FORM S-4/A

Registration of securities issued in business combination transactions [amend]

Filing Date: **2006-11-08**
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FILER

AIIM Restaurant, Inc. CIK:**1375898**| IRS No.: **411977654** | State of Incorp.:**MN** | Fiscal Year End: **0630** Type: **S-4/A** | Act: **33** | File No.: **333-137605-08** | Film No.: **061196922**	Mailing Address *15 S. 9TH ST.* *LASALLE BLDG.* *MINNEAPOLIS MN 55402*	Business Address *15 S. 9TH ST.* *LASALLE BLDG.* *MINNEAPOLIS MN 55402* *612-332-3361*
Argosy University Family Center, Inc. CIK:**1375897**| IRS No.: **161665500** | State of Incorp.:**MN** | Fiscal Year End: **0630** Type: **S-4/A** | Act: **33** | File No.: **333-137605-07** | Film No.: **061196923**	Mailing Address *310 EAST 38TH ST.,* *MINNEAPOLIS MN 55409*	Business Address *310 EAST 38TH ST.,* *MINNEAPOLIS MN 55409* *612-827-5981*
Connecting Link, Inc. CIK:**1375896**| IRS No.: **581987235** | State of Incorp.:**GA** | Fiscal Year End: **0630** Type: **S-4/A** | Act: **33** | File No.: **333-137605-05** | Film No.: **061196924**	Mailing Address *5126 RALSTON ST.* *VENTURA CA 93003*	Business Address *5126 RALSTON ST.* *VENTURA CA 93003* *805-654-0739*
EDMC Aviation, Inc. CIK:**1375894**| IRS No.: **200212231** | State of Incorp.:**PA** | Fiscal Year End: **0630** Type: **S-4/A** | Act: **33** | File No.: **333-137605-04** | Film No.: **061196926**	Mailing Address *210 SIXTH AVENUE* *PITTSBURGH PA 15222*	Business Address *210 SIXTH AVENUE* *PITTSBURGH PA 15222* *412-562-0900*
MCM University Plaza, Inc. CIK:**1375892**| IRS No.: **364118464** | State of Incorp.:**IL** | Fiscal Year End: **0630** Type: **S-4/A** | Act: **33** | File No.: **333-137605-01** | Film No.: **061196928**	Mailing Address *210 SIXTH AVENUE* *PITTSBURGH PA 15222*	Business Address *210 SIXTH AVENUE* *PITTSBURGH PA 15222* *412-562-0900*
Education Management Finance Corp. CIK:**1375890**| IRS No.: **204887689** | State of Incorp.:**DE** | Fiscal Year End: **0630** Type: **S-4/A** | Act: **33** | File No.: **333-137605-11** | Film No.: **061196929**	Mailing Address *210 SIXTH AVENUE* *PITTSBURGH PA 15222*	Business Address *210 SIXTH AVENUE* *PITTSBURGH PA 15222* *412-562-0900*
Brown Mackie Holding CO CIK:**1375895**| IRS No.: **203108775** | State of Incorp.:**DE** | Fiscal Year End: **0630** Type: **S-4/A** | Act: **33** | File No.: **333-137605-06** | Film No.: **061196925**	Mailing Address *210 SIXTH AVENUE* *PITTSBURGH PA 15222*	Business Address *210 SIXTH AVENUE* *PITTSBURGH PA 15222* *412-562-0900*
EDMC Marketing & Advertising, Inc. CIK:**1375893**| IRS No.: **581591601** | State of Incorp.:**GA** | Fiscal Year End: **0630** Type: **S-4/A** | Act: **33** | File No.: **333-137605-03** | Film No.: **061196927**	Mailing Address *210 SIXTH AVENUE* *PITTSBURGH PA 15222*	Business Address *210 SIXTH AVENUE* *PITTSBURGH PA 15222* *412-562-0900*

Education Management LLC

CIK:**1375891**| IRS No.: **204506022** | State of Incorp.:**DE** | Fiscal Year End: **0630**
Type: **S-4/A** | Act: **33** | File No.: **333-137605** | Film No.: **061196918**
SIC: **8200** Educational services

Mailing Address
210 SIXTH AVENUE
PITTSBURGH PA 15222

Business Address
210 SIXTH AVENUE
PITTSBURGH PA 15222
412-562-0900

AIH Restaurant, Inc.

CIK:**1375899**| IRS No.: **760431417** | State of Incorp.:**TX** | Fiscal Year End: **0630**
Type: **S-4/A** | Act: **33** | File No.: **333-137605-09** | Film No.: **061196921**

Mailing Address
1900 YORKTOWN
HOUSTON TX 77056

Business Address
1900 YORKTOWN
HOUSTON TX 77056
713-623-2040

Higher Education Services, Inc.

CIK:**1375901**| IRS No.: **581983881** | State of Incorp.:**GA** | Fiscal Year End: **0630**
Type: **S-4/A** | Act: **33** | File No.: **333-137605-02** | Film No.: **061196919**

Mailing Address
9 SCIENCE COURT
COLUMBIA SC 29203

Business Address
9 SCIENCE COURT
COLUMBIA SC 29203
803-799-9082

AID Restaurant, Inc.

CIK:**1375900**| IRS No.: **010691168** | State of Incorp.:**TX** | Fiscal Year End: **0630**
Type: **S-4/A** | Act: **33** | File No.: **333-137605-10** | Film No.: **061196920**

Mailing Address
8080 PARK LANE
SUITE 100
DALLAS TX 75231

Business Address
8080 PARK LANE
SUITE 100
DALLAS TX 75231
214-692-8080

As filed with the Securities and Exchange Commission on November 8, 2006

Registration No. 333-137605

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

AMENDMENT NO. 1
TO
FORM S-4
REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

Education Management LLC
Education Management Finance Corp.

(Exact name of registrant issuer as specified in its charter)

SEE TABLE OF ADDITIONAL REGISTRANTS

Delaware	**8249**	**20-4506022**
Delaware	**8249**	**20-4887689**
(State or other jurisdiction of incorporation)	**(Primary Standard Industrial Classification Code Number)**	**(I.R.S. Employer Identification Number)**

c/o Education Management Corporation

210 Sixth Avenue, 33rd Floor, Pittsburgh, Pennsylvania 15222

(412)-562-0900

(Address, including zip code, and telephone number, including area code, of registrants' principal executive offices)

J. Devitt Kramer, Esq.

Senior Vice President, General Counsel and Secretary

210 Sixth Avenue, 33rd Floor, Pittsburgh, Pennsylvania 15222

(412)-562-0900

(Name, address, including zip code, and telephone number, including area code, of agent for service)

With a copy to:

Richard A. Fenyes, Esq.

Simpson Thacher & Bartlett LLP

425 Lexington Avenue

New York, New York 10017-3954

Tel: (212) 455-2000

Approximate date of commencement of proposed exchange offers: As soon as practicable after this Registration Statement is declared effective.

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, please check the following box. ☐

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Note	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee
8 3/4% Senior Notes due 2014	$375,000,000	100%	$375,000,000	$40,125(2)
10 1/4% Senior Subordinated Notes due 2016	$385,000,000	100%	$385,000,000	$41,195(2)
Guarantees of 8 3/4% Senior Notes due 2014(4)	N/A(3)	(4)	(4)	(4)
Guarantees of 10 1/4% Senior Subordinated Notes due 2016(4)	N/A(3)	(4)	(4)	(4)

(1) Estimated solely for the purpose of calculating the registration fee under Rule 457(f) of the Securities Act of 1933, as amended (the "Securities Act").

(2) Previously Paid.

(3) See inside facing page for additional registrant guarantors.

(4) Pursuant to Rule 457(n) under the Securities Act, no separate filing fee is required for the guarantees.

The Registrants hereby amend this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrants shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

Table of Additional Registrant Guarantors

Exact Name of Registrant Guarantor as Specified in its Charter	State or Other Jurisdiction of Incorporation or Organization	I.R.S. Employer Identification Number	Address, Including Zip Code and Telephone Number, Including Area Code, of Registrant Guarantor's Principal Executive Offices
AID Restaurant, Inc.	Texas	01-0691168	8080 Park Lane Suite 100 Dallas, Texas 75231 214-692-8080
AIH Restaurant, Inc.	Texas	76-0431417	1900 Yorktown Houston, Texas 77056 713-623-2040
AIIM Restaurant, Inc.	Minnesota	41-1977654	15 S. 9th St. LaSalle Building Minneapolis, Minnesota 55409 612-332-3361
Argosy University Family Center, Inc.	Minnesota	16-1665500	310 East 38th St. Minneapolis, MN 55409 612-827-5981
Brown Mackie Holding Company	Delaware	20-3108775	210 Sixth Avenue, 33rd Floor, Pittsburgh, Pennsylvania 15222 412-562-0900
The Connecting Link, Inc.	Georgia	58-1987235	5126 Ralston St. Ventura, CA 93003 805-654-0739
EDMC Aviation, Inc.	Pennsylvania	20-0212231	210 Sixth Avenue, 33rd Floor, Pittsburgh, Pennsylvania 15222 412-562-0900
EDMC Marketing and Advertising, Inc.	Georgia	58-1591601	210 Sixth Avenue, 33rd Floor, Pittsburgh, Pennsylvania 15222 412-562-0900
Higher Education Services, Inc.	Georgia	58-1983881	709 Mall Avenue Savanah, GA 31406 803-799-9082
MCM University Plaza, Inc.	Illinois	36-4118464	210 Sixth Avenue, 33rd Floor, Pittsburgh, Pennsylvania 15222 412-562-0900

EXPLANATORY NOTE

This Amendment No. 1 to the Registration Statement on Form S-4 of Education Management LLC and Education Management Finance Corp. is being filed for the purpose of filing exhibits.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 20. ***Indemnification of Directors and Officers.***

(a) Education Management Finance Corp. and Brown Mackie Holding Company are each incorporated under the laws of Delaware.

Section 145 of the Delaware General Corporation Law (the "DGCL") grants each corporation organized thereunder the power to indemnify any person who is or was a director, officer, employee or agent of a corporation or enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of being or having been in any such capacity, if he acted in good faith in a manner reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 102(b)(7) of the DGCL enables a corporation in its certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director to the corporation or its stockholders of monetary damages for violations of the directors' fiduciary duty of care, except (i) for any breach of the director' s duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions) or (iv) for any transaction from which a director derived an improper personal benefit.

In accordance with these provisions, the articles of incorporation and/or the bylaws of Education Management Finance Corp. and Brown Mackie Holding Company provide for indemnification of any person who is, was or shall be a director, officer, employee or agent of the corporation, to the full extent permitted by the DGCL, as amended from time to time.

(b) Education Management LLC is a limited liability company organized under the laws of Delaware

Section 18-108 of the Delaware Limited Liability Company Act empowers a Delaware limited liability company to indemnify and hold harmless any member or manager of the limited liability company from and against any and all claims and demands whatsoever.

In accordance with this provisions, the Limited Liability Company Agreement of Education Management LLC state that the company shall indemnify, defend and hold harmless the member and any director, officer, partner, stockholder, controlling person or employee of the member, each member of the board of managers and any person serving at the request of the company from any liability, loss or damage incurred by the indemnified party by reason of any act performed or omitted to be performed by the indemnified party in connection with the business of the company including reasonable attorneys' fees and costs and any amounts expended in the settlement of any such claims of liability, loss or damage; provided however, that if the liability, loss, damage or claim arises out of any action or inaction of an indemnified party, indemnification shall be available only if (a) either (i) the indemnified party, at the time of such action or inaction determined in good faith that its, his or her course of conduct was in, or not opposed to, the best interests of the company or (ii) in the case of inaction by the indemnified party, the indemnified party did not intend its, his or her inaction to be harmful or opposed to the best interests of the company and (b) the action or inaction did not constitute fraud, gross negligence or willful misconduct by the indemnified party.

(c) Higher Education Services, Inc. is incorporated under the laws of Georgia

Section 14 of the Georgia Business Corporation Code states that a corporation may indemnify an individual who is a party to a proceeding because he or she is or was a director against liability incurred in the proceeding if: (1) such individual conducted himself or herself in good faith; and (2) such individual reasonably believed: (A) in the case of conduct in his or her official capacity, that such conduct was in the best interests of the corporation; (B) in all other cases, that such conduct was at least not opposed to the best interests of the corporation; and (C) in the case of any criminal proceeding, that the individual had no reasonable cause to believe such conduct was unlawful. A corporation may not indemnify a director under this Code section: (1) in connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct; or (2) in connection with any proceeding with respect to conduct for which he or she was adjudged liable on the basis that personal benefit was improperly received by him or her, whether or not involving action in his or her official capacity. The Code further states that a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he or she was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding. A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding because he or she is a director.

A corporation may indemnify and advance expenses under this part to an officer of the corporation who is a party to a proceeding because he or she is an officer of the corporation to the same extent as a director and f he or she is not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract except for liability arising out of conduct that constitutes appropriation, in violation of his or her duties, of any business opportunity of the corporation, acts or omissions which involve intentional misconduct or a knowing violation of law, the types of liability set forth in section 14-2-832 of the Code or receipt of an improper personal benefit.

A corporation may purchase and maintain insurance on behalf of an individual who is a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, serves at the corporation' s request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify or advance expenses to him or her against the same liability.

The bylaws of Higher Education Services, Inc. provide that the corporation shall indemnify any and all persons who may serve or who have served at any time as directors, trustees or officers to the fullest extent permitted by the Georgia Business Corporation Code.

(d) MCM University Plaza, Inc. is incorporated under the laws of Illinois.

Under Article 8, Section 5 of the Illinois Business Corporation Act, a corporation may indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or who is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

A corporation may purchase and maintain insurance on behalf of any such person against any liability asserted him or her and incurred by him or her in any such capacity.

The bylaws of MCM University Plaza, Inc. provide that the corporation shall indemnify any and all persons whom it shall have the power to indemnify under the provisions of the Illinois Business Corporation Act from and against any and all of the expenses, liabilities or other matters referred to by such provisions.

(e) AIIM Restaurant, Inc. and Argosy University Family Center, Inc. are each incorporated under the laws of Minnesota.

The Minnesota Business Corporation Act provides that a corporation shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions; acted in good faith; received no improper personal benefit; in the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and in the case of acts or omissions occurring in the official capacity, reasonably believed that the conduct was in the best interests of the corporation, or in the case of acts or omissions occurring in the official capacity, reasonably believed that the conduct was not opposed to the best interests of the corporation.

A corporation may purchase and maintain insurance on behalf of a person in that person' s official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the corporation would have been required to indemnify the person against the liability under the provisions of this section.

The articles of association and the bylaws of AIIM Restaurant, Inc. and Argosy University Family Center, Inc. provide that directors, officers, committee members and other persons shall have the rights to indemnification provided by the Minnesota Business Corporation Act.

(f) EDMC Aviation, Inc. is incorporated under the laws of Pennsylvania.

Under Section 1741 of the Pennsylvania Business Corporation Law of 1988 (the "PBCL"), subject to certain limitations, a corporation has the power to indemnify directors, officers and other parties under certain prescribed circumstances against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with a threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative, to which any of them is a party or threatened to be made a party by reason of his being a representative of the corporation or serving at the request of the corporation as a representative of another corporation, partnership, joint venture, trust or other enterprise, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

Expenses incurred by parties in defending any action may be paid by the corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the party to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation.

The bylaws of EDMC Aviation, Inc. provide that it may indemnify any person who is or was or shall be a director or officer of the corporation, and may indemnify any person who is or was or shall be an employee or agent of the corporation, to the fullest extent permitted by the PBCL, from time to time.

(g) AID Restaurant, Inc. and AIH Restaurant, Inc. are each incorporated under the laws of Texas.

The Texas Business Organizations Code provides that an enterprise shall indemnify a governing person, former governing person, or delegate against reasonable expenses actually incurred by the person in connection with a proceeding in which the person is a respondent because the person is or was a governing person or delegate if the person is wholly successful, on the merits or otherwise, in the defense of the proceeding. A court that determines, in a suit for indemnification, that a governing person, former governing person, or delegate is entitled to indemnification under this section shall order indemnification and award to the person the expenses incurred in securing the indemnification.

An enterprise may indemnify a governing person, former governing person, or delegate who was, is, or is threatened to be made a respondent in a proceeding to the extent permitted by Section 8.102 of the Code if it is determined in accordance with Section 8.103 that the person acted in good faith; reasonably believed: (i) in the case of conduct in the person' s official capacity, that the person' s conduct was in the enterprise' s best interests; and (ii) in any other case, that the person' s conduct was not opposed to the enterprise' s best interests; and, in the case of a criminal proceeding, did not have a reasonable cause to believe the person' s conduct was unlawful.

The bylaws of AID Restaurant, Inc. and AIH Restaurant, Inc. provide that the corporations indemnify its present and former directors and officers to the fullest extent permitted by the Texas Business Corporation Act.

Item 21. ***Exhibits and Financial Statement Schedules.***

(a) Exhibits

2.1	Agreement and Plan of Merger, dated as of March 3, 2006, between EM Acquisition Corporation and Education Management Corporation ("EDMC") (incorporated herein by reference to the Exhibits filed with EDMC' s Current Report on Form 8-K dated March 9, 2006 and filed March 9, 2006 (Commission File No. 000-21363))*
3.1	Certificate of Formation of Education Management LLC*
3.2	Limited Liability Company Agreement of Education Management LLC*
3.3	Articles of Incorporation of Education Management Finance Corp.*
3.4	Bylaws of Education Management Finance Corp.*
3.5	Articles of Incorporation of AID Restaurant, Inc.*
3.6	Bylaws of AID Restaurant, Inc.*
3.7	Articles of Incorporation of AIH Restaurant, Inc.*
3.8	Bylaws of AIH Restaurant, Inc.*
3.9	Articles of Incorporation of AIIM Restaurant, Inc.*
3.10	Bylaws of AIIM Restaurant, Inc.*
3.11	Articles of Incorporation of Argosy University Family Center, Inc.*
3.12	Bylaws of Argosy University Family Center, Inc.*
3.13	Certificate of Incorporation of Brown Mackie Holding Company*
3.14	Bylaws of Brown Mackie Holding Company*
3.15	Articles of Incorporation of The Connecting Link, Inc.*
3.16	Bylaws of The Connecting Link, Inc.*
3.17	Articles of Incorporation of EDMC Aviation Inc.*
3.18	Bylaws of EDMC Aviation Inc.*
3.19	Articles of Incorporation of EDMC Marketing and Advertising, Inc.*

3.20	Bylaws of EDMC Marketing and Advertising, Inc.*
3.21	Articles of Incorporation of Higher Education Services, Inc.*
3.22	Bylaws of Higher Education Services, Inc.*
3.23	Articles of Incorporation of MCM University Plaza, Inc.*
3.24	Bylaws of MCM University Plaza, Inc.*
4.1	Indenture, dated as of June 1, 2006, among Education Management LLC, Education Management Finance Corp., the Guarantors named therein and The Bank of New York, as Trustee, governing the 8 3/4% Senior Notes**
4.2	Indenture, dated as of June 1, 2006, among Education Management LLC, Education Management Finance Corp., the Guarantors named therein and The Bank of New York, as Trustee, governing the 10 1/4% Senior Subordinated Notes**
5.1	Opinion of Simpson Thacher & Bartlett LLP**
5.2	Opinion of Kirkpatrick & Lockhart Nicholson Graham LLP**
5.3	Opinion of Greenberg Traurig, LLP**
5.4	Opinion of Morgan, Lewis & Bockius LLP**
5.5	Opinion of Dorsey & Whitney LLP**
5.6	Opinion of Kirkpatrick & Lockhart Nicholson Graham LLP**
10.1	Form of Credit and Guaranty Agreement, dated as of June 1, 2006, among Education Management LLC, Education Management Holdings LLC, certain Subsidiaries of Education Management Holdings LLC, the designated Subsidiary Borrowers referred to therein, each lender thereto, Credit Suisse Securities (USA) LLC, as Syndication Agent, BNP Paribas, as Administrative Agent and Collateral Agent and Merrill Lynch Capital Corporation and Bank of America, N.A., as Documentation Agents**
10.2	Form of Pledge and Security Agreement, dated as of June 1, 2006, among Education Management LLC, Education Management Holdings LLC, Education Management Finance Corp., the subsidiaries of Education Management LLC and BNP Paribas, as Collateral Agent**
10.3	Copyright Security Agreement, dated as of June 1, 2006, between Educational Management LLC and BNP Paribas, as Collateral Agent**
10.4	Trademark Security Agreement, dated as of June 1, 2006, between Educational Management LLC and BNP Paribas, as Collateral Agent**
10.5	Subscription Agreement, dated as of June 1, 2006, between EM Acquisition Corporation and each of the Purchasers named therein**
10.6	Management Agreement, dated as of June 1, 2006, between EM Acquisition Corporation, Education Management LLC, Goldman, Sachs & Co. and Providence Equity Partners Inc**
10.7	Amended and Restated Shareholders' Agreement, dated as of October 30, 2006, between EDMC and each of the Shareholders named therein**
10.8	EDMC Retirement Plan (incorporated by reference to the Exhibits to EDMC' s Annual Report on Form 10-K for the year ended June 30, 2003, filed on September 29, 2003 (the "2003 Form 10-K"))
10.9	EDMC Stock Option Plan, effective August 1, 2006**
10.10	EDMC Deferred Compensation Plan, amended for implementation August 1, 2003 (incorporated by reference to the Exhibits filed with the 2003 Form 10-K)

10.11	EDMC Deferred Compensation Plan, amended for implementation August 1, 2003, with resolution for rescission of 2005 contributions under the AJCA, effected December 14, 2005 (incorporated by reference the Exhibits filed with EDMC' s Current Report on Form 8-K filed on December 19, 2005)
10.12	Amendment to the EDMC Retirement Plan, dated as of March 9, 2004**
10.13	Second Amendment to the EDMC Retirement Plan, dated as of December 23, 2004**
10.14	Third Amendment to the EDMC Retirement Plan, dated as of December 21, 2005**
10.15	Employment Agreement, dated as of June 1, 2006, by and between EDMC and John R. McKernan, Jr.*
10.16	Employment Agreement, dated as of June 1, 2006, by and between EDMC and Edward H. West*
10.17	Nonqualified Stock Option Agreement (Time-Vesting), between EDMC and John R. McKernan, Jr., effective as of August 1, 2006*
10.18	Nonqualified Stock Option Agreement (Performance-Vesting), between EDMC and John R. McKernan, Jr., effective as of August 1, 2006*
10.19	Nonqualified Stock Option Agreement (Time-Vesting), between EDMC and Edward H. West, effective as of August 1, 2006*
10.20	Nonqualified Stock Option Agreement (Performance-Vesting), between EDMC and Edward H. West, effective as of August 1, 2006*
12.1	Computation of Ratio of Earnings to Fixed Charges*
21.1	List of Subsidiaries*
23.1	Consent of Simpson Thacher & Bartlett LLP (included as part of its opinion filed as Exhibit 5.1 hereto)**
23.2	Consent of Kirkpatrick & Lockhart Nicholson Graham LLP (included as part of his opinion filed as Exhibit 5.2 hereto)**
23.3	Consent of Greenberg Traurig, LLP (included as part of its opinion filed as Exhibit 5.3 hereto)**
23.4	Consent of Morgan, Lewis & Bockius LLP (included as part of its opinion filed as Exhibit 5.4 hereto)**
23.5	Consent of Dorsey & Whitney LLP (included as part of its opinion filed as Exhibit 5.5 hereto)**
23.6	Consent of Kirkpatrick & Lockhart Nicholson Graham LLP (included as part of its opinion filed as Exhibit 5.6 hereto)**
23.7	Consent of Ernst & Young LLP*
24.1	Power of Attorney of Education Management LLC*
24.2	Power of Attorney of Education Management Finance Corp*
24.3	Power of Attorney of AID Restaurant, Inc.*
24.4	Power of Attorney of AIH Restaurant, Inc.*
24.5	Power of Attorney of AIIM Restaurant, Inc.*
24.6	Power of Attorney of Argosy University Family Center*
24.7	Power of Attorney of Brown Mackie Holding Company*
24.8	Power of Attorney of The Connecting Link, Inc.*
24.9	Power of Attorney of EDMC Aviation Inc.*
24.10	Power of Attorney of EDMC Marketing and Advertising, Inc.*
24.11	Power of Attorney of Higher Education Services, Inc.*
24.12	Power of Attorney of MCM University Plaza, Inc.*
25.1	Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939 of The Bank of New York with respect to the Indenture governing the 8 3/4% Senior Notes**
25.2	Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939 of The Bank of New York with respect to the Indenture governing the 10 1/4 % Senior Subordinated Notes**

99.1 Form of Letter of Transmittal**

99.2 Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees**

99.3 Form of Letter to Clients**

99.4 Form of Notice of Guaranteed Delivery**

* Previously filed

** Filed herewith

(b) Financial Statement Schedules

None.

