<u>Balance, shares at Dec. 31, 2011</u>	24,520					

**Investment In Receivable  
Portfolios, Net**

**12 Months Ended  
Dec. 31, 2011**

[Investment In Receivable  
Portfolios, Net \[Abstract\]](#)

[Investment In Receivable  
Portfolios, Net](#)

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

In accordance with the authoritative guidance for loans and debt securities acquired with deteriorated credit quality, discrete receivable portfolio purchases during a quarter are aggregated into pools based on common risk characteristics. Once a static pool is established, the portfolios are permanently assigned to the pool. The discount (*i.e.*, the difference between the cost of each static pool and the related aggregate contractual receivable balance) is not recorded because the Company expects to collect a relatively small percentage of each static pool's contractual receivable balance. As a result, receivable portfolios are recorded at cost at the time of acquisition. The purchase cost of the portfolios includes certain fees paid to third parties incurred in connection with the direct acquisition of the receivable portfolios.

In compliance with the authoritative guidance, the Company accounts for its investments in consumer receivable portfolios using either the interest method or the cost recovery method. The interest method applies an internal rate of return ("IRR") to the cost basis of the pool, which remains unchanged throughout the life of the pool, unless there is an increase in subsequent expected cash flows. Subsequent increases in expected cash flows are generally recognized prospectively through an upward adjustment of the pool's IRR over its remaining life. Subsequent decreases in expected cash flows do not change the IRR, but are recognized as an allowance to the cost basis of the pool, and are reflected in the consolidated statements of income as a reduction in revenue, with a corresponding valuation allowance, offsetting the investment in receivable portfolios in the consolidated statements of financial condition.

The Company utilizes its proprietary forecasting models to continuously evaluate the economic life of each pool. The collection forecast of each pool is generally estimated to be between 84 to 96 months based on the expected collection period of each pool.

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

If the amount and timing of future cash collections on a pool of receivables are not reasonably estimable, the Company accounts for such portfolios on the cost recovery method as Cost Recovery Portfolios. The accounts in these portfolios have different risk characteristics than those included in other portfolios acquired during the same quarter, or the necessary information was not available to estimate future cash flows and, accordingly, they were not aggregated with other portfolios. Under the cost recovery method of accounting, no income is recognized until the purchase price of a Cost Recovery Portfolio has been fully recovered.

Accretable yield represents the amount of revenue the Company expects to generate over the remaining life of its existing investment in receivable portfolios based on estimated future

cash flows. Total accretable yield is the difference between future estimated collections and the current carrying value of a portfolio. All estimated cash flows on portfolios where the cost basis has been fully recovered are classified as zero basis cash flows.

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

	Accretable Yield	Estimate of Zero Basis Cash Flows	Total
Balance at December 31, 2009	\$628,439	\$4,695	\$633,134
Revenue recognized, net	(353,704)	(10,590 )	(364,294)
Additions on existing portfolios	39,332	10,169	49,501
Additions for current purchases	425,718	—	425,718
Balance at December 31, 2010	\$739,785	\$4,274	\$744,059
Revenue recognized, net	(428,096)	(20,618 )	(448,714)
Additions on existing portfolios	119,600	49,020	168,620
Additions for current purchases	390,238	—	390,238
Balance at December 31, 2011	\$821,527	\$32,676	\$854,203

During the year ended December 31, 2011, the Company purchased receivable portfolios with a face value of \$11.7 billion for \$386.9 million, or a purchase cost of 3.3% of face value. The estimated future collections at acquisition for these portfolios amounted to \$733.6 million. During the year ended December 31, 2010, the Company purchased receivable portfolios with a face value of \$10.9 billion for \$362.0 million, or a purchase cost of 3.3% of face value. The estimated future collections at acquisition for these portfolios amounted to \$750.4 million.

All collections realized after the net book value of a portfolio has been fully recovered ("Zero Basis Portfolios") are recorded as revenue ("Zero Basis Revenue"). During the years ended December 31, 2011, 2010, and 2009, approximately \$20.6 million, \$10.6 million, and \$9.0 million, respectively, were recognized as revenue on portfolios for which the related cost basis has been fully recovered.