Item 22. ***Undertakings.***

(a) The undersigned registrant hereby undertakes:

(1) to file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amend) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more that a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

(2) that, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and

(3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities:

The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Item 4, 10(b) 11 or 13 of Form S-4, within one business day of receipt of such request, and to send the incorporated documents by first class mail or equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(c) The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

(d) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Pittsburgh, Commonwealth of Pennsylvania, on November 8, 2006.

EDUCATION MANAGEMENT LLC

By: *

Name: **John R. McKernan, Jr.**

Title: **Chief Executive Officer**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
*	Chief Executive Officer (Principal Executive Officer) and Chairman of the Board of Directors	November 8, 2006
John R. McKernan, Jr.		
/S/ EDWARD H. WEST	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	November 8, 2006
Edward H. West		
*	Vice President and Controller (Principal Accounting Officer)	November 8, 2006
Christopher M. Lynne		
*	Director	November 8, 2006
Adrian M. Jones		
*	Director	November 8, 2006
Leo F. Mullin		
*	Director	November 8, 2006
Peter O. Wilde		
*	Director	November 8, 2006
Paul J. Salem		

*By: /S/ EDWARD H. WEST

Edward H. West

Attorney-in-Fact

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Pittsburgh, Commonwealth of Pennsylvania, on November 8, 2006.

EDUCATION MANAGEMENT FINANCE CORP.

By: *

Name: **John R. McKernan, Jr.**

Title: **President**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
*	President (Principal Executive Officer)	November 8, 2006
John R. McKernan, Jr.		
/S/ EDWARD H. WEST	Chief Financial Officer (Principal Financial Officer)	November 8, 2006
Edward H. West		
*	Controller (Principal Accounting Officer)	November 8, 2006
Christopher M. Lynne		
*	Director	November 8, 2006
Leo F. Mullin		
*	Director	November 8, 2006
Adrian M. Jones		
*	Director	November 8, 2006
Peter O. Wilde		
*	Director	November 8, 2006
Paul J. Salem		

*By: /S/ EDWARD H. WEST

Edward H. West

Attorney-in-Fact

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Pittsburgh, Commonwealth of Pennsylvania, on November 8, 2006.

AID RESTAURANT, INC.

By: *

Name: **Simon Lumley**

Title: **President**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
*	President (Principal Executive Officer) and Director	November 8, 2006
Simon Lumley		
/s/ EDWARD H. WEST	Principal Financial Officer	November 8, 2006
Edward H. West		
*	Controller and Principal Accounting Officer	November 8, 2006
Christopher M. Lynne		

*By: /s/ EDWARD H. WEST

Edward H. West

Attorney-in-Fact

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Pittsburgh, Commonwealth of Pennsylvania, on November 8, 2006.

AIH RESTAURANT, INC.

By: *

Name: **Larry Horn**

Title: **President**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
*	President (Principal Executive Officer) and Director	November 8, 2006
Larry Horn		
/S/ EDWARD H. WEST	Principal Financial Officer	November 8, 2006
Edward H. West		
*	Principal Accounting Officer	November 8, 2006
Christopher M. Lynne		

*By: /s/ EDWARD H. WEST

Edward H. West

Attorney-in-Fact

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Pittsburgh, Commonwealth of Pennsylvania, on November 8, 2006.

AIIM RESTAURANT, INC.

By: *

Name: **Joseph Marzano**

Title: **President**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
*	President (Principal Executive Officer) and Director	November 8, 2006
Joseph Marzano		
/S/ EDWARD H. WEST	Principal Financial Officer	November 8, 2006
Edward H. West		
*	Principal Accounting Officer	November 8, 2006
Christopher M. Lynne		

*By: /s/ EDWARD H. WEST

Edward H. West

Attorney-in-Fact

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Pittsburgh, Commonwealth of Pennsylvania, on November 8, 2006.

ARGOSY UNIVERSITY FAMILY CENTER, INC.

By: *

Name: **William Cowan**

Title: **President**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
*	President (Principal Executive Officer) and Director	November 8, 2006
William Cowan		
/S/ EDWARD H. WEST	Principal Financial Officer	November 8, 2006
Edward H. West		
*	Principal Accounting Officer	November 8, 2006
Christopher M. Lynne		

*By: /S/ EDWARD H. WEST

Edward H. West

Attorney-in-Fact

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Pittsburgh, Commonwealth of Pennsylvania, on November 8, 2006.

BROWN MACKIE HOLDING COMPANY

*

By:

Name: **Danny Finuf**
Title: **President**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
*	President	
Danny Finuf	(Principal Executive Officer)	November 8, 2006
/S/ EDWARD H. WEST	Principal Financial Officer and Director	
Edward H. West		November 8, 2006
*	Principal Accounting Officer	
Christopher M. Lynne		November 8, 2006
*	Director	
John R. McKernan		November 8, 2006
*	Director	
Stacey R. Sauchuk		November 8, 2006

/S/ EDWARD H. WEST

*By:

Edward H. West
Attorney-in-Fact

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Pittsburgh, Commonwealth of Pennsylvania, on November 8, 2006.

THE CONNECTING LINK, INC.

By: *

Name: **Gregory O' Brien**

Title: **President**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
*	President (Principal Executive Officer) and Director	November 8, 2006
Gregory O' Brien		
/S/ EDWARD H. WEST	Principal Financial Officer and Director	November 8, 2006
Edward H. West		
*	Principal Accounting Officer	November 8, 2006
Christopher M. Lynne		
*	Director	November 8, 2006
John R. McKernan, Jr.		
*	Director	November 8, 2006
John T. South, III		

*By:

/S/ EDWARD H. WEST

Edward H. West

Attorney-in-Fact

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Pittsburgh, Commonwealth of Pennsylvania, on November 8, 2006.

EDMC AVIATION, INC.

*

By:

Name: **John R. McKernan, Jr.**
Title: **President**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
*	President (Principal Executive Officer) and Director	November 8, 2006
John R. McKernan, Jr.		
/S/ EDWARD H. WEST	Principal Financial Officer and Director	November 8, 2006
Edward H. West		
*	Principal Accounting Officer	November 8, 2006
Christopher M. Lynne		
*	Director	November 8, 2006
Stacey R. Sauchuk		

/S/ EDWARD H. WEST

*By:

Edward H. West
Attorney-in-Fact

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Pittsburgh, Commonwealth of Pennsylvania, on November 8, 2006.

EDMC MARKETING AND ADVERTISING, INC.

By: *

Name: **Joseph A. Charlson**

Title: **President**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
*	President (Principal Executive Officer)	November 8, 2006
Joseph A. Charlson		
/S/ EDWARD H. WEST	Principal Financial Officer and Director	November 8, 2006
Edward H. West		
*	Principal Accounting Officer	November 8, 2006
Christopher M. Lynne		
*	Director	November 8, 2006
John R. McKernan, Jr.		
*	Director	November 8, 2006
John T. South, III		

***By:** /S/ EDWARD H. WEST

Edward H. West

Attorney-in-Fact

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Pittsburgh, Commonwealth of Pennsylvania, on November 8, 2006.

HIGHER EDUCATION SERVICES, INC.

By: *

Name: **John T. South, III**

Title: **President**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
*	President (Principal Executive Officer) and Director	November 8, 2006
John T. South, III		
/S/ EDWARD H. WEST	Principal Financial Officer and Director	November 8, 2006
Edward H. West		
*	Principal Accounting Officer	November 8, 2006
Christopher M. Lynne		
*	Director	November 8, 2006
John R. McKernan, Jr.		
*	Director	November 8, 2006
John T. South, III		

*By: /S/ EDWARD H. WEST

Edward H. West

Attorney-in-Fact

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Pittsburgh, Commonwealth of Pennsylvania, on November 8, 2006.

MCM UNIVERSITY PLAZA, INC.

By: *

Name:

Gregory O' Brien

Title:

President

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
*	President (Principal Executive Officer) and Director	November 8, 2006
Gregory O' Brien		
/S/ EDWARD H. WEST	Principal Financial Officer and Director	November 8, 2006
Edward H. West		
*	Principal Accounting Officer	November 8, 2006
Christopher M. Lynne		
*	Director	November 8, 2006
John R. McKernan, Jr.		
*	Director	November 8, 2006
John T. South, III		

*By: /S/ EDWARD H. WEST

Edward H. West

Attorney-in-Fact

Exhibit 4.1

INDENTURE

Dated as of June 1, 2006

Among

EDUCATION MANAGEMENT LLC,

EDUCATION MANAGEMENT FINANCE CORP.,

THE GUARANTORS NAMED ON THE SIGNATURE PAGES HERETO

and

THE BANK OF NEW YORK,
as Trustee

8 3/4% SENIOR NOTES DUE 2014

CROSS-REFERENCE TABLE*

Trust Indenture Act Section	Indenture Section
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.10
(b)	7.10
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.05
(b)	12.03
(c)	12.03
313(a)	7.06
(b)(1)	N.A.
(b)(2)	7.06;7.07

(c)	7.06; 12.02
(d)	7.06
314(a)	4.03; 12.02; 12.05
(b)	N.A.
(c)(1)	12.04
(c)(2)	12.04
(c)(3)	N.A.
(d)	N.A.
(e)	12.05
(f)	N.A.
315(a)	7.01
(b)	7.05; 12.02
(c)	7.01
(d)	7.01
(e)	6.14
316(a)(last sentence)	2.09
(a)(1)(A)	6.05

(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	6.07
(c)	2.12; 9.04
317(a)(1)	6.08
(a)(2)	6.12
(b)	2.04
318(a)	12.01
(b)	N.A.
(c)	12.01

N.A. means not applicable.

* This Cross-Reference Table is not part of the Indenture.

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ARTICLE 6

DEFAULTS AND REMEDIES

ARTICLE 7

TRUSTEE

ARTICLE 12

MISCELLANEOUS

EXHIBITS

INDENTURE, dated as of June 1, 2006, among Education Management LLC, a Delaware limited liability company (the "**Company**"), Education Management Finance Corp., a Delaware corporation (the "**Co-Issuer**" and, together with the Company, the "**Issuers**") the Guarantors (as defined herein) listed on the signature pages hereto and The Bank of New York, a New York banking corporation, as Trustee (the "**Trustee**").

WITNESSETH

WHEREAS, the Issuers have duly authorized the creation of an issue of $375,000,000 aggregate principal amount of 8 3/4% Senior Notes due 2014 (the "**Initial Notes**");

WHEREAS, each of the Issuers and each of the Guarantors has duly authorized the execution and delivery of this Indenture.

NOW, THEREFORE, the Issuers, the Guarantors and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders of the Notes.

ARTICLE 1

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 . *Definitions*.

"**144A Global Note**" means a Global Note substantially in the form of Exhibit A hereto, bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"**Acquired Indebtedness**" means, with respect to any specified Person,

(1) Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging with or into or becoming a Restricted Subsidiary of such specified Person, and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"**Acquisition**" means the transactions contemplated by the Transaction Agreement.

"**Additional Interest**" means all additional interest then owing pursuant to the Registration Rights Agreement.

"**Additional Notes**" means additional Notes (other than the Initial Notes and other than Exchange Notes for such Initial Notes) issued from time to time under this Indenture in accordance with Sections 2.01 and 4.09 hereof.

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"**Agent**" means any Registrar or Paying Agent.

"**Applicable Premium**" means, with respect to any Note on any Redemption Date, the greater of:

(1) 1.0% of the principal amount of such Note; and

(2) the excess, if any, of (a) the present value at such Redemption Date of (i) the redemption price of such Note at June 1, 2010 (each such redemption price being set forth in Section 3.07 hereof), plus (ii) all required interest payments due on such Note through June 1, 2010 (excluding accrued but unpaid interest to the Redemption Date), computed using a discount rate equal to the Treasury Rate as of such Redemption Date plus 50 basis points; over (b) the principal amount of such Note.

"**Applicable Procedures**" means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depositary, Euroclear and/or Clearstream that apply to such transfer or exchange.

"**Asset Sale**" means:

(1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a Sale and Lease Back Transaction) of the Company or any of its Restricted Subsidiaries (each referred to in this definition as a "**disposition**"); or

(2) the issuance or sale of Equity Interests of any Restricted Subsidiary (other than Preferred Stock of Restricted Subsidiaries issued in compliance with Section 4.09), whether in a single transaction or a series of related transactions;

in each case, other than:

(a) any disposition of Cash Equivalents or obsolete or worn out equipment in the ordinary course of business or any disposition of inventory or goods (or other assets) held for sale in the ordinary course of business;

(b) the disposition of all or substantially all of the assets of the Company in a manner permitted pursuant to the provisions described under Section 5.01(a) hereof or any disposition that constitutes a Change of Control pursuant to this Indenture;

(c) the making of any Restricted Payment or Permitted Investment that is permitted to be made, and is made, under Section 4.07 hereof;

(d) any disposition of assets or issuance or sale of Equity Interests of any Restricted Subsidiary in any transaction or series of transactions with an aggregate fair market value of less than $10.0 million;

(e) any disposition of property or assets or issuance of securities by a Restricted Subsidiary of the Company to the Company or by the Company or a Restricted Subsidiary of the Company to another Restricted Subsidiary of the Company;

(f) to the extent allowable under Section 1031 of the Internal Revenue Code of 1986, any exchange of like property (excluding any boot thereon) for use in a Similar Business;

(g) the lease, assignment or sub lease of any real or personal property in the ordinary course of business;

(h) any issuance or sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(i) foreclosures on assets; and

(j) any financing transaction with respect to property built or acquired by the Company or any Restricted Subsidiary after the Issue Date, including Sale and Lease Back Transactions and asset securitizations permitted by this Indenture.

"**Bankruptcy Law**" means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

"**Broker-Dealer**" has the meaning set forth in the Registration Rights Agreement.

"**Business Day**" means each day which is not a Legal Holiday.

"**Capital Stock**" means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"**Capitalized Lease Obligation**" means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) in accordance with GAAP.

"**Cash Equivalents**" means:

(1) United States dollars;

(2) such local currencies held by the Company or any Restricted Subsidiary from time to time in the ordinary course of business;

(3) securities issued or directly and fully and unconditionally guaranteed or insured by the U.S. government (or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government), with maturities of 24 months or less from the date of acquisition;

(4) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus of not less than $500.0 million in the case of U.S. banks and $100.0 million (or the U.S. dollar equivalent as of the date of determination) in the case of non U.S. banks;

(5) repurchase obligations for underlying securities of the types described in clauses (3) and (4) entered into with any financial institution meeting the qualifications specified in clause (4) above;

(6) commercial paper rated at least P 1 by Moody' s or at least A 1 by S&P and in each case maturing within 24 months after the date of creation thereof;

(7) marketable short term money market and similar securities having a rating of at least P 2 or A 2 from either Moody' s or S&P, respectively (or, if at any time neither Moody' s nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency) and in each case maturing within 24 months after the date of creation thereof;

(8) investment funds investing 95% of their assets in securities of the types described in clauses (1) through (7) above;

(9) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an Investment Grade Rating from either Moody' s or S&P with maturities of 24 months or less from the date of acquisition;

(10) Indebtedness or Preferred Stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody' s with maturities of 24 months or less from the date of acquisition; and

(11) Investments with average maturities of 24 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody' s.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clauses (1) and (2) above, *provided* that such amounts are converted into any currency listed in clauses (1) and (2) as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

"**Change of Control**" means the occurrence of any of the following:

(1) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person other than a Permitted Holder; or

(2) the Company becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d 5(b)(1) under the Exchange Act), other than the Permitted Holders, in

a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d 3 under the Exchange Act, or any successor provision) of 50% or more of the total voting power of the Voting Stock of the Company or any of its direct or indirect parent companies holding directly or indirectly 100% of the total voting power of the Voting Stock of the Company.

"**Clearstream**" means Clearstream Banking, Société Anonyme.

"**Company**" has the meaning set forth in the recitals hereto; provided that when used in the context of determining the fair market value of an asset or liability under this Indenture, "**Company**" shall be deemed to mean the board of directors of the Company when the fair market value is equal to or in excess of $50.0 million (unless otherwise expressly stated).

"**Consolidated Depreciation and Amortization Expense**" means with respect to any Person for any period, the total amount of depreciation and amortization expense, including the amortization of deferred financing fees of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"**Consolidated Interest Expense**" means, with respect to any Person for any period, without duplication, the sum of:

(1) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (a) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (b) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (c) non cash interest payments (but excluding any non cash interest expense attributable to the movement in the mark to market valuation of Hedging Obligations or other derivative instruments pursuant to GAAP), (d) the interest component of Capitalized Lease Obligations, and (e) net payments, if any, pursuant to interest rate Hedging Obligations with respect to Indebtedness, and excluding (v) accretion or accrual of discounted liabilities not constituting Indebtedness, (w) any expense resulting from the discounting of any Indebtedness in connection with the application of purchase accounting in connection with any acquisition, (x) any Additional Interest with respect to the Notes or the Senior Notes (as hereinafter defined), (y) amortization of deferred financing fees, debt issuance costs, commissions, fees and expenses and (z) any expensing of bridge, commitment and other financing fees; plus

(2) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; less

(3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

"**Consolidated Net Income**" means, with respect to any Person for any period, the aggregate of the Net Income, of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, and otherwise determined in accordance with GAAP; *provided, however*, that, without duplication,

(1) any after tax effect of extraordinary, non recurring or unusual gains or losses (less all fees and expenses relating thereto) or expenses (including relating to the Transaction to the extent incurred on or prior to June 30, 2007), severance, relocation costs and curtailments or modifications to pension and post-retirement employee benefit plans and other restructuring costs shall be excluded,

(2) the Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(3) any after tax effect of income (loss) from disposed or discontinued operations and any net after tax gains or losses on disposal of disposed, abandoned or discontinued operations shall be excluded,

(4) any after tax effect of gains or losses (less all fees and expenses relating thereto) attributable to asset dispositions other than in the ordinary course of business, as determined in good faith by the Company, shall be excluded,

(5) the Net Income for such period of any Person that is not a Subsidiary, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; provided that Consolidated Net Income of the Company shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash (or to the extent converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period,

(6) solely for the purpose of determining the amount available for Restricted Payments under clause (iii)(a) of Section 4.07(a) hereof, the Net Income for such period of any Restricted Subsidiary (other than any Guarantor) shall be excluded if the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not at the date of determination wholly permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, or governmental

regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived, provided that Consolidated Net Income of the Company will be increased by the amount of dividends or other distributions or other payments actually paid in cash (or to the extent converted into cash) to the Company or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein,

(7) effects of adjustments (including the effects of such adjustments pushed down to the Company and its Restricted Subsidiaries) in the property and equipment, software and other intangible assets, deferred revenue and debt line items in such Person' s consolidated financial statements pursuant to GAAP resulting from the application of purchase accounting in relation to the Transaction or any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded,

(8) any after tax effect of income (loss) from the early extinguishment of Indebtedness or Hedging Obligations or other derivative instruments shall be excluded,

(9) any impairment charge or asset write off, in each case, pursuant to GAAP and the amortization of intangibles arising pursuant to GAAP shall be excluded,

(10) any non cash compensation expense recorded from grants of stock appreciation or similar rights, stock options, restricted stock or other rights shall be excluded, and

(11) accruals and reserves that are established within twelve months after the Issue Date that are so required to be established as a result of the Transaction in accordance with GAAP shall be excluded.

Notwithstanding the foregoing, for the purpose of Section 4.07 hereof only (other than clause (iii)(d) of Section 4.07(a) hereof), there shall be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by the Company and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from the Company and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by the Company or any of its Restricted Subsidiaries, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case only to the extent such amounts increase the amount of Restricted Payments permitted under clause (iii)(d) of Section 4.07(a) hereof.

"**Consolidated Net Tangible Assets**" means the total amount of assets (less applicable reserves and other properly deductible items) after deducting (i) all current liabilities (excluding the amount of those which are by their terms

extendable or renewable at the option of the obligor to a date more than 12 months after the date as of which the amount is being determined) and (2) all goodwill, tradenames, patents, unamortized debt discount and expense and other intangible assets, all as set forth on the most recent balance sheet of the Company and its consolidated Restricted Subsidiaries and determined in accordance with GAAP.

"**Consolidated Secured Debt Ratio**" as of any date of determination means, the ratio of (1) Consolidated Total Indebtedness of the Company and its Restricted Subsidiaries that is secured by Liens as of such date to (2) the Company' s EBITDA for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such event for which such calculation is being made shall occur, in each case with such *pro* forma adjustments to Consolidated Total Indebtedness and EBITDA as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of Fixed Charge Coverage Ratio.

"**Consolidated Total Indebtedness**" means, as at any date of determination, an amount equal to the sum of (1) the aggregate amount of all outstanding Indebtedness of the Company and its Restricted Subsidiaries on a consolidated basis consisting of Indebtedness for borrowed money, Obligations in respect of Capitalized Lease Obligations and debt obligations evidenced by promissory notes and similar instruments (and any such Indebtedness of another Person guaranteed, or secured by a lien on any assets of, the Company or any of its Restricted Subsidiaries) and (2) the aggregate amount of all outstanding Disqualified Stock of the Company and all Preferred Stock of its Restricted Subsidiaries on a consolidated basis, with the amount of such Disqualified Stock and Preferred Stock equal to the greater of their respective voluntary or involuntary liquidation preferences and maximum fixed repurchase prices, in each case determined on a consolidated basis in accordance with GAAP. For purposes hereof, the "maximum fixed repurchase price" of any Disqualified Stock or Preferred Stock that does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Stock or Preferred Stock as if such Disqualified Stock or Preferred Stock were purchased on any date on which Consolidated Total Indebtedness shall be required to be determined pursuant to the Indenture, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock or Preferred Stock, such fair market value shall be determined reasonably and in good faith by the Company.

"**Contingent Obligations**" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness ("**primary obligations**") of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent,

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor,

(2) to advance or supply funds

(a) for the purchase or payment of any such primary obligation, or

(b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"**Corporate Trust Office of the Trustee**" shall be at the address of the Trustee specified in Section 12.02 hereof or such other address as to which the Trustee may give notice to the Holders and the Issuers.

"**Credit Facilities**" means, with respect to the Company or any of its Restricted Subsidiaries, one or more debt facilities, including the Senior Credit Facilities, or other financing arrangements (including, without limitation, commercial paper facilities or indentures) providing for revolving credit loans, term loans, letters of credit or other long term indebtedness, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof and any indentures or credit facilities or commercial paper facilities that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount permitted to be borrowed thereunder or alters the maturity thereof (provided that such increase in borrowings is permitted under Section 4.09 hereof) or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders.

"**Custodian**" means the Trustee, as custodian with respect to the Notes in global form, or any successor entity thereto.

"**Default**" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"**Definitive Note**" means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06(c) hereof, substantially in the form of Exhibit A hereto, except that such Note shall not bear the Global Note Legend and shall not have the "Schedule of Exchanges of Interests in the Global Note" attached thereto.

"**Depositary**" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 hereof as the Depositary with respect to the Notes, and any and all successors thereto appointed as Depositary hereunder and having become such pursuant to the applicable provision of this Indenture.

"**Designated Non-cash Consideration**" means the fair market value of non-cash consideration received by the Company or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer' s Certificate, setting forth the basis of such valuation, executed by the principal financial officer of the Company, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of or collection on such Designated Non-cash Consideration.

"**Designated Preferred Stock**" means Preferred Stock of the Company or any parent company thereof (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Company or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer' s Certificate executed by the principal financial officer of the Company or the applicable parent corporation thereof, as the case may be, on the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in clause (iii) of Section 4.07(a) hereof.

"**Disqualified Stock**" means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is putable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than solely as a result of a change of control or asset sale) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than solely as a result of a change of control or asset sale), in whole or in part, in each case prior to the date 91 days after the earlier of the maturity date of the Notes or the date the Notes are no longer outstanding; *provided, however*, that if such Capital Stock is issued to any plan for the benefit of employees of the Company or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Company or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

"**EBITDA**" means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period

(1) increased (without duplication) by:

(a) provision for taxes based on income or profits or capital, including, without limitation, state, franchise and similar taxes (such as the Pennsylvania capital tax) and foreign

withholding taxes of such Person paid or accrued during such period deducted (and not added back) in computing Consolidated Net Income; *plus*

(b) Fixed Charges of such Person for such period (including (x) net losses or Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk and (y) costs of surety bonds in connection with financing activities, in each case, to the extent included in Fixed Charges) to the extent the same was deducted (and not added back) in calculating such Consolidated Net Income; *plus*

(c) Consolidated Depreciation and Amortization Expense of such Person for such period to the extent the same were deducted (and not added back) in computing Consolidated Net Income; *plus*

(d) any expenses or charges (other than depreciation or amortization expense) related to any Equity Offering, Permitted Investment, acquisition, disposition, recapitalization or the incurrence of Indebtedness permitted to be incurred by this Indenture (including a refinancing thereof) (whether or not successful), including (i) such fees, expenses or charges related to the offering of the Notes, the Senior Subordinated Notes and the Credit Facilities and (ii) any amendment or other modification of the Notes or the Senior Subordinated Notes, and, in each case, deducted (and not added back) in computing Consolidated Net Income; *plus*

(e) the amount of any restructuring charge or reserve deducted (and not added back) in such period in computing Consolidated Net Income, including any one time costs incurred in connection with acquisitions after the Issue Date and costs related to the closure and/or consolidation of facilities; *plus*

(f) any other non cash charges, including any write offs or write downs, reducing Consolidated Net Income for such period (other than any such non-cash charges that represent an accrual or reserve for potential cash items in any future period, and excluding amortization of a prepaid cash item that was paid in a prior period); *plus*

(g) the amount of any minority interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any non-Wholly-Owned Subsidiary deducted (and not added back) in such period in calculating Consolidated Net Income; *plus*

(h) the amount of management, monitoring, consulting and advisory fees and related expenses paid in such period to the Investors to the extent otherwise permitted under clause (c) of Section 4.11 hereof; *plus*

(i) any costs or expense incurred by the Company or a Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement reducing Consolidated Net Income, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of the Company as equity (other than Disqualified Stock) or net cash proceeds of an issuance of Equity Interest of the Company (other than Disqualified Stock) solely to the extent that such net cash proceeds are excluded from the calculation set forth in clause (iii) of Section 4.07(a) hereof and the calculation set forth in clause (xii) of Section 4.09(b) hereof; *plus*

(j) any fees and expenses incurred during such period, or any amortization thereof for such period, in connection with any acquisition, disposition, Investment, Asset Sale, issuance or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (in each case, including any such transaction consummated prior to the Issue Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction shall be excluded;

(2) decreased by (without duplication) non cash gains increasing Consolidated Net Income of such Person for such period, excluding any non-cash gains to the extent they represent the reversal of an accrual or reserve for a potential cash item that reduced EBITDA in any prior period, and

(3) increased or decreased by (without duplication):

(a) any net gain or loss resulting in such period from Hedging Obligations and the application of Statement of Financial Accounting Standards No. 133; *plus or minus*, as applicable,

(b) any net gain or loss resulting in such period from currency translation gains or losses related to currency remeasurements of Indebtedness (including any net loss or gain resulting from hedge agreements for currency exchange risk).

"**EMU**" means economic and monetary union as contemplated in the Treaty on European Union.

"**Equity Interests**" means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

"**Equity Offering**" means any public or private sale of common stock or Preferred Stock (excluding Disqualified Stock) of the Company or any of its direct or indirect parent companies to the extent contributed to the Company as common equity, other than:

(1) public offerings with respect to the Company' s or any direct or indirect parent company' s common stock registered on Form S-8;

(2) issuances to any Subsidiary of the Company; and

(3) any such public or private sale that constitutes an Excluded Contribution.

"**euro**" means the single currency of participating member states of the EMU.

"**Euroclear**" means Euroclear S.A./N.V., as operator of the Euroclear system.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Exchange Notes**" means the Notes issued in the Exchange Offer pursuant to Section 2.06(f) hereof.

"**Exchange Offer**" has the meaning set forth in the Registration Rights Agreement.

"**Exchange Offer Registration Statement**" has the meaning set forth in the Registration Rights Agreement.

"**Excluded Contribution**" means net cash proceeds, marketable securities or Qualified Proceeds received by the Company from

(1) contributions to its common equity capital, and

(2) the sale (other than to a Subsidiary of the Company or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Company) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Company,

in each case designated as Excluded Contributions pursuant to an officer' s certificate executed by the principal financial officer of the Company on the date

such capital contributions are made or the date such Equity Interests are sold, as the case may be, which are excluded from the calculation set forth in clause (iii) of Section 4.07(a) hereof.

"**Fixed Charge Coverage Ratio**" means, with respect to any Person for any period, the ratio of EBITDA of such Person for such period to the Fixed Charges of such Person for such period. In the event that the Company or any Restricted Subsidiary incurs, assumes, guarantees, redeems, retires, defeases or extinguishes any Indebtedness (other than Indebtedness repaid under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) or issues or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to or simultaneously with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "**Fixed Charge Coverage Ratio Calculation Date**"), then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, redemption, retirement, defeasance or extinguishment of Indebtedness, or such issuance or redemption of Disqualified Stock or Preferred Stock, as if the same had occurred at the beginning of the applicable four quarter period.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, mergers, consolidations and disposed operations (as determined in accordance with GAAP) that have been made by the Company or any of its Restricted Subsidiaries during the four quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Fixed Charge Coverage Ratio Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, mergers, consolidations and disposed operations (and the change in any associated fixed charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the four quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Company or any of its Restricted Subsidiaries since the beginning of such period shall have made any Investment, acquisition, disposition, merger, consolidation or disposed operation that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, disposition, merger, consolidation or disposed operation had occurred at the beginning of the applicable four quarter period.

For purposes of this definition, whenever *pro forma* effect is to be given to a transaction, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Company. If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Fixed Charge Coverage Ratio Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest

rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period except as set forth in the first paragraph of this definition. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Company may designate.

"**Fixed Charges**" means, with respect to any Person for any period, the sum of:

(1) Consolidated Interest Expense of such Person for such period;

(2) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock during such period; and

(3) all dividends or other distributions accrued (excluding items eliminated in consolidation) on any series of Disqualified Stock during such period.

"**Foreign Subsidiary**" means, with respect to any Person, any Restricted Subsidiary of such Person that is not organized or existing under the laws of the United States, any State thereof, the District of Columbia, or any territory thereof and any Restricted Subsidiary of such Foreign Subsidiary.

"**GAAP**" means generally accepted accounting principles in the United States which are in effect on the Issue Date.

"**Global Note Legend**" means the legend set forth in Section 2.06(g)(ii) hereof, which is required to be placed on all Global Notes issued under this Indenture.

"**Global Notes**" means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes, substantially in the form of Exhibit A hereto, issued in accordance with Section 2.01, 2.06(b), 2.06(d) or 2.06(f) hereof.

"**Government Securities**" means securities that are:

(1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

(2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America,

which, in either case, are not callable or redeemable at the option of the issuers thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such Government Securities or a specific payment of principal of or interest on any such Government Securities held by such custodian for the account of the holder of such depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Securities or the specific payment of principal of or interest on the Government Securities evidenced by such depository receipt.

"**guarantee**" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

"**Guarantee**" means the guarantee by any Guarantor of the Issuers' Obligations under this Indenture.

"**Guarantor**" means, each Restricted Subsidiary that Guarantees the Notes in accordance with the terms of this Indenture.

"**Hedging Obligations**" means, with respect to any Person, the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contract, currency swap agreement or similar agreement providing for the transfer or mitigation of interest rate or currency risks either generally or under specific contingencies.

"**Holder**" means the Person in whose name a Note is registered on the Registrar' s books.

"**Indebtedness**" means, with respect to any Person, without duplication:

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent:

(a) in respect of borrowed money;

(b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof);

(c) representing the balance deferred and unpaid of the purchase price of any property (including Capitalized Lease Obligations), except (i) any such balance that constitutes a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business and (ii) any earn-out obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP; or

(d) representing any Hedging Obligations;

if and to the extent that any of the foregoing Indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of a third Person (whether or not such items would appear upon the balance sheet of the such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person;

provided, however, that notwithstanding the foregoing, Indebtedness shall be deemed not to include Contingent Obligations incurred in the ordinary course of business.

"**Indenture**" means this Indenture, as amended or supplemented from time to time.

"**Independent Financial Advisor**" means an accounting, appraisal, investment banking firm or consultant to Persons engaged in Similar Businesses of nationally recognized standing that is, in the good faith judgment of the Company, qualified to perform the task for which it has been engaged.

"**Indirect Participant**" means a Person who holds a beneficial interest in a Global Note through a Participant.

"**Initial Notes**" has the meaning set forth in the recitals hereto.

"**Initial Purchasers**" means Credit Suisse Securities (USA) LLC, Goldman, Sachs & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated and Banc of America Securities LLC.

"**Interest Payment Date**" means June 1 and December 1 of each year to stated maturity.

"**Investment Grade Rating**" means a rating equal to or higher than Baa3 (or the equivalent) by Moody' s and BBB (or the equivalent) by S&P, or an equivalent rating by any other Rating Agency.

"**Investments**" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, trade credit, advances to customers, commission, travel and similar advances to officers and employees, in each case made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet (excluding the footnotes) of the Company in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. For purposes of the definition of "**Unrestricted Subsidiary**" and Section 4.07 hereof:

(1) "**Investments**" shall include the portion (proportionate to the Company' s equity interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Company at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided, however*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Company' s "Investment" in such Subsidiary at the time of such redesignation; less

(b) the portion (proportionate to the Company' s Equity Interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer, in each case as determined in good faith by the Company.

"**Investors**" means Goldman Sachs Capital Partners, Providence Equity Partners, Inc. (and Leeds Equity Partners, if it exercises the option to purchase equity of the Company' s parent outstanding on the Issue Date) and each of their respective Affiliates but not including, however, any portfolio companies of any of the foregoing.

"**Issue Date**" means June 1, 2006.

"**Issuers**" has the meaning set forth in the recitals hereto.

"**Issuers' Order**" means a written request or order signed on behalf of each Issuer by an Officer of such Issuer, who must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of such Issuer, and delivered to the Trustee.

"**Legal Holiday**" means a Saturday, a Sunday or a day on which commercial banking institutions are not required to be open in the State of New York.

"**Letter of Transmittal**" means the letter of transmittal to be prepared by the Issuers and sent to all Holders of the Notes for use by such Holders in connection with the Exchange Offer.

"**Lien**" means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest, preference, priority or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; provided that in no event shall an operating lease be deemed to constitute a Lien.

"**Moody's**" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"**Net Income**" means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

"**Net Proceeds**" means the aggregate cash proceeds received by the Company or any of its Restricted Subsidiaries in respect of any Asset Sale, including any cash received upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale, net of the direct costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration, including legal, accounting and investment banking fees, and brokerage and sales commissions, any relocation expenses incurred as a result thereof, taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), amounts required to be applied to the repayment of principal, premium, if any, and interest on Secured Indebtedness required (other than required by clause (i) of Section 4.10(b) hereof) to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Company or any of its Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Company or any of its Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post employment benefit liabilities and

liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

"**Non-U.S. Person**" means a Person who is not a U.S. Person.

"**Notes**" means the Initial Notes and more particularly means any Note authenticated and delivered under this Indenture. For all purposes of this Indenture, the term "**Notes**" shall also include any Additional Notes that may be issued under a supplemental indenture. For purposes of this Indenture, all references to Notes to be issued or authenticated upon transfer, replacement or exchange shall be deemed to refer to Notes of the applicable series.

"**Obligations**" means any principal, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and banker' s acceptances), damages and other liabilities, and guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Indebtedness.

"**Offering Circular**" means the offering circular, dated May 19, 2006, relating to the sale of the Initial Notes and the Senior Subordinated Notes.

"**Officer**" means the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the applicable Issuer.

"**Officer' s Certificate**" means a certificate signed on behalf of each Issuer by an Officer of such Issuer, who must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of such Issuer, that meets the requirements set forth in this Indenture.

"**Opinion of Counsel**" means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Issuers or the Trustee.

"**Participant**" means, with respect to the Depositary, Euroclear or Clearstream, a Person who has an account with the Depositary, Euroclear or Clearstream, respectively (and, with respect to DTC, shall include Euroclear and Clearstream).

"**Permitted Asset Swap**" means the concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and cash or Cash Equivalents between the Company or any of its Restricted

Subsidiaries and another Person; *provided*, that any cash or Cash Equivalents received must be applied in accordance with Section 4.10 hereof.

"**Permitted Holders**" means each of the Investors and members of management of the Company (or its direct parent) who are holders of Equity Interests of the Company (or any of its direct or indirect parent companies) on the Issue Date and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members; *provided*, that, in the case of such group and without giving effect to the existence of such group or any other group, such Investors and members of management, collectively, have beneficial ownership of more than 50% of the total voting power of the Voting Stock of the Company or any of its direct or indirect parent companies.

"**Permitted Investments**" means:

(1) any Investment in the Company or any of its Restricted Subsidiaries;

(2) any Investment in cash and Cash Equivalents;

(3) any Investment by the Company or any of its Restricted Subsidiaries in a Person that is engaged in a Similar Business if as a result of such Investment:

(a) such Person becomes a Restricted Subsidiary; or

(b) such Person, in one transaction or a series of related transactions, is merged or consolidated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Company or a Restricted Subsidiary,

and, in each case, any Investment held by such Person; *provided*, that such Investment was not acquired by such Person in contemplation of such acquisition, merger, consolidation or transfer;

(4) any Investment in securities or other assets not constituting cash or Cash Equivalents and received in connection with an Asset Sale made pursuant to the provisions of Section 4.10 hereof or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing on the Issue Date;

(6) any Investment acquired by the Company or any of its Restricted Subsidiaries:

(a) in exchange for any other Investment or accounts receivable held by the Company or any such Restricted Subsidiary

in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable; or

(b) as a result of a foreclosure by the Company or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(7) Hedging Obligations permitted under clause (x) of Section 4.09(b) hereof;

(8) any Investment in a Similar Business having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (8) that are at that time outstanding, not to exceed 3.0% of Total Assets at the time of such Investment (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(9) Investments the payment for which consists of Equity Interests (exclusive of Disqualified Stock) of the Company, or any of its direct or indirect parent companies; *provided, however*, that such Equity Interests will not increase the amount available for Restricted Payments under clause (iii) of Section 4.07(a) hereof;

(10) guarantees of Indebtedness permitted under Section 4.09 hereof;

(11) Investments consisting of purchases and acquisitions of inventory, supplies, material or equipment;

(12) additional Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (12) that are at that time outstanding (without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of cash or marketable securities), not to exceed 1.5% of Total Assets at the time of such Investment (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(13) advances to, or guarantees of Indebtedness of, employees not in excess of $5.0 million outstanding at any one time, in the aggregate;

(14) loans and advances to officers, directors and employees for business related travel expenses, moving expenses and other similar expenses, in each case incurred in the ordinary course of business or consistent with past practices or to fund such Person' s purchase of Equity

Interests of the Company or any direct or indirect parent company thereof; and

(15) any transaction to the extent it constitutes an Investment that is permitted and made in accordance with the provisions of Section 4.09(b) (except transactions described in clauses (ii), (vi), (vii) and (ix) thereof).

"**Permitted Liens**" means, with respect to any Person:

(1) pledges or deposits by such Person under workmen' s compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case incurred in the ordinary course of business;

(2) Liens imposed by law, such as carriers' , warehousemen' s and mechanics' Liens, in each case for sums not yet overdue for a period of more than 30 days or being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(3) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than 30 days or payable or subject to penalties for nonpayment or which are being contested in good faith by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(4) Liens in favor of the issuers of performance and surety bonds or bid bonds or with respect to other regulatory requirements or letters of credit issued pursuant to the request of and for the account of such Person in the ordinary course of its business;

(5) minor survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real properties or Liens incidental, to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect

the value of said properties or materially impair their use in the operation of the business of such Person;

(6) Liens securing Indebtedness permitted to be incurred pursuant to clauses (i) ("**Credit Facility Indebtedness**"), (iv), (xii)(b) or (xviii) of Section 4.09(b) hereof; *provided* that Liens securing Indebtedness permitted to be incurred pursuant to clause (xviii) extend only to the assets of Foreign Subsidiaries;

(7) Liens existing on the Issue Date;

(8) Liens on property or shares of stock of a Person at the time such Person becomes a Subsidiary; *provided, however*, such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary; *provided further, however*, that such Liens may not extend to any other property owned by the Company or any of its Restricted Subsidiaries;

(9) Liens on property at the time the Company or a Restricted Subsidiary acquired the property, including any acquisition by means of a merger or consolidation with or into the Company or any of its Restricted Subsidiaries; *provided, however*, that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition; *provided further, however*, that the Liens may not extend to any other property owned by the Company or any of its Restricted Subsidiaries;

(10) Liens securing Indebtedness or other obligations of a Restricted Subsidiary owing to the Company or another Restricted Subsidiary permitted to be incurred in accordance with Section 4.09 hereof;

(11) Liens securing Hedging Obligations so long as related Indebtedness is, and is permitted to be under this Indenture, secured by a Lien on the same property securing such Hedging Obligations;

(12) Liens on specific items of inventory of other goods and proceeds of any Person securing such Person' s obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(13) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Company or any of its Restricted Subsidiaries and do not secure any Indebtedness;

(14) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Company and its Restricted Subsidiaries in the ordinary course of business;

(15) Liens in favor of an Issuer or any Guarantor;

(16) Liens on equipment of the Company or any of its Restricted Subsidiaries granted in the ordinary course of business to the Issuers' clients;

(17) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clauses (6) (other than Liens securing Credit Facility Indebtedness), (7), (8) and (9); *provided, however*, that (a) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements on such property), and (b) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (6) (other than Liens securing Credit Facility Indebtedness), (7), (8) and (9) at the time the original Lien became a Permitted Lien under this Indenture, and (ii) an amount necessary to pay any fees and expenses, including premiums, related to such refinancing, refunding, extension, renewal or replacement;

(18) deposits made in the ordinary course of business to secure liability to insurance carriers;

(19) other Liens securing obligations incurred in the ordinary course of business which obligations do not exceed $15.0 million at any one time outstanding;

(20) Liens securing judgments for the payment of money not constituting an Event of Default under clause (5) of Section 6.01 hereof so long as such Liens are adequately bonded and any appropriate legal proceedings that may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;

(21) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(22) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code or any comparable or successor provision on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary

course of business, and (iii) in favor of banking institutions arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(23) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 4.09 hereof; *provided* that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

(24) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(25) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Company or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Company and its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Company or any of its Restricted Subsidiaries in the ordinary course of business; and

(26) during a Suspension Period only, Liens securing Indebtedness, and Indebtedness represented by Sale and Leaseback Transactions, in an amount that does not exceed 15% of Consolidated Net Tangible Assets of the Company and its Restricted Subsidiaries at any one time outstanding.