The following tables summarize the changes in the balance of the investment in receivable portfolios during the following periods (*in thousands, except percentages*):

	Year Ended December 31, 2011			Total
	Accrual Basis Portfolios	Cost Recovery Portfolios	Zero Basis Portfolios	
Balance, beginning of period	\$644,753	\$ —	\$—	\$644,753
Purchases of receivable portfolios	386,850	—	—	386,850
Gross collections <sup>(1)</sup>	(740,402 )	—	(20,609)	(761,011)
Put-backs and recalls <sup>(2)</sup>	(2,843 )	—	(9 )	(2,852 )
Revenue recognized (Portfolio allowances) portfolio allowance reversals, net	443,367	—	16,170	459,537
	(15,271 )	—	4,448	(10,823 )
Balance, end of period	\$716,454	\$ —	\$—	\$716,454

Revenue as a percentage of collections <sup>(3)</sup>	Year Ended December 31, 2010		Year Ended December 31, 2009	
	Accrual Basis Portfolios	Cost Recovery Portfolios	Zero Basis Portfolios	Total
	59.9 %	0.0 %	78.5 %	60.4 %
Balance, beginning of period	\$526,366	\$ 511	\$—	\$526,877
Purchases of receivable portfolios	361,957	—	—	361,957
Gross collections <sup>(1)</sup>	(593,749 )	(55 )	(10,590)	(604,394)
Put-backs and recalls <sup>(2)</sup>	(3,981 )	—	—	(3,981 )
Revenue recognized	376,814	—	9,689	386,503
(Portfolio allowances) portfolio allowance reversals, net	(22,654 )	(456 )	901	(22,209 )
Balance, end of period	\$644,753	\$ —	\$—	\$644,753
Revenue as a percentage of collections <sup>(3)</sup>	63.5 %	0.0 %	91.5 %	63.9 %

Revenue as a percentage of collections <sup>(3)</sup>	Year Ended December 31, 2010		Year Ended December 31, 2009	
	Accrual Basis Portfolios	Cost Recovery Portfolios	Zero Basis Portfolios	Total
Balance, beginning of period	\$460,598	\$ 748	\$—	\$461,346
Purchases of receivable portfolios	256,632	—	—	256,632
Gross collections <sup>(1)</sup>	(478,253 )	(237 )	(8,968 )	(487,458)
Put-backs and recalls <sup>(2)</sup>	(3,371 )	—	(4 )	(3,375 )
Revenue recognized	310,116	—	8,926	319,042
(Portfolio allowances) portfolio allowance reversals, net	(19,356 )	—	46	(19,310 )
Balance, end of period	\$526,366	\$ 511	\$—	\$526,877
Revenue as a percentage of collections <sup>(3)</sup>	64.8 %	0.0 %	99.5 %	65.4 %

(1) Does not include amounts collected on behalf of others.

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

(3) Revenue as a percentage of collections excludes the effects of net portfolio allowances or net portfolio allowance reversals.

The following table summarizes the change in the valuation allowance for investment in receivable portfolios during the periods presented (*in thousands*):

	Valuation Allowance
Balance at December 31, 2008	\$57,152

Provision for portfolio allowances	21,329
Reversal of prior allowances	(2,019 )
Balance at December 31, 2009	\$76,462
Provision for portfolio allowances	28,259
Reversal of prior allowances	(6,050 )
Balance at December 31, 2010	\$98,671
Provision for portfolio allowances	17,707
Reversal of prior allowances	(6,884 )
Balance at December 31, 2011	<u>\$109,494</u>

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

	<u>Year Ended December 31,</u>		
	<u>2011</u>	<u>2010</u>	<u>2009</u>
Legal collections	\$377,455	\$266,762	\$232,667
Collection sites	335,992	268,205	185,789
Collection agencies	47,657	68,042	62,653
Other	54	1,600	6,683
	<u>\$761,158</u>	<u>\$604,609</u>	<u>\$487,792</u>