For purposes of this definition, the term "Indebtedness" shall be deemed to include interest on such Indebtedness. Additionally, solely for purposes of this definition and Section 4.12, any Indebtedness incurred during a Suspension Period that could have been incurred in compliance with an applicable provision under Section 4.09 were such covenant in effect at such time, may be deemed by the Company to have been so incurred.

"**Person**" means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"**Preferred Stock**" means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution, or winding up.

"**Private Placement Legend**" means the legend set forth in Section 2.06(g)(i) hereof to be placed on all Notes issued under this Indenture, except where otherwise permitted by the provisions of this Indenture.

"**QIB**" means a "**qualified institutional buyer**" as defined in Rule 144A.

"**Qualified Proceeds**" means assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business; *provided* that the fair market value of any such assets or Capital Stock shall be determined by the Company in good faith.

"**Rating Agencies**" means Moody' s and S&P or if Moody' s or S&P or both shall not make a rating on the Notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Issuers which shall be substituted for Moody' s or S&P or both, as the case may be.

"**Record Date**" for the interest or Additional Interest, if any, payable on any applicable Interest Payment Date means May 15 or November 15 (whether or not a Business Day) next preceding such Interest Payment Date.

"**Registration Rights Agreement**" means the Registration Rights Agreement with respect to the Notes and the Senior Subordinated Notes dated as of the Issue Date, among the Issuers, the Guarantors and the Initial Purchasers, as such agreement may be amended, modified or supplemented from time to time and, with respect to any Additional Notes, one or more registration rights agreements between the Issuers and the other parties thereto, as such agreement(s) may be amended, modified or supplemented from time to time, relating to rights given by the Issuers to the purchasers of Additional Notes to register such Additional Notes under the Securities Act.

"**Regulation S**" means Regulation S promulgated under the Securities Act.

"**Regulation S Global Note**" means a Regulation S Temporary Global Note or Regulation S Permanent Global Note, as applicable.

"**Regulation S Permanent Global Note**" means a permanent Global Note in the form of Exhibit A hereto, bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Regulation S Temporary Global Note upon expiration of the Restricted Period.

"**Regulation S Temporary Global Note**" means a temporary Global Note in the form of Exhibit A hereto, bearing the Global Note Legend, the Private Placement Legend and the Regulation S Temporary Global Note Legend and deposited with or on behalf of and registered in the name of the Depositary or its

nominee, issued in a denomination equal to the outstanding principal amount of the Notes initially sold in reliance on Rule 903.

"**Regulation S Temporary Global Note Legend**" means the legend set forth in Section 2.06(g)(ii) hereof.

"**Related Business Assets**" means assets (other than cash or Cash Equivalents) used or useful in a Similar Business, *provided* that any assets received by the Company or a Restricted Subsidiary in exchange for assets transferred by the Company or a Restricted Subsidiary shall not be deemed to be Related Business Assets if they consist of securities of a Person, unless upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

"**Responsible Officer**" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person' s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"**Restricted Definitive Note**" means a Definitive Note bearing the Private Placement Legend.

"**Restricted Global Note**" means a Global Note bearing the Private Placement Legend.

"**Restricted Investment**" means an Investment other than a Permitted Investment.

"**Restricted Period**" means the 40-day distribution compliance period as defined in Regulation S.

"**Restricted Subsidiary**" means, at any time, any direct or indirect Subsidiary of the Company (including any Foreign Subsidiary) that is not then an Unrestricted Subsidiary; *provided, however*, that upon the occurrence of an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary shall be included in the definition of "Restricted Subsidiary."

"**Rule 144**" means Rule 144 promulgated under the Securities Act.

"**Rule 144A**" means Rule 144A promulgated under the Securities Act.

"**Rule 903**" means Rule 903 promulgated under the Securities Act.

"**Rule 904**" means Rule 904 promulgated under the Securities Act.

"**S&P**" means Standard & Poor' s, a division of The McGraw Hill Companies, Inc., and any successor to its rating agency business.

"**Sale and Lease Back Transaction**" means any arrangement providing for the leasing by the Company or any of its Restricted Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by the Company or such Restricted Subsidiary to a third Person in contemplation of such leasing.

"**SEC**" means the U.S. Securities and Exchange Commission.

"**Secured Indebtedness**" means any Indebtedness of the Company or any of its Restricted Subsidiaries secured by a Lien.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Senior Credit Facilities**" means the Credit Facility under the Credit and Guaranty Agreement to be entered into as of the Issue Date by and among Education Management Holdings LLC, the Company, the Guarantors party thereto, the lenders party thereto in their capacities as lenders thereunder and the Agents party thereto, including any guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements, refundings or refinancings thereof and any indentures or credit facilities or commercial paper facilities with banks or other institutional lenders or investors that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount borrowable thereunder or alters the maturity thereof (*provided* that such increase in borrowings is permitted under Section 4.09 hereof).

"**Senior Subordinated Notes**" means the $385,000,000 aggregate principal amount of the Issuers' 10 1/4% senior notes due 2016 issued on the Issue Date.

"**Shelf Registration Statement**" means the Shelf Registration Statement as defined in the Registration Rights Agreement.

"**Significant Subsidiary**" means (i) the Co-Issuer or (ii) any Restricted Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the Issue Date.

"**Similar Business**" means any business conducted or proposed to be conducted by the Company and its Restricted Subsidiaries on the Issue Date or any business that is similar, reasonably related, incidental or ancillary thereto.

"**Sponsor Management Agreement**" means the management agreement between certain of the management companies associated with the Investors and the Company or one of its direct or indirect parent companies as in effect on the Issue Date.

"**Subordinated Indebtedness**" means, with respect to the Notes,

(1) any Indebtedness of the Issuers which is by its terms subordinated in right of payment to the Notes, and

(2) any Indebtedness of any Guarantor which is by its terms subordinated in right of payment to the Guarantee of such entity of the Notes.

"**Subsidiary**" means, with respect to any Person:

(1) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof or is consolidated under GAAP with such Person at such time; and

(2) any partnership, joint venture, limited liability company or similar entity of which

(x) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise, and

(y) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

"**Total Assets**" means the total assets of the Company and its Restricted Subsidiaries on a consolidated basis, as shown on the most recent balance sheet of the Company or such other Person as may be expressly stated.

"**Transaction**" means the merger contemplated by the Transaction Agreement, the issuance of the Notes and the Senior Subordinated Notes and borrowings under the Senior Credit Facilities as in effect on the Issue Date to finance the merger contemplated by the Transaction Agreement and repay certain debt.

"**Transaction Agreement**" means the Agreement and Plan of Merger dated as of March 3, 2006 between Education Management Corporation and EM Acquisition Corporation, as the same may be amended prior to the Issue Date.

"**Treasury Rate**" means, as of any Redemption Date, the yield to maturity as of such Redemption Date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to the Redemption Date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the Redemption Date to June 1, 2010; *provided, however*, that if the period from the Redemption Date to June 1, 2010 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended (15 U.S.C. §§ 77aaa-777bbbb).

"**Trustee**" means The Bank of New York, as trustee, until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"**Unrestricted Definitive Note**" means one or more Definitive Notes that do not bear and are not required to bear the Private Placement Legend.

"**Unrestricted Global Note**" means a permanent Global Note, substantially in the form of Exhibit A attached hereto, that bears the Global Note Legend and that has the "Schedule of Exchanges of Interests in the Global Note" attached thereto, and that is deposited with or on behalf of and registered in the name of the Depositary, representing Notes that do not bear the Private Placement Legend.

"**Unrestricted Subsidiary**" means:

(1) any Subsidiary of the Company which at the time of determination is an Unrestricted Subsidiary (as designated by the Company, as provided below); and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Company may designate any Subsidiary of the Company (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any

property of, the Company or any Subsidiary of the Company (other than solely any Subsidiary of the Subsidiary to be so designated); *provided* that

(1) any Unrestricted Subsidiary must be an entity of which the Equity Interests entitled to cast at least a majority of the votes that may be cast by all Equity Interests having ordinary voting power for the election of directors or Persons performing a similar function are owned, directly or indirectly, by the Company;

(2) such designation complies with Section 4.07 hereof; and

(3) each of:

(a) the Subsidiary to be so designated; and

(b) its Subsidiaries

has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Company or any Restricted Subsidiary.

The Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that, immediately after giving effect to such designation, no Default shall have occurred and be continuing and either:

(1) the Company could incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test described in Section 4.09(a) hereof; or

(2) the Fixed Charge Coverage Ratio for the Company and its Restricted Subsidiaries would be greater than such ratio for the Company and its Restricted Subsidiaries immediately prior to such designation,

in each case on a *pro forma* basis taking into account such designation.

Any such designation by the Company shall be notified by the Company to the Trustee by promptly filing with the Trustee a copy of the resolution of the board of directors of the Company or any committee thereof giving effect to such designation and an Officer' s Certificate certifying that such designation complied with the foregoing provisions.

"**U.S. Person**" means a U.S. person as defined in Rule 902(k) under the Securities Act.

"**Voting Stock**" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the board of directors of such Person.

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

(1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment; by

(2) the sum of all such payments.

"**Wholly-Owned Subsidiary**" of any Person means a Subsidiary of such Person, 100% of the outstanding Equity Interests of which (other than directors' qualifying shares) shall at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

Section 1.02. *Other Definitions.*

Term	Defined in Section
Acceptable Commitment	4.10
Affiliate Transaction	4.11
Asset Sale Offer	4.10
Authentication Order	2.02
Change of Control Offer	4.14
Change of Control Payment	4.14
Change of Control Payment Date	4.14
Covenant Defeasance	8.03
Covenant Suspension Event	4.16
DTC	2.03
Event of Default	6.01
Excess Proceeds	4.10

Term	Defined in Section
Successor Company	5.01
Successor Person	5.01
Suspended Covenants	4.16
Suspension Period	4.16
Treasury Capital Stock	4.07

Section 1.03. *Incorporation by Reference of Trust Indenture Act.* Whenever this Indenture refers to a provision of the Trust Indenture Act, the provision is incorporated by reference in and made a part of this Indenture.

The following Trust Indenture Act terms used in this Indenture have the following meanings:

"**indenture securities**" means the Notes;

"**indenture security Holder**" means a Holder of a Note;

"**indenture to be qualified**" means this Indenture;

"**indenture trustee**" or "**institutional trustee**" means the Trustee; and

"**obligor**" on the Notes and the Guarantees means the Issuers and the Guarantors, respectively, and any successor obligor upon the Notes and the Guarantees, respectively.

All other terms used in this Indenture that are defined by the Trust Indenture Act, defined by Trust Indenture Act reference to another statute or defined by SEC rule under the Trust Indenture Act have the meanings so assigned to them.

Section 1.04. *Rules of Construction.* Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(c) "or" is not exclusive;

(d) words in the singular include the plural, and in the plural include the singular;

(e) "will" shall be interpreted to express a command;

(f) provisions apply to successive events and transactions;

(g) references to sections of, or rules under, the Securities Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time;

(h) unless the context otherwise requires, any reference to an "Article," "Section" or "clause" refers to an Article, Section or clause, as the case may be, of this Indenture; and

(i) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause or other subdivision.

Section 1.05. *Acts of Holders*. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Issuers. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Note, shall be sufficient for any purpose of this Indenture and (subject to Section 7.01) conclusive in favor of the Trustee and the Issuers, if made in the manner provided in this Section 1.05.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient.

(c) The ownership of Notes shall be proved by the Note Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of any action taken, suffered or omitted by the Trustee or the Issuers in reliance thereon, whether or not notation of such action is made upon such Note.

(e) The Issuers may, in the circumstances permitted by the Trust Indenture Act, set a record date for purposes of determining the identity of Holders entitled to give any request, demand, authorization, direction, notice,

consent, waiver or take any other act, or to vote or consent to any action by vote or consent authorized or permitted to be given or taken by Holders. Unless otherwise specified, if not set by the Issuers prior to the first solicitation of a Holder made by any Person in respect of any such action, or in the case of any such vote, prior to such vote, any such record date shall be the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished to the Trustee prior to such solicitation.

(f) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Holders of each such different part.

(g) Without limiting the generality of the foregoing, a Holder, including DTC, as the Holder of a Global Note, may make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders, and DTC as the Holder of a Global Note may provide its proxy or proxies to the beneficial owners of interests in any such Global Note through such depositary' s standing instructions and customary practices.

(h) The Issuers may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in any Global Note held by DTC entitled under the procedures of such depositary to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders. If such a record date is fixed, the Holders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Holders remain Holders after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other action shall be valid or effective if made, given or taken more than 90 days after such record date.

ARTICLE 2
THE NOTES

Section 2.01. *Form and Dating; Terms*. (a) General. The Notes and the Trustee' s certificate of authentication shall be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rules or usage. Each Note shall be dated the date of its authentication. The Notes shall be in denominations of $2,000 and multiples of $1,000 in excess thereof.

(b) Global Notes. Notes issued in global form shall be substantially in the form of Exhibit A attached hereto (including the Global Note Legend thereon and the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Notes issued in definitive form shall be substantially in the form of Exhibit A attached hereto (but without the Global Note Legend thereon and without the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Each Global Note shall represent such of the outstanding Notes as shall be specified in the "Schedule of Exchanges of Interests in the Global Note" attached thereto and each shall provide that it shall represent up to the aggregate principal amount of Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as applicable, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) Temporary Global Notes. Notes offered and sold in reliance on Regulation S shall be issued initially in the form of the Regulation S Temporary Global Note, which shall be deposited on behalf of the purchasers of the Notes represented thereby with the Trustee, as custodian for the Depositary, and registered in the name of the Depositary or the nominee of the Depositary for the accounts of designated agents holding on behalf of Euroclear or Clearstream, duly executed by each Issuer and authenticated by the Trustee as hereinafter provided. The Restricted Period shall be terminated upon the receipt by the Trustee of:

(i) a written certificate from the Depositary, together with copies of certificates from Euroclear and Clearstream certifying that they have received certification of non-United States beneficial ownership of 100% of the aggregate principal amount of the Regulation S Temporary Global Note (except to the extent of any beneficial owners thereof who acquired an interest therein during the Restricted Period pursuant to another exemption from registration under the Securities Act and who shall take delivery of a beneficial ownership interest in a 144A Global Note bearing a Private Placement Legend, all as contemplated by Section 2.06(b) hereof); and

(ii) an Officer' s Certificate from each Issuer.

Following the termination of the Restricted Period, beneficial interests in the Regulation S Temporary Global Note shall be exchanged for beneficial interests in the Regulation S Permanent Global Note pursuant to the Applicable Procedures. Simultaneously with the authentication of the Regulation S Permanent Global Note, the Trustee shall cancel the Regulation S Temporary Global Note. The aggregate principal amount of the Regulation S Temporary Global Note and the Regulation S Permanent Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and

the Depositary or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided.

(d) Terms. The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is unlimited.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Issuers, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

The Notes shall be subject to repurchase by the Issuers pursuant to an Asset Sale Offer as provided in Section 4.10 hereof or a Change of Control Offer as provided in Section 4.14 hereof. The Notes shall not be redeemable, other than as provided in Article 3.

Additional Notes ranking *pari passu* with the Initial Notes may be created and issued from time to time by the Issuers without notice to or consent of the Holders and shall be consolidated with and form a single class with the Initial Notes and shall have the same terms as to status, redemption or otherwise as the Initial Notes; *provided* that the Issuers' ability to issue Additional Notes shall be subject to the Issuers' compliance with Section 4.09 hereof. Any Additional Notes shall be issued with the benefit of an indenture supplemental to this Indenture.

(e) Euroclear and Clearstream Procedures Applicable. The provisions of the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" and the "General Terms and Conditions of Clearstream Banking" and "Customer Handbook" of Clearstream shall be applicable to transfers of beneficial interests in the Regulation S Temporary Global Note and the Regulation S Permanent Global Notes that are held by Participants through Euroclear or Clearstream.

Section 2.02. *Execution and Authentication.* At least one Officer of each Issuer shall execute the Notes on behalf of such Issuer by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note shall nevertheless be valid.

A Note shall not be entitled to any benefit under this Indenture or be valid or obligatory for any purpose until authenticated substantially in the form of Exhibit A attached hereto, as the case may be, by the manual or facsimile signature of the Trustee. The signature shall be conclusive evidence that the Note has been duly authenticated and delivered under this Indenture.

On the Issue Date, the Trustee shall, upon receipt of an Issuers' Order (an "**Authentication Order**"), authenticate and deliver the Initial Notes. In addition, at any time, from time to time, the Trustee shall upon an Authentication Order authenticate and deliver any Additional Notes and Exchange Notes for an aggregate principal amount specified in such Authentication Order for such Additional Notes or Exchange Notes issued hereunder.

The Trustee may appoint an authenticating agent acceptable to the Issuers to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Issuers.

Section 2.03. *Registrar and Paying Agent.* The Issuers shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("**Registrar**") and an office or agency where Notes may be presented for payment ("**Paying Agent**"). The Registrar shall keep a register of the Notes ("**Note Register**") and of their transfer and exchange. The Issuers may appoint one or more co-registrars and one or more additional paying agents. The term "**Registrar**" includes any co-registrar and the term "**Paying Agent**" includes any additional paying agent. The Issuers may change any Paying Agent or Registrar without prior notice to any Holder. The Issuers shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Issuers fail to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Issuers or any of their respective Subsidiaries may act as Paying Agent or Registrar.

The Issuers initially appoint The Depository Trust Company ("**DTC**") to act as Depositary with respect to the Global Notes.

The Issuers initially appoint the Trustee to act as the Paying Agent and Registrar for the Notes and to act as Custodian with respect to the Global Notes.

Section 2.04. *Paying Agent to Hold Money in Trust.* The Issuers shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or Additional Interest, if any, or interest on the Notes, and will notify the Trustee of any default by the Issuers in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Issuers at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than an Issuer or a Subsidiary) shall have no further liability for the money. If an Issuer or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Issuers, the Trustee shall serve as Paying Agent for the Notes.

Section 2.05. *Holder Lists.* The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders and shall otherwise comply with Trust Indenture Act Section 312(a). If the Trustee is not the Registrar, the Issuers shall furnish to the Trustee at least two Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes and the Issuers shall otherwise comply with Trust Indenture Act Section 312(a).

Section 2.06. *Transfer and Exchange*. (a) Transfer and Exchange of Global Notes. Except as otherwise set forth in this Section 2.06, a Global Note may be transferred, in whole and not in part, only to another nominee of the Depositary or to a successor Depositary or a nominee of such successor Depositary. A beneficial interest in a Global Note may not be exchanged for a Definitive Note unless (i) the Depositary (x) notifies the Issuers that it is unwilling or unable to continue as Depositary for such Global Note or (y) has ceased to be a clearing agency registered under the Exchange Act and, in either case, a successor Depositary is not appointed by the Issuers within 120 days or (ii) there shall have occurred and be continuing a Default with respect to the Notes. Upon the occurrence of any of the preceding events in (i) or (ii) above, Definitive Notes delivered in exchange for any Global Note or beneficial interests therein will be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depositary (in accordance with its customary procedures). Global Notes also may be exchanged or replaced, in whole or in part, as provided in Sections 2.07 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 and 2.10 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Note, except for Definitive Notes issued subsequent to any of the preceding events in (i) or (ii) above and pursuant to Section 2.06(c) hereof. A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a); *provided, however*, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b), (c) or (f) hereof.

(b) Transfer and Exchange of Beneficial Interests in the Global Notes. The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(i) Transfer of Beneficial Interests in the Same Global Note. Beneficial interests in any Restricted Global Note may be transferred to

Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend; *provided, however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Temporary Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(i).

(ii) All Other Transfers and Exchanges of Beneficial Interests in Global Notes. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(i) hereof, the transferor of such beneficial interest must deliver to the Registrar either (A) (i) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (ii) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase or (B) (1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in (1) above; *provided* that in no event shall Definitive Notes be issued upon the transfer or exchange of beneficial interests in the Regulation S Temporary Global Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903. Upon consummation of an Exchange Offer by the Issuers in accordance with Section 2.06(f) hereof, the requirements of this Section 2.06(b)(ii) shall be deemed to have been satisfied upon receipt by the Registrar of the instructions contained in the Letter of Transmittal delivered by the Holder of such beneficial interests in the Restricted Global Notes. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(h) hereof.

(iii) Transfer of Beneficial Interests to Another Restricted Global Note. A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a

beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.06(b)(ii) hereof and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in the 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof; or

(B) if the transferee will take delivery in the form of a beneficial interest in the Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof.

(iv) Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an Unrestricted Global Note. A beneficial interest in any Restricted Global Note may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.06(b)(ii) hereof and:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the holder of the beneficial interest to be transferred, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Broker-Dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Issuers;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to subparagraph (B) or (D) above at a time when an Unrestricted Global Note has not yet been issued, the Issuers shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to subparagraph (B) or (D) above.

Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

(c) Transfer or Exchange of Beneficial Interests for Definitive Notes.

(i) Beneficial Interests in Restricted Global Notes to Restricted Definitive Notes. If any holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then, upon the occurrence of any of the events in paragraph (i) or (ii) of Section 2.06(a) hereof and receipt by the Registrar of the following documentation:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such holder substantially in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to the Company or any of its Restricted Subsidiaries, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(F) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h) hereof, and the Issuers shall execute and the Trustee shall authenticate and mail to the Person designated in the instructions a Definitive Note in the applicable principal amount. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee shall mail such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c)(i) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(ii) Beneficial Interests in Regulation S Temporary Global Note to Definitive Notes. Notwithstanding Sections 2.06(c)(i)(A) and (C) hereof, a beneficial interest in the Regulation S Temporary Global Note may not be exchanged for a Definitive Note or transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) of the Securities Act, except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

(iii) Beneficial Interests in Restricted Global Notes to Unrestricted Definitive Notes. A holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only upon the occurrence of any of the events in subsection (i) or (ii) of Section 2.06(a) hereof and if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the holder of such beneficial interest, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Broker-Dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Issuers;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note, a certificate from such holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar

to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iv) Beneficial Interests in Unrestricted Global Notes to Unrestricted Definitive Notes. If any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon the occurrence of any of the events in subsection (i) or (ii) of Section 2.06(a) hereof and satisfaction of the conditions set forth in Section 2.06(b)(ii) hereof, the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h) hereof, and the Issuers shall execute and the Trustee shall authenticate and mail to the Person designated in the instructions a Definitive Note in the applicable principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(iv) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from or through the Depositary and the Participant or Indirect Participant. The Trustee shall mail such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(iv) shall not bear the Private Placement Legend.

(d) Transfer and Exchange of Definitive Notes for Beneficial Interests.

(i) Restricted Definitive Notes to Beneficial Interests in Restricted Global Notes. If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;

(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to the Company or any of its Restricted Subsidiaries, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(F) if such Restricted Definitive Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the applicable Restricted Global Note, in the case of clause (B) above, the applicable 144A Global Note, and in the case of clause (C) above, the applicable Regulation S Global Note.

(ii) Restricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes. A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Broker-Dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Issuers;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the Holder of such Definitive Notes proposes to exchange such Notes for a beneficial interest in the Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(c) thereof; or

(2) if the Holder of such Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of a beneficial interest in the Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.06(d)(ii), the Trustee shall cancel the Definitive Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(iii) Unrestricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes. A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraph (ii)(B), (ii)(D) or (iii) above at a time when an Unrestricted Global Note has not yet been issued, the Issuers shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

(e) Transfer and Exchange of Definitive Notes for Definitive Notes. Upon request by a Holder of Definitive Notes and such Holder' s compliance with the provisions of this Section 2.06(e), the Registrar shall register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(e):

(i) Restricted Definitive Notes to Restricted Definitive Notes. Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer will be made pursuant to a QIB in accordance with Rule 144A, then the transferor must deliver a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904 then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; or

(C) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications required by item (3) thereof, if applicable.

(ii) Restricted Definitive Notes to Unrestricted Definitive Notes. Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Broker-Dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Issuers;

(B) any such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) any such transfer is effected by a Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or

(2) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) Unrestricted Definitive Notes to Unrestricted Definitive Notes. A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(f) Exchange Offer. Upon the occurrence of the Exchange Offer in accordance with the Registration Rights Agreement, the Issuers shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate (i) one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of the beneficial interests in the Restricted Global Notes tendered for acceptance by Persons that certify in the applicable Letters of Transmittal that (x) they are not

Broker-Dealers, (y) they are not participating in a distribution of the Exchange Notes and (z) they are not affiliates (as defined in Rule 144) of the Issuers, and accepted for exchange in the Exchange Offer and (ii) Unrestricted Definitive Notes in an aggregate principal amount equal to the principal amount of the Restricted Definitive Notes tendered for acceptance by Persons that certify in the applicable Letters of Transmittal that (x) they are not Broker-Dealers, (y) they are not participating in a distribution of the Exchange Notes and (z) they are not affiliates (as defined in Rule 144) of the Issuers, and accepted for exchange in the Exchange Offer. Concurrently with the issuance of such Notes, the Trustee shall cause the aggregate principal amount of the applicable Restricted Global Notes to be reduced accordingly, and the Issuers shall execute and the Trustee shall authenticate and mail to the Persons designated by the Holders of Definitive Notes so accepted Unrestricted Definitive Notes in the applicable principal amount. Any Notes that remain outstanding after the consummation of the Exchange Offer, and Exchange Notes issued in connection with the Exchange Offer, shall be treated as a single class of securities under this Indenture.

(g) Legends. The following legends shall appear on the face of all Global Notes and Definitive Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture:

(i) Private Placement Legend. (A) Except as permitted by subparagraph (B) below, each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY RESELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO THE ISSUERS OR ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT (IF AVAILABLE),

(D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (E) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL IF THE ISSUERS SO REQUEST), OR (F) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT."

(B) Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraph (b)(iv), (c)(iii), (c)(iv), (d)(ii), (d)(iii), (e)(ii), (e)(iii) or (f) of this Section 2.06 (and all Notes issued in exchange therefor or substitution thereof) shall not bear the Private Placement Legend.

(ii) Global Note Legend. Each Global Note shall bear a legend in substantially the following form:

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06(h) OF THE INDENTURE, (II) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (III) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (IV) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE ISSUERS. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE

DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("DTC") TO THE ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

(iii) Regulation S Temporary Global Note Legend. The Regulation S Temporary Global Note shall bear a legend in substantially the following form:

"THE RIGHTS ATTACHING TO THIS REGULATION S TEMPORARY GLOBAL NOTE, AND THE CONDITIONS AND PROCEDURES GOVERNING ITS EXCHANGE FOR CERTIFICATED NOTES, ARE AS SPECIFIED IN THE INDENTURE (AS DEFINED HEREIN)."

(h) Cancellation and/or Adjustment of Global Notes. At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(i) General Provisions Relating to Transfers and Exchanges.

(i) To permit registrations of transfers and exchanges, the Issuers shall execute and the Trustee shall authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 hereof or at the Registrar' s request.

(ii) No service charge shall be made to a holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Issuers may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.07, 2.10, 3.06, 3.09, 4.10, 4.14 and 9.05 hereof).

(iii) Neither the Registrar nor the Issuers shall be required to register the transfer of or exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(iv) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes shall be the valid obligations of the Issuers, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(v) The Issuers shall not be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.02 hereof and ending at the close of business on the day of selection, (B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part or (C) to register the transfer of or to exchange a Note between a Record Date and the next succeeding Interest Payment Date.

(vi) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuers may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of (and premium, if any) and interest (including Additional Interest, if any) on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuers shall be affected by notice to the contrary.

(vii) Upon surrender for registration of transfer of any Note at the office or agency of the Issuers designated pursuant to Section 4.02 hereof, the Issuers shall execute, and the Trustee shall authenticate and

mail, in the name of the designated transferee or transferees, one or more replacement Notes of any authorized denomination or denominations of a like aggregate principal amount.

(viii) At the option of the Holder, Notes may be exchanged for other Notes of any authorized denomination or denominations of a like aggregate principal amount upon surrender of the Notes to be exchanged at such office or agency. Whenever any Global Notes or Definitive Notes are so surrendered for exchange, the Issuers shall execute, and the Trustee shall authenticate and mail, the replacement Global Notes and Definitive Notes which the Holder making the exchange is entitled to in accordance with the provisions of Section 2.02 hereof.

(ix) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

Section 2.07. *Replacement Notes.* If any mutilated Note is surrendered to the Trustee, the Registrar or the Issuers and the Trustee receives evidence to its satisfaction of the ownership and destruction, loss or theft of any Note, the Issuers shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Note if the Trustee' s requirements are met. If required by the Trustee or the Issuers, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Issuers to protect the Issuers, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Issuers may charge for their expenses in replacing a Note.

Every replacement Note is a contractual obligation of the Issuers and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08. *Outstanding Notes.* The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because an Issuer or an Affiliate of an Issuer holds the Note.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than an Issuer, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

Section 2.09. *Treasury Notes.* In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by an Issuer, or by any Affiliate of an Issuer, shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee' s right to deliver any such direction, waiver or consent with respect to the Notes and that the pledgee is not an Issuer or any obligor upon the Notes or any Affiliate of an Issuer or of such other obligor.

Section 2.10. *Temporary Notes.* Until certificates representing Notes are ready for delivery, the Issuers may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of certificated Notes but may have variations that the Issuers consider appropriate for temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, the Issuers shall prepare and the Trustee shall authenticate definitive Notes in exchange for temporary Notes.

Holders and beneficial holders, as the case may be, of temporary Notes shall be entitled to all of the benefits accorded to Holders, or beneficial holders, respectively, of Notes under this Indenture.

Section 2.11. *Cancellation.* The Issuers at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee or, at the direction of the Trustee, the Registrar or the Paying Agent and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall destroy cancelled Notes (subject to the record retention requirement of the Exchange Act). Certification of the destruction of all cancelled Notes shall be delivered to the Issuers. The Issuers may not issue new Notes to replace Notes that they have paid or that have been delivered to the Trustee for cancellation.

Section 2.12. *Defaulted Interest.* If the Issuers default in a payment of interest on the Notes, they shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Issuers shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each

Note and the date of the proposed payment, and at the same time the Issuers shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such defaulted interest as provided in this Section 2.12. The Trustee shall fix or cause to be fixed each such special record date and payment date; *provided* that no such special record date shall be less than 10 days prior to the related payment date for such defaulted interest. The Trustee shall promptly notify the Issuers of such special record date. At least 15 days before the special record date, the Issuers (or, upon the written request of the Issuers, the Trustee in the name and at the expense of the Issuers) shall mail or cause to be mailed, first-class postage prepaid, to each Holder a notice at his or her address as it appears in the Note Register that states the special record date, the related payment date and the amount of such interest to be paid.

Subject to the foregoing provisions of this Section 2.12 and for greater certainty, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

Section 2.13. *CUSIP Numbers.* The Issuers in issuing the Notes may use CUSIP numbers (if then generally in use) and, if so, the Trustee shall use CUSIP numbers in notices of redemption as a convenience to Holders; *provided*, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuers will as promptly as practicable notify the Trustee of any change in the CUSIP numbers.

ARTICLE 3

REDEMPTION

Section 3.01. *Notices to Trustee.* If the Issuers elect to redeem Notes pursuant to Section 3.07 hereof, they shall furnish to the Trustee, at least 2 Business Days before notice of redemption is required to be mailed or caused to be mailed to Holders pursuant to Section 3.03 hereof but not more than 60 days before a redemption date, an Officer' s Certificate setting forth (a) the paragraph or subparagraph of such Note and/ or Section of this Indenture pursuant to which the redemption shall occur, (b) the redemption date, (c) the principal amount of the Notes to be redeemed and (d) the redemption price.

Section 3.02. *Selection of Notes to Be Redeemed or Purchased.* If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee shall select the Notes to be redeemed or purchased h) if the Notes are listed on any national securities exchange, in compliance with the

requirements of the principal national securities exchange on which the Notes are listed or i) on a *pro rata* basis or, to the extent that selection on a *pro rata* basis is not practicable, by lot or by such other method the Trustee considers fair and appropriate. In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased shall be selected, unless otherwise provided herein, not less than 30 days nor more than 60 days prior to the redemption date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee shall promptly notify the Issuers in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected shall be in amounts of $2,000 or multiples of $1,000 in excess thereof; no Notes of $2,000 or less can be redeemed in part, except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder, even if not $2,000 or a multiple of $1,000 in excess thereof, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03. *Notice of Redemption.* Subject to Section 3.09 hereof, the Issuers shall mail or cause to be mailed by first-class mail notices of redemption at least 30 days but not more than 60 days prior to the redemption date to each Holder of Notes to be redeemed at such Holder' s registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with Article 8 or Article 11 hereof. Except as set forth in Section 3.07(b) hereof, notices of redemption may not be conditional.

The notice shall identify the Notes to be redeemed and shall state:

(a) the redemption date;

(b) the redemption price;

(c) if any Note is to be redeemed in part only, the portion of the principal amount of that Note that is to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion of the original Note representing the same indebtedness to the extent not redeemed will be issued in the name of the Holder of the Notes upon cancellation of the original Note;

(d) the name and address of the Paying Agent;

(e) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(f) that, unless the Issuers default in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;

(g) the paragraph or subparagraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed;

(h) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes; and

(i) if in connection with a redemption pursuant to Section 3.07(b) hereof, any condition to such redemption.

At the Issuers' request, the Trustee shall give the notice of redemption in the names of the Issuers and at their expense; *provided* that the Issuers shall have delivered to the Trustee, at least 5 Business Days before notice of redemption is required to be mailed or caused to be mailed to Holders pursuant to this Section 3.03 (unless a shorter notice shall be agreed to by the Trustee), an Officer' s Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04. *Effect of Notice of Redemption.* Once notice of redemption is mailed in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price (except as provided for in Section 3.07(b) hereof). The notice, if mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the Holder of any Note designated for redemption in whole or in part shall not affect the validity of the proceedings for the redemption of any other Note. Subject to Section 3.05 hereof, on and after the redemption date, interest ceases to accrue on Notes or portions of Notes called for redemption.

Section 3.05. *Deposit of Redemption or Purchase Price.* Prior to 10:00 a.m. (New York City time) on the redemption or purchase date, the Issuers shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued and unpaid interest (including Additional Interest, if any) on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent shall promptly return to the Issuers any money deposited with the Trustee or the Paying Agent by the Issuers in excess of the amounts necessary to pay the redemption price of, and accrued and unpaid interest on, all Notes to be redeemed or purchased.

If the Issuers comply with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest shall cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is

redeemed or purchased on or after a Record Date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest to the redemption or purchase date shall be paid to the Person in whose name such Note was registered at the close of business on such Record Date. If any Note called for redemption or purchase shall not be so paid upon surrender for redemption or purchase because of the failure of the Issuers to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest accrued to the redemption or purchase date not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06. *Notes Redeemed or Purchased in Part.* Upon surrender of a Note that is redeemed or purchased in part, the Issuers shall issue and the Trustee shall authenticate for the Holder at the expense of the Issuers a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered representing the same indebtedness to the extent not redeemed or purchased; *provided* that each new Note will be in a principal amount of $2,000 or a multiple of $1,000 in excess thereof. It is understood that, notwithstanding anything in this Indenture to the contrary, only an Authentication Order and not an Opinion of Counsel or Officer' s Certificate is required for the Trustee to authenticate such new Note.

Section 3.07. *Optional Redemption.* (a) At any time prior to June 1, 2010, the Issuers may redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' prior notice mailed by first class mail to the registered address of each Holder of Notes, at a redemption price equal to 100% of the principal amount of the Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest and Additional Interest, if any, to the date of redemption (the "**Redemption Date**"), subject to the rights of Holders of Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date.

(b) Until June 1, 2009, the Issuers may, at their option, redeem up to 35% of the aggregate principal amount of Notes issued by it at a redemption price equal to 108.75% of the aggregate principal amount thereof, plus accrued and unpaid interest thereon and Additional Interest, if any, to the applicable Redemption Date, subject to the right of Holders of Notes of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, with the net cash proceeds of one or more Equity Offerings; *provided* that at least 50% of the sum of the aggregate principal amount of Notes originally issued under this Indenture and any Additional Notes that are Notes issued under this Indenture after the Issue Date remains outstanding immediately after the occurrence of each such redemption; *provided further* that each such redemption occurs within 90 days of the date of closing of each such Equity Offering. Notice of any redemption upon any Equity Offering may be given prior to the redemption thereof, and any such redemption or notice may, at the Issuers' discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Equity Offering.

(c) Except pursuant to clause (a) or (b) of this Section 3.07, the Notes will not be redeemable at the Issuers' option prior to June 1, 2010.

(d) On and after June 1, 2010, the Issuers may redeem the Notes, in whole or in part, upon not less than 30 nor more than 60 days' prior notice by first-class mail, postage prepaid, with a copy to the Trustee, to each Holder of Notes at the address of such Holder appearing in the security register, at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth below, plus accrued and unpaid interest thereon and Additional Interest, if any, to the applicable Redemption Date, subject to the right of Holders of Notes of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, if redeemed during the twelve month period beginning on June 1 of each of the years indicated below:

Year	Percentage
2010	104.375%
2011	102.188%
2012 and thereafter	100.000%

(e) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Section 3.01 through Section 3.06 hereof.

Section 3.08. *Mandatory Redemption.* The Issuers shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

Section 3.09. *Offers to Repurchase by Application of Excess Proceeds.* (a) In the event that, pursuant to Section 4.10 hereof, the Issuers shall be required to commence an Asset Sale Offer, they shall follow the procedures specified below.

(b) The Asset Sale Offer shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the "**Offer Period**"). No later than five Business Days after the termination of the Offer Period (the "**Purchase Date**"), the Issuers shall apply all Excess Proceeds (the "**Offer Amount**") to the purchase of Notes and, if required, Pari Passu Indebtedness (on a *pro rata* basis, if applicable), or, if less than the Offer Amount has been tendered, all Notes and Pari Passu Indebtedness tendered in response to the Asset Sale Offer. Payment for any Notes so purchased shall be made in the same manner as interest payments are made.

(c) If the Purchase Date is on or after a Record Date and on or before the related Interest Payment Date, any accrued and unpaid interest and Additional Interest, if any, up to but excluding the Purchase Date, shall be paid to the Person in whose name a Note is registered at the close of business on such Record Date,

and no additional interest shall be payable to Holders who tender Notes pursuant to the Asset Sale Offer.

(d) Upon the commencement of an Asset Sale Offer, the Issuers shall send, by first-class mail, a notice to each of the Holders, with a copy to the Trustee. The notice shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Asset Sale Offer. The Asset Sale Offer shall be made to all Holders and holders of Pari Passu Indebtedness. The notice, which shall govern the terms of the Asset Sale Offer, shall state:

(i) that the Asset Sale Offer is being made pursuant to this Section 3.09 and Section 4.10 hereof and the length of time the Asset Sale Offer shall remain open;

(ii) the Offer Amount, the purchase price and the Purchase Date;

(iii) that any Note not tendered or accepted for payment shall continue to accrue interest;

(iv) that, unless the Issuers default in making such payment, any Note accepted for payment pursuant to the Asset Sale Offer shall cease to accrue interest after the Purchase Date;

(v) that Holders electing to have a Note purchased pursuant to an Asset Sale Offer may elect to have Notes purchased in denominations of $2,000 and multiples of $1,000 in excess thereof;

(vi) that Holders electing to have a Note purchased pursuant to any Asset Sale Offer shall be required to surrender the Note, with the form entitled "**Option of Holder to Elect Purchase**" attached to the Note completed, or transfer by book-entry transfer, to the Issuers, the Depositary, if appointed by the Issuers, or a Paying Agent at the address specified in the notice at least three days before the Purchase Date;

(vii) that Holders shall be entitled to withdraw their election if any of the Issuers, the Depositary or the Paying Agent, as the case may be, receives, not later than the expiration of the Offer Period, a telegram, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;

(viii) that, if the aggregate principal amount of Notes and Pari Passu Indebtedness surrendered by the holders thereof exceeds the Offer Amount, the Trustee shall select the Notes and such Pari Passu Indebtedness to be purchased on a *pro rata* basis based on the accreted value or principal amount of the Notes or such Pari Passu Indebtedness

tendered (with such adjustments as may be deemed appropriate by the Trustee so that only Notes in denominations of $2,000, or multiples of $1,000 in excess thereof, shall be purchased); and

(ix) that Holders whose Notes were purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer) representing the same indebtedness to the extent not repurchased.

(e) On or before the Purchase Date, the Issuers shall, to the extent lawful, (i) accept for payment, on a *pro rata* basis to the extent necessary, the Offer Amount of Notes or portions thereof validly tendered pursuant to the Asset Sale Offer, or if less than the Offer Amount has been tendered, all Notes tendered and (ii) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer' s Certificate stating the aggregate principal amount of Notes or portions thereof so tendered.

(f) The Issuers, the Depositary or the Paying Agent, as the case may be, shall promptly mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes properly tendered by such Holder and accepted by the Issuers for purchase, and the Issuers shall promptly issue a new Note, and the Trustee, upon receipt of an Authentication Order, shall authenticate and mail or deliver (or cause to be transferred by book-entry) such new Note to such Holder (it being understood that, notwithstanding anything in this Indenture to the contrary, no Opinion of Counsel or Officer' s Certificate is required for the Trustee to authenticate and mail or deliver such new Note) in a principal amount equal to any unpurchased portion of the Note surrendered representing the same indebtedness to the extent not repurchased; *provided*, that each such new Note shall be in a principal amount of $2,000 or a multiple of $1,000 in excess thereof. Any Note not so accepted shall be promptly mailed or delivered by the Issuers to the Holder thereof. The Issuers shall publicly announce the results of the Asset Sale Offer on or as soon as practicable after the Purchase Date.

Other than as specifically provided in this Section 3.09 or Section 4.10 hereof, any purchase pursuant to this Section 3.09 shall be made pursuant to the applicable provisions of Section 3.01 through Section 3.06 hereof.

ARTICLE 4
COVENANTS

Section 4.01. *Payment of Notes.* The Issuers shall pay or cause to be paid the principal of, premium, if any, Additional Interest, if any, and interest on the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, Additional Interest, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than an Issuer or a Subsidiary, holds as of noon Eastern Time on the due date money deposited by the Issuers in immediately

available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due.

The Issuers shall pay all Additional Interest, if any, in the same manner on the dates and in the amounts set forth in the Registration Rights Agreement.

The Issuers shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to the then applicable interest rate on the Notes to the extent lawful; they shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest and Additional Interest (without regard to any applicable grace period) at the same rate to the extent lawful.

Section 4.02. *Maintenance of Office or Agency.* The Issuers shall maintain in the Borough of Manhattan in the City of New York an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Issuers in respect of the Notes and this Indenture may be served. The Issuers shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuers shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Issuers may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Issuers of their obligation to maintain an office or agency in the Borough of Manhattan in the City of New York for such purposes. The Issuers shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Issuers hereby designate the Corporate Trust Office of the Trustee as one such office or agency of the Issuers in accordance with Section 2.03 hereof.

Section 4.03. *Reports and Other Information.* (a) Notwithstanding that the Company may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise report on an annual and quarterly basis on forms provided for such annual and quarterly reporting pursuant to rules and regulations promulgated by the SEC, the Company shall file with the SEC (and make available to the Trustee and Holders of the Notes (without exhibits), without cost to any Holder, within 15 days after the Company files them with the SEC) from and after the Issue Date,

(i) within 90 days (or any other time period then in effect under the rules and regulations of the Exchange Act with respect to the

filing of a Form 10-K by a non-accelerated filer) after the end of each fiscal year, annual reports on Form 10-K, or any successor or comparable form, containing the information required to be contained therein, or required in such successor or comparable form;

(ii) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, reports on Form 10-Q containing all quarterly information that would be required to be contained in Form 10-Q, or any successor or comparable form;

(iii) promptly from time to time after the occurrence of an event required to be therein reported, such other reports on Form 8-K, or any successor or comparable form; and

(iv) any other information, documents and other reports that the Company would be required to file with the SEC if it were subject to Section 13 or 15(d) of the Exchange Act;

in each case, in a manner that complies in all material respects with the requirements specified in such form; *provided* that the Company shall not be so obligated to file such reports with the SEC if the SEC does not permit such filing, in which event the Company shall make available such information to prospective purchasers of Notes, in addition to providing such information to the Trustee and the Holders of the Notes, in each case within 15 days after the time the Company would be required to file such information with the SEC, if it were subject to Sections 13 or 15(d) of the Exchange Act. In addition, to the extent not satisfied by the foregoing, the Company shall furnish to Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(b) In the event that any direct or indirect parent company of the Company becomes a guarantor of the Notes, the Company may satisfy its obligations under this Section 4.03 with respect to financial information relating to the Company by furnishing financial information relating to such parent; *provided* that the same is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such parent, on the one hand, and the information relating to the Company and its Restricted Subsidiaries on a standalone basis, on the other hand.

(c) Notwithstanding the foregoing, the requirements of this Section 4.03 shall be deemed satisfied prior to the commencement of the Exchange Offer or the effectiveness of the Shelf Registration Statement (i) by the filing with the SEC of any Registration Statement, and any amendments thereto, with such financial information that satisfies Regulation S-X of the Securities Act or (ii) by posting reports that would be required to be filed substantially in the form required by the SEC on the Company' s website (or that of any of its parent companies) or providing such reports the Trustee, with financial information that satisfies

Regulation S-X of the Securities Act, subject to exceptions consistent with the presentation of financial information in the Offering Circular, to the extent filed within the times specified in Section 4.03(a) hereof.

Section 4.04. *Compliance Certificate.* (a) Each Issuer and each Guarantor (to the extent that such Guarantor is so required under the Trust Indenture Act) shall deliver to the Trustee, within 90 days after the end of each fiscal year ending after the Issue Date, a certificate from the principal executive officer, principal financial officer or principal accounting officer stating that a review of the activities of such Issuer and, in the case of the Company, its Restricted Subsidiaries, during the preceding fiscal year has been made under the supervision of the signing Officer with a view to determining whether such Issuer has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to such Officer signing such certificate, that to the best of his or her knowledge such Issuer has kept, observed, performed and fulfilled each and every condition and covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions, covenants and conditions of this Indenture (or, if a Default shall have occurred, describing all such Defaults of which he or she may have knowledge and what action such Issuer is taking or proposes to take with respect thereto).

(b) When any Default has occurred and is continuing under this Indenture, or if the Trustee or the holder of any other evidence of Indebtedness of the Issuers or any of their respective Subsidiaries gives any notice or takes any other action with respect to a claimed Default, the Issuers shall promptly (which shall be no more than five (5) Business Days) deliver to the Trustee by registered or certified mail or by facsimile transmission an Officer' s Certificate specifying such event and what action the Issuers propose to take with respect thereto.

Section 4.05. *Taxes.* The Company shall pay, and the Company shall cause each of its Restricted Subsidiaries to pay, prior to delinquency, all material taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate negotiations or proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders of the Notes.

Section 4.06. *Stay, Extension and Usury Laws.* Each of the Issuers and each of the Guarantors covenant (to the extent that they may lawfully do so) that they shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and each of the Issuers and each of the Guarantors (to the extent that they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and covenant that they shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07. *Limitation on Restricted Payments*. (a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

(i) declare or pay any dividend or make any payment or distribution on account of the Company' s, or any of its Restricted Subsidiaries' Equity Interests, including any dividend or distribution payable in connection with any merger or consolidation other than:

(A) dividends or distributions by the Company payable solely in Equity Interests (other than Disqualified Stock) of the Company; or

(B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly Owned Subsidiary, a majority of such class is owned by the Company or another Restricted Subsidiary and the Company or a Restricted Subsidiary receives at least its *pro rata* share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities;

(ii) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Company or any direct or indirect parent of the Company, including in connection with any merger or consolidation;

(iii) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value in each case, prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness, other than:

(A) Indebtedness permitted under clauses (vii) and (viii) of Section 4.09(b) hereof; or

(B) the purchase, repurchase or other acquisition of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of purchase, repurchase or acquisition; or

(iv) make any Restricted Investment

(all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as "**Restricted Payments**"), unless, at the time of such Restricted Payment:

(1) no Default shall have occurred and be continuing or would occur as a consequence thereof;

(2) immediately after giving effect to such transaction on a *pro forma* basis, the Company could incur $1.00 of additional Indebtedness under Section 4.09(a) hereof; and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Company and its Restricted Subsidiaries after the Issue Date (including Restricted Payments permitted by clauses (i), (ii) (with respect to the payment of dividends pursuant to clause (b)), (v), (vi), (ix) and (xiv) (to the extent not deducted in calculating Consolidated Net Income) of Section 4.07(b) hereof, but excluding all other Restricted Payments permitted by Section 4.07(b) hereof), is less than the sum of (without duplication):

(a) 50% of the Consolidated Net Income of the Company for the period (taken as one accounting period) beginning April 1, 2006, to the end of the Company' s most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment, or, in the case such Consolidated Net Income for such period is a deficit, minus 100% of such deficit; plus

(b) 100% of the aggregate net cash proceeds and the fair market value, as determined in good faith by the Company, of marketable securities or other property received by the Company since immediately after the Issue Date (other than net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness, Disqualified Stock or Preferred Stock pursuant to clause (xii)(a) of Section 4.09(b) hereof) from the issue or sale of:

(i) (A) Equity Interests of the Company, including Treasury Capital Stock, but excluding cash proceeds and the fair market value, as determined in good faith by the Company, of marketable securities or other property received from the sale of:

(x) Equity Interests to members of management, directors or consultants of the Company, any direct or indirect parent company of the Company and the Company' s Subsidiaries after the Issue Date to the extent such amounts have been applied to Restricted Payments made in accordance with clause (iv) of Section 4.07(b) hereof; and

(y) Designated Preferred Stock and

and (B) to the extent such net cash proceeds are actually contributed to the Company, Equity Interests of any direct or indirect parent company of the Company (excluding contributions of the proceeds from the sale of Designated Preferred Stock of such parent company or contributions to the extent such amounts have been applied to Restricted Payments made in accordance with clause (iv) of Section 4.07(b) hereof); or

(ii) debt securities of the Company that have been converted into or exchanged for such Equity Interests of the Company;

provided, however, that this clause (b) shall not include the proceeds from (W) Refunding Capital Stock, (X) Equity Interests or convertible debt securities of the Company sold to a Subsidiary, as the case may be, (Y) Disqualified Stock or debt securities that have been converted into Disqualified Stock or (Z) Excluded Contributions; plus

(c) 100% of the aggregate amount of cash and the fair market value, as determined in good faith by the Company, of marketable securities or other property contributed to the capital of the Company following the Issue Date (other than net cash proceeds (i) to the extent such net cash proceeds have been used to incur Indebtedness, Disqualified Stock or Preferred Stock pursuant to clause (xii)(a) of Section 4.09(b) hereof, (ii) contributed by a Subsidiary or (iii) constituting an Excluded Contribution); plus

(d) 100% of the aggregate amount received (which amount shall not increase Consolidated Net Income) in cash and the fair market value, as determined in good faith by the Company, of marketable securities or other property received by means of:

(i) the sale or other disposition (other than to the Company or a Restricted Subsidiary) of Restricted Investments made by the Company or its Restricted Subsidiaries and repurchases and redemptions of such Restricted Investments from the Company or its Restricted Subsidiaries and repayments of loans or advances, which constitute Restricted Investments by the Company or its Restricted Subsidiaries, in each case after the Issue Date; or, without duplication,

(ii) the sale (other than to the Company or a Restricted Subsidiary) of the stock of an Unrestricted Subsidiary or a distribution from an Unrestricted

Subsidiary (other than in each case to the extent the Investment in such Unrestricted Subsidiary was made by the Company or a Restricted Subsidiary pursuant to clause (vii) of Section 4.07(b) hereof or to the extent such Investment constituted a Permitted Investment) or a dividend from an Unrestricted Subsidiary after the Issue Date; *plus*

(e) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary after the Issue Date, the fair market value of the Investment in such Unrestricted Subsidiary, as determined by the Company in good faith or if, in the case of an Unrestricted Subsidiary, such fair market value may exceed $40.0 million, in writing by an Independent Financial Advisor, at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary, except to the extent the Investment in such Unrestricted Subsidiary was made by the Company or a Restricted Subsidiary pursuant to clause (vii) of Section 4.07(b) hereof or to the extent such Investment constituted a Permitted Investment.

(b) The foregoing provisions of Section 4.07(a) hereof shall not prohibit:

(i) the payment of any dividend within 60 days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of this Indenture;

(ii) (A) the redemption, repurchase, retirement or other acquisition of any Equity Interests ("**Treasury Capital Stock**") or Subordinated Indebtedness of the Issuers or any Equity Interests of any direct or indirect parent company of the Company, in exchange for, or out of the proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary) of, Equity Interests of the Company or any direct or indirect parent company of the Company to the extent contributed to the Company as common equity (in each case, other than any Disqualified Stock) ("**Refunding Capital Stock**") and (B) if immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon was permitted under clause (vi) of this Section 4.07(b), the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any direct or indirect parent company of the Company) in an aggregate amount per year no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(iii) the redemption, repurchase or other acquisition or retirement of Subordinated Indebtedness of the Issuers or a Guarantor made in exchange for, or out of the proceeds of the substantially concurrent sale of, new Indebtedness of the Issuers or a Guarantor, as the case may be, which is incurred in compliance with Section 4.09 hereof so long as:

(A) the principal amount or accreted value of such new Indebtedness does not exceed the principal amount of (or accreted value, if applicable), plus any accrued and unpaid interest on, the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired for value, plus the amount of any reasonable premium to be paid (including reasonable tender premiums) any reasonable fees and expenses incurred in connection with the issuance of such new Indebtedness;

(B) such new Indebtedness is subordinated to the Notes or the applicable Guarantee at least to the same extent as such Subordinated Indebtedness so purchased, exchanged, redeemed, repurchased, acquired or retired for value;

(C) such new Indebtedness has a final scheduled maturity date equal to or later than the final scheduled maturity date of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired; and

(D) such new Indebtedness has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired;

(iv) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) of the Company or any of its direct or indirect parent companies held by any future, present or former employee, director or consultant of the Company, any of its Subsidiaries or any of its direct or indirect parent companies pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement; *provided, however*, that the aggregate Restricted Payments made under this clause (iv) do not exceed in any calendar year $15.0 million (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum (without giving effect to the following proviso) of $30.0 million in any calendar year; *provided further* that such amount in any calendar year may be increased by an amount not to exceed:

(A) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Company and, to the extent contributed to the Company as equity (other than Disqualified Stock), Equity Interests of any of the Company' s direct or indirect parent companies, in each case to members of management, directors or consultants of the Company, any of its Subsidiaries or any of its direct or indirect parent companies that occurs after the Issue Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments; plus

(B) the cash proceeds of key man life insurance policies received by the Company or its Restricted Subsidiaries after the Issue Date; less

(C) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (A) and (B) of this clause (iv);

and *provided further* that cancellation of Indebtedness owing to the Company or any of its Restricted Subsidiaries from members of management of the Company, any of the Company' s direct or indirect parent companies or any of the Company' s Restricted Subsidiaries in connection with a repurchase of Equity Interests of the Company or any of its direct or indirect parent companies will not be deemed to constitute a Restricted Payment for purposes of this Section 4.07 or any other provision of this Indenture;

(v) the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Company or any of its Restricted Subsidiaries issued in accordance with Section 4.09 hereof to the extent such dividends are included in the definition of "**Fixed Charges**";

(vi) (A) the declaration and payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) issued by the Company after the Issue Date;

(B) the declaration and payment of dividends to a direct or indirect parent company of the Company, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) of such parent corporation issued after the Issue Date, *provided* that the amount of dividends paid pursuant to this clause (B) shall not exceed the aggregate amount of cash actually contributed to the Company from the sale of such Designated Preferred Stock; or

(C) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to clause (ii) of this Section 4.07(b);

provided, however, in the case of each of (A) and (C) of this clause (vi), that for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date of issuance of such Designated Preferred Stock, after giving effect to such issuance or declaration on a *pro forma* basis, the Company and its Restricted Subsidiaries on a consolidated basis would have had a Fixed Charge Coverage Ratio of at least 2.00 to 1.00;

(vii) Investments in Unrestricted Subsidiaries having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (vii) that are at the time outstanding, without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of cash or marketable securities, not to exceed 2.0% of Total Assets at the time of such Investment (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(viii) repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(ix) the declaration and payment of dividends on the Company' s common stock (or the payment of dividends to any direct or indirect parent entity to fund a payment of dividends on such entity' s common stock), following the first public offering of the Company' s common stock or the common stock of any of its direct or indirect parent companies after the Issue Date, of up to 6% per annum of the net cash proceeds received by or contributed to the Company in or from any such public offering, other than public offerings with respect to the Company' s common stock registered on Form S-8 and other than any public sale constituting an Excluded Contribution;

(x) Restricted Payments that are made with Excluded Contributions;

(xi) other Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (xi) not to exceed the greater of (x) $60.0 million or (y) 1.5% of Total Assets at the time made;

(xii) any Restricted Payment made as part of the Transaction and the fees and expenses related thereto or owed to Affiliates (including dividends to any direct or indirect parent of the Company to permit payment by such parent of such costs), in each case to the extent permitted

by (or, in the case of a dividend to fund such payment, to the extent such payment, if made by the Company, would be permitted by) Section 4.11 hereof;

(xiii) the repurchase, redemption or other acquisition or retirement for value of any Subordinated Indebtedness in accordance with the provisions similar to those described under Section 4.10 and Section 4.14 hereof; *provided* that all Notes tendered by Holders in connection with a Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed or acquired for value;

(xiv) the declaration and payment of dividends by the Company to, or the making of loans to, any direct or indirect parent in amounts required for any direct or indirect parent companies to pay, in each case without duplication,

(A) franchise taxes and other fees, taxes and expenses required to maintain their corporate existence;

(B) federal, state and local income taxes, to the extent such income taxes are attributable to the income of the Company and its Restricted Subsidiaries and, to the extent of the amount actually received from its Unrestricted Subsidiaries, in amounts required to pay such taxes to the extent attributable to the income of such Unrestricted Subsidiaries; *provided* that in each case the amount of such payments in any fiscal year does not exceed the amount that the Company and its Restricted Subsidiaries would be required to pay in respect of federal, state and local taxes for such fiscal year were the Company, its Restricted Subsidiaries and its Unrestricted Subsidiaries (to the extent described above) to pay such taxes separately from any such parent entity;

(C) customary salary, bonus and other benefits payable to officers and employees of any direct or indirect parent company of the Company to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Company and its Restricted Subsidiaries;

(D) general corporate operating and overhead costs and expenses of any direct or indirect parent company of the Company to the extent such costs and expenses are attributable to the ownership or operation of the Company and its Restricted Subsidiaries; and

(E) fees and expenses other than to Affiliates of the Company (it being understood that Goldman, Sachs & Co. shall not be deemed an Affiliate of the Company' s direct or

indirect parent company by its Affiliates) related to any unsuccessful equity or debt offering of such parent entity; and

(xv) the distribution, dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to the Company or a Restricted Subsidiary by Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, the primary assets of which are (i) cash and/or Cash Equivalents or (ii) were contributed to such Unrestricted Subsidiary in anticipation of such distribution, dividend or other payment, as determined in good faith by the Company);

provided, however, that at the time of, and after giving effect to, any Restricted Payment permitted under clauses (vii), (xi) or (xv) of this Section 4.07(b), no Default shall have occurred and be continuing or would occur as a consequence thereof.

(c) The Company shall not permit any Unrestricted Subsidiary to become a Restricted Subsidiary except pursuant to the last sentence of the definition of "**Unrestricted Subsidiary.**" For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Company and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated shall be deemed to be Restricted Payments in an amount determined as set forth in the last sentence of the definition of "**Investment.**" Such designation shall be permitted only if a Restricted Payment in such amount would be permitted at such time, whether pursuant to Section 4.07(a) hereof or under clause (vii), (x) or (xi) of Section 4.07(b) hereof, or pursuant to the definition of "**Permitted Investments,**" and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary.

Section 4.08. *Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries*. (a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any such Restricted Subsidiary to:

(i) (A) pay dividends or make any other distributions to the Company or any of its Restricted Subsidiaries on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or

(B) pay any Indebtedness owed to the Company or any of its Restricted Subsidiaries;

(ii) make loans or advances to the Company or any of its Restricted Subsidiaries; or

(iii) sell, lease or transfer any of its properties or assets to the Company or any of its Restricted Subsidiaries.

(b) The restrictions in Section 4.08(a) hereof shall not apply to encumbrances or restrictions existing under or by reason of:

(i) contractual encumbrances or restrictions in effect on the Issue Date, including pursuant to the Senior Credit Facilities and the related documentation;

(ii) the indenture governing the Senior Subordinated Notes, this Indenture, the Senior Subordinated Notes and the Notes;

(iii) purchase money obligations for property acquired in the ordinary course of business that impose restrictions of the nature discussed in clause (iii) of Section 4.08(a) hereof on the property so acquired;

(iv) applicable law or any applicable rule, regulation or order;

(v) any agreement or other instrument of a Person acquired by the Company or any of its Restricted Subsidiaries in existence at the time of such acquisition (but not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired;

(vi) contracts for the sale of assets, including customary restrictions with respect to a Subsidiary of the Company pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Subsidiary;

(vii) Secured Indebtedness otherwise permitted to be incurred pursuant to Section 4.09 hereof and Section 4.12 hereof that limit the right of the debtor to dispose of the assets securing such Indebtedness;

(viii) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(ix) other Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries or other Restricted Subsidiaries that are not Guarantors permitted to be incurred subsequent to the Issue Date pursuant to the provisions of Section 4.09 hereof;

(x) customary provisions in joint venture agreements and other similar agreements relating solely to such joint venture;

(xi) customary provisions contained in leases or licenses of intellectual property and other agreements, in each case, entered into in the ordinary course of business; and

(xii) any encumbrances or restrictions of the type referred to in clauses (i), (ii) and (iii) of Section 4.08(a) hereof imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i) through (xi) of this Section 4.08(b); *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Company, no more restrictive with respect to such encumbrance and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 4.09. *Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.* (a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, "**incur**" and collectively, an "**incurrence**") with respect to any Indebtedness (including Acquired Indebtedness) and the Company shall not issue any shares of Disqualified Stock and shall not permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock; *provided, however*, that the Company may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any of its Restricted Subsidiaries may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock, if the Fixed Charge Coverage Ratio on a consolidated basis for the Company and its Restricted Subsidiaries' most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued would have been at least 2.00 to 1.00, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such four quarter period; *provided, further* that the maximum amount that Restricted Subsidiaries that are not Guarantors may incur pursuant to the foregoing shall not exceed $50.0 million.

(b) The provisions of Section 4.09(a) hereof shall not apply to:

(i) the incurrence of Indebtedness under Credit Facilities by the Company or any of its Restricted Subsidiaries and the issuance and creation of letters of credit and bankers' acceptances thereunder (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof), up to an aggregate principal amount of $1,685.0 million outstanding at any one time, less principal payments actually made by the borrower thereunder in respect of Indebtedness thereunder with Net Proceeds from an Asset Sale;

(ii) the incurrence by the Company and any Guarantor of Indebtedness represented by (A) the Notes (including any Guarantee) (other than any Additional Notes) or the Senior Subordinated Notes (including Guarantees thereof) and (B) any Notes or Senior Subordinated Notes (including Guarantees thereof) issued in exchange for the Notes or the Senior Subordinated Notes pursuant to the Registration Rights Agreement;

(iii) Indebtedness of the Company and its Restricted Subsidiaries in existence on the Issue Date (other than Indebtedness described in clauses (i) and (ii) of this Section 4.09(b));

(iv) Indebtedness (including Capitalized Lease Obligations), Disqualified Stock and Preferred Stock incurred by the Company or any of its Restricted Subsidiaries, to finance the purchase, lease or improvement of property (real or personal) or equipment (other than software) that is used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets, in an aggregate principal amount at the date of such incurrence (including all Refinancing Indebtedness (as defined in clause (xii) hereof) incurred to refinance any other Indebtedness incurred pursuant to this clause (iv)) not to exceed the greater of (x) $160.0 million and (y) 4% of Total Assets; provided, however, that such Indebtedness exists at the date of such purchase or transaction, or is created within 270 days thereafter (it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this clause (iv) shall cease to be deemed incurred or outstanding for purposes of this clause (iv) but shall be deemed incurred for the purposes of the first paragraph of this covenant from and after the first date on which the Company or such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under the first paragraph of this covenant without reliance on this clause (iv));

(v) Indebtedness incurred by the Company or any of its Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit issued in the ordinary course of business, including letters of credit in respect of workers' compensation claims, or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims; *provided, however*, that upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 30 days following such drawing or incurrence;

(vi) Indebtedness arising from agreements of the Company or its Restricted Subsidiaries providing for indemnification, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with the disposition of any business, assets or a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all

or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition; *provided, however*, that

(A) such Indebtedness is not reflected on the balance sheet of the Company, or any of its Restricted Subsidiaries (Contingent Obligations referred to in a footnote to financial statements and not otherwise reflected on the balance sheet will not be deemed to be reflected on such balance sheet for purposes of this clause (vi)(A)); and

(B) the maximum assumable liability in respect of all such Indebtedness shall at no time exceed the gross proceeds including non-cash proceeds (the fair market value of such non-cash proceeds being measured at the time received and without giving effect to any subsequent changes in value) actually received by the Company and its Restricted Subsidiaries in connection with such disposition;

(vii) Indebtedness of the Company to a Restricted Subsidiary; *provided* that any such Indebtedness owing to a Restricted Subsidiary that is not the Co-Issuer or a Guarantor is expressly subordinated in right of payment to the Notes; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Restricted Subsidiary ceasing to be a such Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Company or another Restricted Subsidiary) shall be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause (vii);

(viii) Indebtedness of a Restricted Subsidiary to the Company or another Restricted Subsidiary; *provided* that if a Guarantor incurs such Indebtedness to a Restricted Subsidiary that is not the Co-Issuer or a Guarantor, such Indebtedness is expressly subordinated in right of payment to the Notes or the Guarantee of the Notes of such Guarantor; *provided further* that any subsequent transfer of any such Indebtedness (except to the Company or another Restricted Subsidiary) shall be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause (viii);

(ix) shares of Preferred Stock of a Restricted Subsidiary issued to the Company or another Restricted Subsidiary, *provided* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock (except to the Company or another of its Restricted Subsidiaries) shall be deemed in each case to be an issuance of such shares of Preferred Stock not permitted by this clause (ix);

(x) Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes) for the purpose of limiting interest rate risk with respect to any Indebtedness permitted to be incurred pursuant to this Section 4.09, exchange rate risk or commodity pricing risk;

(xi) obligations in respect of performance, bid, appeal and surety bonds and completion guarantees provided by the Company or any of its Restricted Subsidiaries in the ordinary course of business;

(xii) (A) Indebtedness or Disqualified Stock of the Company and Indebtedness, Disqualified Stock or Preferred Stock of the Company or any Restricted Subsidiary equal to 200.0% of the net cash proceeds received by the Company since immediately after the Issue Date from the issue or sale of Equity Interests of the Company or cash contributed to the capital of the Company (in each case, other than proceeds of Disqualified Stock or sales of Equity Interests to the Company or any of its Subsidiaries) as determined in accordance with clauses (iii)(b) and (iii)(c) of Section 4.07(a) hereof to the extent such net cash proceeds or cash have not been applied pursuant to such clauses to make Restricted Payments or to make other Investments, payments or exchanges pursuant to Section 4.07(b) hereof or to make Permitted Investments (other than Permitted Investments specified in clauses (i), (ii) and (iii) of the definition thereof) and (B) Indebtedness or Disqualified Stock of the Company and Indebtedness, Disqualified Stock or Preferred Stock of the Company or any Restricted Subsidiary not otherwise permitted hereunder in an aggregate principal amount or liquidation preference, which when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred pursuant to this Section 4.09(b)(xii)(B), does not at any one time outstanding exceed $150.0 million (it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this Section 4.09(b)(xii)(B) shall cease to be deemed incurred or outstanding for purposes of this Section 4.09(b)(xii)(B) but shall be deemed incurred for the purposes of Section 4.09(a) hereof from and after the first date on which the Company or such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under Section 4.09(a) hereof without reliance on this Section 4.09(b)(xii)(B));

(xiii) the incurrence or issuance by the Company or any Restricted Subsidiary of Indebtedness, Disqualified Stock or Preferred Stock which serves to refund or refinance any Indebtedness, Disqualified Stock or Preferred Stock incurred as permitted under Section 4.09(a) hereof and clauses (ii), (iii), (iv) and (xii)(A) of this Section 4.09(b), this clause (xiii) and clause (xiv) of this Section 4.09(b), including additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay

premiums (including reasonable tender premiums), defeasance costs and fees in connection therewith (the "**Refinancing Indebtedness**") prior to its respective maturity; *provided, however*, that such Refinancing Indebtedness:

(A) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being refunded or refinanced,

(B) to the extent such Refinancing Indebtedness refinances (1) Indebtedness subordinated or *pari passu* to the Notes or any Guarantee thereof, such Refinancing Indebtedness is subordinated or *pari passu* to the Notes or the Guarantee at least to the same extent as the Indebtedness being refinanced or refunded or (2) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively, and

(C) shall not include:

(1) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Company that is not an Issuer or a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of the Company;

(2) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Company that is not an Issuer or a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or

(3) Indebtedness, Disqualified Stock or Preferred Stock of the Company or a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary;

and *provided further* that subclause (A) of this clause (xiii) will not apply to any refunding or refinancing of any Secured Indebtedness;

(xiv) Indebtedness, Disqualified Stock or Preferred Stock of (x) the Company or a Restricted Subsidiary incurred to finance an acquisition or (y) Persons that are acquired by the Company or any Restricted Subsidiary or merged into the Company or a Restricted Subsidiary in accordance with the terms of this Indenture; *provided* that after giving effect to such acquisition or merger, either

(a) the Company would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) hereof, or

(b) the Fixed Charge Coverage Ratio of the Company and the Restricted Subsidiaries is greater than immediately prior to such acquisition or merger;

(xv) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, *provided* that such Indebtedness is extinguished within two Business Days of its incurrence;

(xvi) Indebtedness of the Company or any of its Restricted Subsidiaries supported by a letter of credit issued pursuant to the Credit Facilities, in a principal amount not in excess of the stated amount of such letter of credit;

(xvii) (A) any guarantee by the Company or a Restricted Subsidiary of Indebtedness or other obligations of any Restricted Subsidiary so long as the incurrence of such Indebtedness incurred by such Restricted Subsidiary is permitted under the terms of this Indenture,

(B) any guarantee by a Restricted Subsidiary of Indebtedness of the Company provided that such guarantee is incurred in accordance with Section 4.15 hereof, or

(C) any incurrence by the Co-Issuer of Indebtedness as a co-issuer of Indebtedness of the Company that was permitted to be incurred by another provision of this covenant; and

(xviii) Indebtedness of Foreign Subsidiaries of the Company incurred not to exceed at any one time outstanding and together with any other Indebtedness incurred under this clause (xviii) 5.0% of the Total Assets of the Foreign Subsidiaries (it being understood that any Indebtedness incurred pursuant to this clause (xviii) shall cease to be deemed incurred or outstanding for purposes of this clause (xviii) but shall be deemed incurred for the purposes of Section 4.09(a) hereof from and after the first date on which the Company or such Restricted Subsidiary could have incurred such Indebtedness under Section 4.09(a) hereof without reliance on this clause(xviii)).

(c) For purposes of determining compliance with this Section 4.09:

(i) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) meets the criteria of more than one of the categories of permitted Indebtedness, Disqualified

Stock or Preferred Stock described in clauses (i) through (xviii) of Section 4.09(b) hereof or is entitled to be incurred pursuant to Section 4.09(a) hereof, the Company, in its sole discretion, shall classify or reclassify such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) and shall only be required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock in one of the above clauses; and

(ii) at the time of incurrence, the Company shall be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in Sections 4.09(a) and 4.09(b) hereof;

provided that all Indebtedness outstanding under the Credit Facilities on the Issue Date shall be treated as incurred on the Issue Date under clause (i) of Section 4.09(b) hereof.

Accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness, Disqualified Stock or Preferred Stock shall not be deemed to be an incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 4.09 but shall be included as Fixed Charges.

For purposes of determining compliance with any U.S. dollar denominated restriction on the incurrence of Indebtedness, the U.S. dollar equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced.

The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing.

Section 4.10. *Asset Sales.* (a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, consummate an Asset Sale, unless:

(i) the Company or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal

to the fair market value (as determined in good faith by the Company) of the assets sold or otherwise disposed of; and

(ii) except in the case of a Permitted Asset Swap, at least 75% of the consideration therefor received by the Company or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; *provided* however, that for purposes of this Section 4.10 and for no other purpose, each of the following shall be deemed to be in cash:

(A) any liabilities (as shown on the Company' s or such Restricted Subsidiary' s most recent balance sheet or in the footnotes thereto) of the Company or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the Notes or, in the case of liabilities of a Guarantor, the Guarantee of such Guarantor, that are assumed by the transferee of any such assets and for which the Company and all of its Restricted Subsidiaries have been validly released by all creditors in writing,

(B) any securities received by the Company or such Restricted Subsidiary from such transferee that are converted by the Company or such Restricted Subsidiary into cash (to the extent of the cash received) within 180 days following the closing of such Asset Sale, and

(C) any Designated Non-cash Consideration received by the Company or such Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (C) that is at that time outstanding, not to exceed 3.0% of Total Assets at the time of the receipt of such Designated Non-cash Consideration, with the fair market value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value.

(b) Within 450 days after the receipt of any Net Proceeds of any Asset Sale, the Company or such Restricted Subsidiary, at its option, may apply the Net Proceeds from such Asset Sale,

(i) to permanently reduce:

(A) Secured Indebtedness, and to correspondingly reduce commitments with respect thereto;

(B) Obligations under Indebtedness ranking *pari passu* with the Notes (and to correspondingly reduce commitments with respect thereto) or reduce Obligations under the Notes as provided under Section 3.07, through open-market purchases (to the extent such purchases are at or above 100% of

the principal amount thereof) or by making an Asset Sale Offer (in accordance with the procedures set forth under Section 4.10(c) hereof)); *provided* that in the case of a reduction of Obligations other than under the Notes, the Company shall use commercially reasonable efforts to equally and ratably reduce Obligations under the Notes as provided under Section 3.07 hereof, through open-market purchases (to the extent such purchases are at or above 100% of the principal amount thereof) or by making an offer (in accordance with the procedures set forth under Section 4.10(c) hereof) to all Holders to purchase their Notes at 100% of the principal amount thereof, plus the amount of accrued but unpaid interest, if any, on the amount of Notes that would otherwise be prepaid, or

(C) Indebtedness of a Restricted Subsidiary that is not the Co-Issuer or a Guarantor, other than Indebtedness owed to the Company or another Restricted Subsidiary,

(ii) to make (A) an Investment in any one or more businesses, *provided* that such Investment in any business is in the form of the acquisition of Capital Stock and results in the Company or another of its Restricted Subsidiaries, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (B) capital expenditures or (C) acquisitions of other assets, in each of (A), (B) and (C), used or useful in a Similar Business, or

(iii) to make an investment in (A) any one or more businesses, *provided* that such Investment in any business is in the form of the acquisition of Capital Stock and results in the Company or another of its Restricted Subsidiaries, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (B) properties or (C) acquisitions of other assets that, in each of (A), (B) and (C), replace the businesses, properties and/or assets that are the subject of such Asset Sale;

provided that, in the case of clauses (ii) and (iii) above, a binding commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment so long as the Company, or such other Restricted Subsidiary enters into such commitment with the good faith expectation that such Net Proceeds shall be applied to satisfy such commitment within 180 days of such commitment (an "**Acceptable Commitment**") provided further that if any Acceptable Commitment is later cancelled or terminated for any reason before such Net Proceeds are applied, then such Net Proceeds shall constitute Excess Proceeds.

(c) Any Net Proceeds from the Asset Sale that are not invested or applied as provided and within the time period set forth in Section 4.10(b) shall be

deemed to constitute "**Excess Proceeds.**" When the aggregate amount of Excess Proceeds exceeds $25.0 million, the Issuers shall make an offer to all Holders of the Notes and, if required by the terms of any Indebtedness that is *pari passu* with the Notes ("**Pari Passu Indebtedness**"), to the holders of such Pari Passu Indebtedness (an "**Asset Sale Offer**"), to purchase the maximum aggregate principal amount of the Notes and such Pari Passu Indebtedness that is a multiple of $1,000 (but in a minimum amount of $2,000) that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof, plus accrued and unpaid interest and Additional Interest, if any, to the date fixed for the closing of such offer, in accordance with the procedures set forth in this Indenture. The Issuers shall commence an Asset Sale Offer with respect to Excess Proceeds within ten Business Days after the date that Excess Proceeds exceed $25.0 million by mailing the notice required pursuant to the terms of this Indenture, with a copy to the Trustee.

To the extent that the aggregate amount of Notes and such Pari Passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Company may use any remaining Excess Proceeds for general corporate purposes, subject to other covenants contained in this Indenture. If the aggregate principal amount of Notes or the Pari Passu Indebtedness surrendered by such holders thereof exceeds the amount of Excess Proceeds, the Trustee shall select the Notes and such Pari Passu Indebtedness to be purchased on a *pro rata* basis based on the accreted value or principal amount of the Notes or such Pari Passu Indebtedness tendered. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero. Additionally, the Issuers, at their option, may make an Asset Sale Offer using proceeds from any Asset Sale at any time after consummation of such Asset Sale. Upon consummation of such Asset Sale Offer, any Net Proceeds not required to be used to purchase Notes pursuant to the terms of the Indenture shall not be deemed Excess Proceeds.

(d) Pending the final application of any Net Proceeds pursuant to this Section 4.10, the holder of such Net Proceeds may apply such Net Proceeds temporarily to reduce Indebtedness outstanding under a revolving credit facility or otherwise invest such Net Proceeds in any manner not prohibited by this Indenture.

(e) The Issuers shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of the Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuers shall comply with the applicable securities laws and regulations and shall not be deemed to have breached their obligations described in this Indenture by virtue thereof.

Section 4.11. *Transactions with Affiliates.* (a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, make any payment to, or

sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company (each of the foregoing, an "**Affiliate Transaction**") involving aggregate payments or consideration in excess of $5.0 million, unless:

(i) such Affiliate Transaction is on terms that are not materially less favorable to the Company or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person on an arm' s-length basis; and

(ii) the Company delivers to the Trustee with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate payments or consideration in excess of $10.0 million, a resolution adopted by the majority of the disinterested members of the board of directors of the Company approving such Affiliate Transaction and set forth in an Officer' s Certificate certifying that such Affiliate Transaction complies with clause (i) of this Section 4.11(a).

(b) The provisions of Section 4.11(a) hereof shall not apply to the following:

(i) transactions between or among the Company or any of its Restricted Subsidiaries;

(ii) Restricted Payments permitted by Section 4.07 hereof and the definition of "**Permitted Investments**";

(iii) the payment of management, consulting, monitoring and advisory fees and related expenses to the Investors pursuant to the Sponsor Management Agreement as in effect on the Issue Date, or any amendment thereto (so long as any such amendment is not disadvantageous to the Holders when taken as a whole as compared to the applicable agreement as in effect on the Issue Date);

(iv) the payment of reasonable and customary fees paid to, and indemnities provided on behalf of, officers, directors, employees or consultants of Company, any of its direct or indirect parent companies or any of its Restricted Subsidiaries;

(v) transactions in which the Company or any of its Restricted Subsidiaries, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favorable to the Company or its relevant Restricted Subsidiary than those that would have been

obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person on an arm' s-length basis;

(vi) any agreement as in effect as of the Issue Date, or any amendment thereto (so long as any such amendment is not disadvantageous to the Holders when taken as a whole as compared to the applicable agreement as in effect on the Issue Date);

(vii) the existence of, or the performance by the Company or any of its Restricted Subsidiaries of its obligations under the terms of, any stockholders agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Issue Date and any similar agreements which it may enter into thereafter; *provided, however*, that the existence of, or the performance by the Company or any of its Restricted Subsidiaries of obligations under any future amendment to any such existing agreement or under any similar agreement entered into after the Issue Date shall only be permitted by this clause (vii) to the extent that the terms of any such amendment or new agreement are not otherwise disadvantageous to the Holders when taken as a whole;

(viii) the Transaction and the payment of all fees and expenses related to the Transaction, in each case as disclosed in the Offering Circular;

(ix) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Indenture which are fair to the Company and its Restricted Subsidiaries, in the reasonable determination of the board of directors of the Company or the senior management thereof, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(x) the issuance of Equity Interests (other than Disqualified Stock) of the Company to any Permitted Holder or to any director, officer, employee or consultant;

(xi) payments by the Company or any of its Restricted Subsidiaries to any of the Investors (or their Affiliates) made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including, without limitation, in connection with acquisitions or divestitures which payments are approved by a majority of the board of directors of the Company in good faith;

(xii) payments or loans (or cancellation of loans) to employees or consultants of the Company, any of its direct or indirect parent

companies or any of its Restricted Subsidiaries and employment agreements, stock option plans and other similar arrangements with such employees or consultants which, in each case, are approved by the Company in good faith; and

(xiii) investments by the Investors in securities of the Company or any of its Restricted Subsidiaries so long as (A) the investment is being offered generally to other investors on the same or more favorable terms and (B) the investment constitutes less than 5% of the proposed or outstanding issue amount of such class of securities.

Section 4.12. *Liens.* The Company shall not, and shall not permit the Co-Issuer or any Guarantor to, directly or indirectly, create, incur, assume or suffer to exist any Lien (except Permitted Liens) on any asset or property of the Company, the Co-Issuer or any Guarantor, or any income or profits therefrom, or assign or convey any right to receive income therefrom, unless:

(a) in the case of Liens securing Subordinated Indebtedness or other Indebtedness that is subordinated or junior in right of payment to the Notes and the related Guarantees, the Notes and related Guarantees are secured by a Lien on such property, assets or proceeds that is senior in priority to such Liens; or

(b) in all other cases, the Notes or the Guarantees are equally and ratably secured, except that the foregoing shall not apply to (i) Liens securing the Notes and the related Guarantees and (ii) Liens incurred to secure Obligations in respect of any Indebtedness permitted to be incurred pursuant to Section 4.09(b) (other than Subordinated Indebtedness or Indebtedness referred to in clauses Section 4.09(b)(vii)Section 4.09(b)(viii)Section 4.09(b)(ix) thereof); *provided* that, with respect to Liens securing Obligations permitted under this subclause (ii), at the time of incurrence and after giving pro forma effect thereto, the Consolidated Secured Debt Ratio would be no greater than 4.0 to 1.0.

Section 4.13. *Corporate Existence.* Subject to Article 5 hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect (a) its corporate existence, and the corporate, partnership or other existence of each of its Restricted Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Restricted Subsidiary and (b) the rights (charter and statutory), licenses and franchises of the Company and its Restricted Subsidiaries; *provided* that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of its Restricted Subsidiaries (other than the Co-Issuer), if the Company in good faith shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole.

Section 4.14. *Offer to Repurchase Upon Change of Control.* (a) If a Change of Control occurs, unless the Issuers have previously or concurrently mailed a redemption notice with respect to all the outstanding Notes as described under Section 3.07 hereof, the Issuers shall make an offer to purchase all of the Notes pursuant to the offer described below (the "**Change of Control Offer**") at a price in cash (the "**Change of Control Payment**") equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest and Additional Interest, if any, to the date of purchase, subject to the right of Holders of the Notes of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date. Within 30 days following any Change of Control, the Issuers shall send notice of such Change of Control Offer by first-class mail, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the security register with a copy to the Trustee, with the following information:

(i) that a Change of Control Offer is being made pursuant to this Section 4.14 and that all Notes properly tendered pursuant to such Change of Control Offer will be accepted for payment by the Issuers;

(ii) the purchase price and the purchase date, which will be no earlier than 30 days nor later than 60 days from the date such notice is mailed (the "**Change of Control Payment Date**");

(iii) that any Note not properly tendered will remain outstanding and continue to accrue interest;

(iv) that unless the Issuers default in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;

(v) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender such Notes, with the form entitled "**Option of Holder to Elect Purchase**" on the reverse of such Notes completed, to the paying agent specified in the notice at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(vi) that Holders shall be entitled to withdraw their tendered Notes and their election to require the Issuers to purchase such Notes, *provided* that the paying agent receives, not later than the close of business on the 30th day following the date of the Change of Control notice, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder of the Notes, the principal amount of Notes tendered for purchase, and a statement that such Holder is withdrawing its tendered Notes and its election to have such Notes purchased;

(vii) that if the Issuers are redeeming less than all of the Notes, the Holders of the remaining Notes will be issued new Notes and such new Notes will be equal in principal amount to the unpurchased portion of the Notes surrendered. The unpurchased portion of the Notes must be equal to $2,000 or a multiple of $1,000 in excess thereof; and

(viii) the other instructions, as determined by the Issuers, consistent with this Section 4.14, that a Holder must follow.

The notice, if mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. If (a). (a) the notice is mailed in a manner herein provided and (b) any Holder fails to receive such notice or a Holder receives such notice but it is defective, such Holder' s failure to receive such notice or such defect shall not affect the validity of the proceedings for the purchase of the Notes as to all other Holders that properly received such notice without defect. The Issuers shall comply with the requirements of Rule 14e 1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of Notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.14, the Issuers shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.14 by virtue thereof.

(b) On the Change of Control Payment Date, the Issuers shall, to the extent permitted by law,

(i) accept for payment all Notes issued by it or portions thereof properly tendered pursuant to the Change of Control Offer,

(ii) deposit with the Paying Agent an amount equal to the aggregate Change of Control Payment in respect of all Notes or portions thereof so tendered, and

(iii) deliver, or cause to be delivered, to the Trustee for cancellation the Notes so accepted together with an Officer' s Certificate to the Trustee stating that such Notes or portions thereof have been tendered to and purchased by the Issuers.

(c) The Issuers shall not be required to make a Change of Control Offer following a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.14 applicable to a Change of Control Offer made by the Issuers and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer. Notwithstanding anything to the contrary herein, a Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(d) Other than as specifically provided in this Section 4.14, any purchase pursuant to this Section 4.14 shall be made pursuant to the provisions of Sections Section 3.02, Section 3.05 and Section 3.06 hereof.

Section 4.15. *Limitation on Guarantees of Indebtedness by Restricted Subsidiaries.* The Company shall not permit any of its Wholly-Owned Subsidiaries that are Restricted Subsidiaries (and non-Wholly-Owned Subsidiaries if such non-Wholly-Owned Subsidiaries guarantee other capital markets debt securities), other than the Co-Issuer, a Guarantor or a Foreign Subsidiary guaranteeing Indebtedness of another Foreign Subsidiary, to guarantee the payment of any Indebtedness of the Issuers or any Guarantor unless:

(a) such Restricted Subsidiary within 30 days executes and delivers a supplemental indenture to this Indenture, the form of which is attached as Exhibit D hereto, providing for a Guarantee by such Restricted Subsidiary, except that with respect to a guarantee of Indebtedness of the Company, the Co-Issuer or any Guarantor, if such Indebtedness is by its express terms subordinated in right of payment to the Notes or such Guarantor' s Guarantee, any such guarantee by such Restricted Subsidiary with respect to such Indebtedness shall be subordinated in right of payment to such Guarantee substantially to the same extent as such Indebtedness is subordinated to the Notes; and

(b) such Restricted Subsidiary waives and shall not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Company or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Guarantee;

provided that this Section 4.15 shall not be applicable to any guarantee of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary.

Section 4.16. *Discharge and Suspension of Covenants.* (a) If after the Issue Date (i) the Notes have Investment Grade Ratings from both Rating Agencies and (ii) no Default has occurred and is continuing under this Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "**Covenant Suspension Event**"), the Company and its Restricted Subsidiaries will not be subject to the following covenants: Section 4.07 hereof, Section 4.08 hereof, Section 4.09 hereof, Section 4.10 hereof, Section 4.11 hereof, Section 4.14 hereof, Section 4.15 hereof and clause (iv) of Section 5.01(a) (collectively, the "**Suspended Covenants**").

(b) In the event that the Company and its Restricted Subsidiaries are not subject to the Suspended Covenants under this Indenture for any period of time as a result of the foregoing, and on any subsequent date one or both of the Rating Agencies withdraw their Investment Grade Rating or downgrade the rating

assigned to the Notes below an Investment Grade Rating, then the Company and its Restricted Subsidiaries shall thereafter again be subject to the Suspended Covenants under this Indenture with respect to future events. The period of time between the Suspension Date and the Reversion Date is referred to herein as the "**Suspension Period**." The Guarantees of the Guarantors will be suspended during the Suspension Period and reinstated upon termination thereof. Additionally, upon the occurrence of a Covenant Suspension Event, the amount of Excess Proceeds from Net Proceeds shall be reset at zero.

(c) Notwithstanding the foregoing, in the event of any reinstatement pursuant to Section 4.16(b), no action taken or omitted to be taken by the Company or any of its Restricted Subsidiaries prior to such reinstatement shall give rise to a Default or Event of Default under this Indenture with respect to the Notes; *provided* that (i) with respect to Restricted Payments made after any such reinstatement, the amount of Restricted Payments made will be calculated as though the covenant described in Section 4.07 hereof had been in effect prior to, but not during the Suspension Period; *provided* that any Subsidiaries designated as Unrestricted Subsidiaries during the Suspension Period shall automatically become Restricted Subsidiaries on the Reversion Date (subject to the Company' s right to subsequently designate them as Unrestricted in accordance with this Indenture) and (ii) all Indebtedness incurred, or Disqualified Stock issued, during the Suspension Period will be classified to have been incurred or issued pursuant to clause (iii) of Section 4.09(b).

(d) The Company shall deliver promptly to the Trustee an Officer' s Certificate notifying it of any Covenant Suspension Event or reinstatement of covenants under this Section 4.16.

Section 4.17. *Limitation on Activities of the Co-Issuer.* The Co-Issuer shall not hold any assets, become liable for any obligations or engage in any business activities; *provided* that it may be a co-obligor with respect to the Notes, the Senior Subordinated Notes or any other Indebtedness issued by the Company, and may engage in any activities directly related thereto or necessary in connection therewith. The Co-Issuer shall be a Wholly-Owned Subsidiary of the Company at all times.

ARTICLE 5
SUCCESSORS

Section 5.01. *Merger, Consolidation or Sale of All or Substantially All Assets.* (a) The Company shall not consolidate or merge with or into or wind up into (whether or not the Company is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(i) either: (A) the Company is the surviving Person; or (B) the Person formed by or surviving any such consolidation or merger (if other

than the Company) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation, partnership, trust or limited liability company organized or existing under the laws of the United States, any State thereof, the District of Columbia, or any territory thereof (such Person, as the case may be, being herein called the "**Successor Company**");

(ii) the Successor Company, if other than the Company, expressly assumes all the obligations of the Company under the Notes and the Registration Rights Agreement pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;

(iii) immediately after such transaction, no Default exists;

(iv) immediately after giving *pro forma* effect to such transaction and any related financing transactions, as if such transactions had occurred at the beginning of the applicable four quarter period,

(A) the Successor Company would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) hereof, or

(B) the Fixed Charge Coverage Ratio for the Successor Company, the Company and its Restricted Subsidiaries would be greater than such Ratio for the Company and its Restricted Subsidiaries immediately prior to such transaction;

(v) each Guarantor, unless it is the other party to the transactions described above, in which case Section 5.01(c)(i)(B) hereof shall apply, shall have by supplemental indenture confirmed that its Guarantee shall apply to such Person' s obligations under this Indenture, the Notes and the Registration Rights Agreement; and

(vi) the Company shall have delivered to the Trustee an Officer' s Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with this Indenture.

(b) Notwithstanding clauses (iii) and (iv) of Section 5.01(a) hereof,

(i) any Restricted Subsidiary may consolidate with or merge into or transfer all or part of its properties and assets to the Company, and

(ii) the Company may merge with an Affiliate of the Company as the case may be, solely for the purpose of reincorporating the Company in the United States or any State thereof, the District of Columbia or any

territory thereof so long as the amount of Indebtedness of the Company and its Restricted Subsidiaries is not increased thereby.

(c) Subject to Section 10.06 governing release of a Guarantee upon the sale, disposition or transfer of a Guarantor, no Guarantor shall, and the Company shall not permit any Guarantor to, consolidate or merge with or into or wind up into (whether or not the Company or Guarantor is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(i) (A) such Guarantor is the surviving Person or the Person formed by or surviving any such consolidation or merger (if other than such Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation organized or existing under the laws of the jurisdiction of organization of such Guarantor, as the case may be, or the laws of the United States, any State thereof, the District of Columbia, or any territory thereof (such Guarantor or such Person, as the case may be, being herein called the "**Successor Person**");

(B) the Successor Person, if other than such Guarantor, expressly assumes all the obligations of such Guarantor under this Indenture and such Guarantor' s related Guarantee pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;

(C) immediately after such transaction, no Default exists; and

(D) the Company shall have delivered to the Trustee an Officer' s Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with this Indenture; or

(ii) the transaction is made in compliance with Section 4.10 hereof.

(d) Notwithstanding the foregoing, any Guarantor may merge into or transfer all or part of its properties and assets to another Guarantor or the Company.

(e) The Co-Issuer shall not consolidate with, merge into, sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of its property and assets to, any Person, or permit any Person to merge with or into the Co-Issuer unless:

(i) concurrently therewith, a corporate Wholly-Owned Restricted Subsidiary of the Company organized and validly existing under the laws of the United States or any jurisdiction thereof (which may be the continuing Person as a result of such transaction) shall expressly assume, by a supplemental Indenture, executed and delivered to the Trustee and in form and substance satisfactory to the Trustee, all of the obligations of an issuer under the notes, the Indenture and the Registration Rights Agreement; or

(ii) after giving effect thereto, at least one obligor on the notes shall be a corporation organized and validly existing under the laws of the United States or any jurisdiction thereof; and

(iii) immediately after such transaction, no Default or Event of Default will have occurred and be continuing.

Section 5.02. *Successor Substituted.* Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Company or the Co-Issuer in accordance with Section 5.01 hereof, the successor formed by such consolidation or into or with which the Company or the Co-Issuer, as the case may be, is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Indenture referring to the Company or the Co-Issuer, as the case may be, shall refer instead to the successor corporation and not to the Company or the Co-Issuer, as the case may be), and may exercise every right and power of the Company or the Co-Issuer, as the case may be, under this Indenture with the same effect as if such successor Person had been named as the Company or the Co-Issuer, as the case may be, herein; *provided* that the predecessor Company shall not be relieved from the obligation to pay the principal of and interest and Additional Interest, if any, on the Notes except in the case of a sale, assignment, transfer, conveyance or other disposition of all of the assets of the Company that meets the requirements of Section 5.01 hereof.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01. *Events of Default*. (a) An "**Event of Default**" wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) default in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the Notes;

(ii) default for 30 days or more in the payment when due of interest or Additional Interest on or with respect to the Notes;

(iii) failure by the Issuers or any Guarantor for 60 days after receipt of written notice given by the Trustee or the Holders of not less 25% in principal amount of the Notes to comply with any of their respective obligations, covenants or agreements (other than a default referred to in clauses (i) and (ii) above) contained in this Indenture or the Notes;

(iv) default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries, other than Indebtedness owed to the Company or a Restricted Subsidiary, whether such Indebtedness or guarantee now exists or is created after the issuance of the Notes, if both:

(A) such default either results from the failure to pay any principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace periods) or relates to an obligation other than the obligation to pay principal of any such Indebtedness at its stated final maturity and results in the holder or holders of such Indebtedness causing such Indebtedness to become due prior to its stated maturity; and

(B) the principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at stated final maturity (after giving effect to any applicable grace periods), or the maturity of which has been so accelerated, aggregate $50.0 million or more at any one time outstanding;

(v) failure by the Company or any Significant Subsidiary to pay final judgments aggregating in excess of $50.0 million, which final judgments remain unpaid, undischarged and unstayed for a period of more than 60 days after such judgment becomes final, and in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(vi) the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(A) commences proceedings to be adjudicated bankrupt or insolvent;

(B) consents to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under applicable Bankruptcy law;

(C) consents to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of it or for all or substantially all of its property;

(D) makes a general assignment for the benefit of its creditors; or

(E) generally is not paying its debts as they become due;

(vii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, in a proceeding in which the Company or any such Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, is to be adjudicated bankrupt or insolvent;

(B) appoints a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, or for all or substantially all of the property of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary; or

(C) orders the liquidation of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 consecutive days; or

(viii) the Guarantee of any Significant Subsidiary shall for any reason cease to be in full force and effect or be declared null and void or any responsible officer of any Guarantor that is a Significant Subsidiary,

as the case may be, denies that it has any further liability under its Guarantee or gives notice to such effect, other than by reason of the termination of this Indenture or the release of any such Guarantee in accordance with this Indenture.

(b) In the event of any Event of Default specified in clause (iv) of Section 6.01(a) hereof, such Event of Default and all consequences thereof (excluding any resulting payment default, other than as a result of acceleration of the Notes) shall be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if within 20 days after such Event of Default arose:

(i) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged; or

(ii) holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default; or

(iii) the default that is the basis for such Event of Default has been cured.

Section 6.02. *Acceleration.* (a) If any Event of Default (other than an Event of Default specified in clause (vi) or (vii) of Section 6.01(a) hereof with respect to the Company) occurs and is continuing under this Indenture, the Trustee or the Holders of at least 25% in principal amount of the then total outstanding Notes may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately.

Upon such declaration, such principal and interest shall be due and payable immediately. The Trustee shall have no obligation to accelerate the Notes if and so long as a committee of its Responsible Officers in good faith determines acceleration is not in the best interest of the Holders of the Notes.

Notwithstanding the foregoing, in the case of an Event of Default arising under clause (vi) or (vii) of Section 6.01(a) hereof with respect to the Company, all outstanding Notes shall be due and payable immediately without further action or notice.

The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may on behalf of all of the Holders rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest, Additional Interest, if any, or premium that has become due solely because of the acceleration) have been cured or waived.

Section 6.03. *Other Remedies.* If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 6.04. *Waiver of Past Defaults.* Holders of not less than a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default and its consequences hereunder, except a continuing Default in the payment of the principal of, premium, if any, Additional Interest, if any, or interest on, any Note held by a non-consenting Holder (including in connection with an Asset Sale Offer or a Change of Control Offer); *provided*, subject to Section 6.02 hereof, that the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05. *Control by Majority.* Holders of a majority in principal amount of the then total outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder of a Note or that would involve the Trustee in personal liability.

Section 6.06. *Limitation on Suits.* Subject to Section 6.07 hereof, no Holder of a Note may pursue any remedy with respect to this Indenture or the Notes unless:

(a) such Holder has previously given the Trustee notice that an Event of Default is continuing;

(b) Holders of at least 25% in principal amount of the total outstanding Notes have requested the Trustee to pursue the remedy;

(c) Holders of the Notes have offered the Trustee reasonable security or indemnity against any loss, liability or expense;

(d) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and

(e) Holders of a majority in principal amount of the total outstanding Notes have not given the Trustee a direction inconsistent with such request within such 60 day period.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note.

Section 6.07. *Rights of Holders of Notes to Receive Payment.* Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, premium, if any, and Additional Interest, if any, and interest on the Note, on or after the respective due dates expressed in the Note (including in connection with an Asset Sale Offer or a Change of Control Offer), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08. *Collection Suit by Trustee.* If an Event of Default specified in Section 6.01(a)(i) or (ii) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Issuers for the whole amount of principal of, premium, if any, and Additional Interest, if any, and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09. *Restoration of Rights and Remedies.* If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceedings, the Issuers, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding has been instituted.

Section 6.10. *Rights and Remedies Cumulative.* Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 2.07 hereof, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The

assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.11. *Delay or Omission Not Waiver.* No delay or omission of the Trustee or of any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 6.12. *Trustee May File Proofs of Claim.* The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes including the Co-Issuer and the Guarantors), its creditors or its property and shall be entitled and empowered to participate as a member in any official committee of creditors appointed in such matter and to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.13. *Priorities.* If the Trustee collects any money pursuant to this Article 6, it shall pay out the money in the following order:

(a) to the Trustee, its agents and attorneys for amounts due under Section 7.07 hereof, including payment of all compensation,

expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

(b) to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and Additional Interest, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and Additional Interest, if any, and interest, respectively; and

(c) to the Company or to such party as a court of competent jurisdiction shall direct, including the Co-Issuer or a Guarantor, if applicable.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.13.

Section 6.14 . *Undertaking for Costs.* In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.14 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

ARTICLE 7
TRUSTEE

Section 7.01. *Duties of Trustee.* (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person' s own affairs.

(b) Except during the continuance of an Event of Default:

(i) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to

the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section 7.01.

(e) The Trustee shall be under no obligation to exercise any of its rights or powers under this Indenture at the request or direction of any of the Holders of the Notes unless the Holders have offered to the Trustee reasonable indemnity or security against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuers. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02. *Rights of Trustee.* (a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuers, personally or by agent or attorney at the sole cost of the Issuers and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(b) Before the Trustee acts or refrains from acting, it may require an Officer' s Certificate or an Opinion of Counsel or both. The Trustee shall not be

liable for any action it takes or omits to take in good faith in reliance on such Officer' s Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from an Issuer shall be sufficient if signed by an Officer of such Issuer.

(f) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

(g) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture.

(h) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(j) In the event the Issuers are required to pay Additional Interest, the Issuers will provide written notice to the Trustee of the Issuers' obligation to pay Additional Interest no later than 15 days prior to the next Interest Payment Date, which notice shall set forth the amount of the Additional Interest to be paid by the Issuers. The Trustee shall not at any time be under any duty or responsibility to

any Holders to determine whether the Additional Interest is payable and the amount thereof.

Section 7.03. *Individual Rights of Trustee.* The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuers or any Affiliate of the Issuers with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Section 7.10 and Section 7.11 hereof.

Section 7.04. *Trustee's Disclaimer.* The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Issuers' use of the proceeds from the Notes or any money paid to the Issuers or upon the Issuers' direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

Section 7.05. *Notice of Defaults.* If a Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to Holders of Notes a notice of the Default within 90 days after it occurs. Except in the case of a Default relating to the payment of principal, premium, if any, or interest on any Note, the Trustee may withhold from the Holders notice of any continuing Default if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders of the Notes. The Trustee shall not be deemed to know of any Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is such a Default is received by the Trustee at the Corporate Trust Office of the Trustee.

Section 7.06. *Reports by Trustee to Holders of the Notes.* Within 60 days after each May 15, beginning with the May 15 following the date of this Indenture, and for so long as Notes remain outstanding, the Trustee shall mail to the Holders of the Notes a brief report dated as of such reporting date that complies with Trust Indenture Act Section 313(a) (but if no event described in Trust Indenture Act Section 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also shall comply with Trust Indenture Act Section 313(b)(2). The Trustee shall also transmit by mail all reports as required by Trust Indenture Act Section 313(c).

A copy of each report at the time of its mailing to the Holders of Notes shall be mailed to the Issuers and filed with the SEC and each stock exchange on which the Notes are listed in accordance with Trust Indenture Act Section 313(d).

The Issuers shall promptly notify the Trustee when the Notes are listed on any stock exchange.

Section 7.07. *Compensation and Indemnity.* The Issuers shall pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services hereunder as the parties shall agree in writing from time to time. The Trustee' s compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuers shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee' s agents and counsel.

The Issuers and the Guarantors, jointly and severally, shall indemnify the Trustee for, and hold the Trustee harmless against, any and all loss, damage, claims, liability or expense (including attorneys' fees) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder (including the costs and expenses of enforcing this Indenture against the Issuers or any of the Guarantors (including this Section 7.07) or defending itself against any claim whether asserted by any Holder, the Issuers or any Guarantor, or liability in connection with the acceptance, exercise or performance of any of its powers or duties hereunder). The Trustee shall notify the Issuers promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuers shall not relieve the Issuers of their obligations hereunder. The Issuers shall defend the claim and the Trustee may have separate counsel and the Issuers shall pay the fees and expenses of such counsel. The Issuers need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee' s own willful misconduct, negligence or bad faith.

The obligations of the Issuers under this Section 7.07 shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee.

To secure the payment obligations of the Issuers and the Guarantors in this Section 7.07, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(a)(vi) or (vii) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

The Trustee shall comply with the provisions of Trust Indenture Act Section 313(b)(2) to the extent applicable.

Section 7.08. *Replacement of Trustee.* A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee' s acceptance of appointment as provided in this Section 7.08. The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Issuers. The Holders of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Issuers in writing. The Issuers may remove the Trustee if:

(a) the Trustee fails to comply with Section 7.10 hereof;

(b) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(c) a custodian or public officer takes charge of the Trustee or its property; or

(d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Issuers shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Issuers.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Issuers' expense), the Issuers or the Holders of at least 10% in principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.10 hereof, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuers. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; *provided* all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.07 hereof. Notwithstanding

replacement of the Trustee pursuant to this Section 7.08, the Issuers' obligations under Section 7.07 hereof shall continue for the benefit of the retiring Trustee.

Section 7.09. *Successor Trustee by Merger, Etc.* If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee.

Section 7.10. *Eligibility; Disqualification.* There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any State thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $50,000,000 as set forth in its most recent published annual report of condition.

This Indenture shall always have a Trustee who satisfies the requirements of Trust Indenture Act Sections 310(a)(1), (2) and (5). The Trustee is subject to Trust Indenture Act Section 310(b).

Section 7.11. *Preferential Collection of Claims Against Issuers.* The Trustee is subject to Trust Indenture Act Section 311(a), excluding any creditor relationship listed in Trust Indenture Act Section 311(b). A Trustee who has resigned or been removed shall be subject to Trust Indenture Act Section 311(a) to the extent indicated therein.

ARTICLE 8

LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01. *Option to Effect Legal Defeasance or Covenant Defeasance.* The Issuers may, at their option and at any time, elect to have either Section 8.02 or Section 8.03 hereof applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

Section 8.02. *Legal Defeasance and Discharge.* Upon the Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Issuers and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes and Guarantees on the date the conditions set forth below are satisfied ("**Legal Defeasance**"). For this purpose, Legal Defeasance means that the Issuers shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in (a) and (b) below, and to have satisfied all their other obligations under such Notes and this Indenture including that of the Guarantors (and the Trustee, on demand of and at the expense of the Issuers, shall execute proper instruments acknowledging the

same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder:

(a) the rights of Holders of Notes to receive payments in respect of the principal of, premium, if any, and interest on the Notes when such payments are due solely out of the trust created pursuant to this Indenture referred to in Section 8.04 hereof;

(b) the Issuers' obligations with respect to Notes concerning issuing temporary Notes, registration of such Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payment and money for security payments held in trust;

(c) the rights, powers, trusts, duties and immunities of the Trustee, and the Issuer' s obligations in connection therewith; and

(d) this Section 8.02.

Subject to compliance with this Article 8, the Issuers may exercise their option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

Section 8.03. *Covenant Defeasance.* Upon the Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Issuers and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from their obligations under the covenants contained in Section 4.03, Section 4.04, Section 4.05, Section 4.07, Section 4.08, Section 4.09, Section 4.10, Section 4.11, Section 4.12, Section 4.13, Section 4.14 and Section 4.15 hereof and clauses (iv) and (v) of Section 5.01(a), Section 5.01(c) and Section 5.01(d) hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied ("**Covenant Defeasance**"), and the Notes shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Issuers may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. In addition, upon the Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.03 hereof, subject to the satisfaction of the conditions set forth in Section 8.04

hereof, Section 6.01(a)(iii), Section 6.01(a)(iv), Section 6.01(a)(v), Section 6.01(a)(vi), (solely with respect to Restricted Subsidiaries that are Significant Subsidiaries), Section 6.01(a)(vii) (solely with respect to Restricted Subsidiaries that are Significant Subsidiaries) and Section 6.01(a)(viii) (solely with respect to Restricted Subsidiaries that are Significant Subsidiaries) hereof shall not constitute Events of Default.

Section 8.04. *Conditions to Legal or Covenant Defeasance.* The following shall be the conditions to the application of either Section 8.02 or Section 8.03 hereof to the outstanding Notes:

In order to exercise either Legal Defeasance or Covenant Defeasance with respect to the Notes:

(a) the Issuers must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Notes, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest due on the Notes on the stated maturity date or on the redemption date, as the case may be, of such principal, premium, if any, or interest on such Notes and the Issuers must specify whether such Notes are being defeased to maturity or to a particular redemption date;

(b) in the case of Legal Defeasance, the Issuers shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions,

(i) the Issuers have received from, or there has been published by, the United States Internal Revenue Service a ruling, or

(ii) since the issuance of the Notes, there has been a change in the applicable U.S. federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, subject to customary assumptions and exclusions, the Holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes, as applicable, as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of Covenant Defeasance, the Issuers shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions, the Holders of the Notes will not recognize income, gain or

loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to such tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Default (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness, including the Senior Subordinated Notes, and in each case the granting of Liens in connection therewith) shall have occurred and be continuing on the date of such deposit;

(e) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, the Senior Credit Facilities or any other material agreement or instrument (other than this Indenture) to which any Issuer or Guarantor is a party or by which any Issuer or Guarantor is bound (other than that resulting from any borrowing of funds to be applied to make the deposit required to effect such Legal Defeasance or Covenant Defeasance and any similar and simultaneous deposit relating to other Indebtedness, including the Senior Subordinated Notes, and the granting of Liens in connection therewith);

(f) the Issuers shall have delivered to the Trustee an Opinion of Counsel to the effect that, as of the date of such opinion and subject to customary assumptions and exclusions following the deposit, the trust funds will not be subject to the effect of Section 547 of Title 11 of the United States Code;

(g) the Issuers shall have delivered to the Trustee an Officer' s Certificate stating that the deposit was not made by the Issuers with the intent of defeating, hindering, delaying or defrauding any creditors of any Issuer or Guarantor or others; and

(h) the Issuers shall have delivered to the Trustee an Officer' s Certificate and an Opinion of Counsel (which Opinion of Counsel may be subject to customary assumptions and exclusions) each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance, as the case may be, have been complied with.

Section 8.05. *Deposited Money and Government Securities to Be Held in Trust; Other Miscellaneous Provisions.* Subject to Section 8.06 hereof, all money and Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "**Trustee**") pursuant to Section 8.04 hereof in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including an Issuer or a Guarantor acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to

become due thereon in respect of principal, premium and Additional Interest, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

The Issuers shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or Government Securities deposited pursuant to Section 8.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Anything in this Article 8 to the contrary notwithstanding, the Trustee shall deliver or pay to the Issuers from time to time upon the request of the Issuers any money or Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(a) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06. *Repayment to Issuers.* Any money deposited with the Trustee or any Paying Agent, or then held by the Issuers, in trust for the payment of the principal of, premium and Additional Interest, if any, or interest on any Note and remaining unclaimed for two years after such principal, and premium and Additional Interest, if any, or interest has become due and payable shall be paid to the Issuers on their request or (if then held by the Issuers) shall be discharged from such trust; and the Holder of such Note shall thereafter look only to the Issuers for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuers as trustee thereof, shall thereupon cease.

Section 8.07. *Reinstatement.* If the Trustee or Paying Agent is unable to apply any United States dollars or Government Securities in accordance with Section 8.02 or Section 8.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuers' obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or Section 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or Section 8.03 hereof, as the case may be; *provided* that, if the Issuers make any payment of principal of, premium and Additional Interest, if any, or interest on any Note following the reinstatement of its obligations, the Issuers shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE 9

AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01. *Without Consent of Holders of Notes*. Notwithstanding Section 9.02 hereof, the Issuers, any Guarantor (with respect to a Guarantee or this Indenture) and the Trustee may amend or supplement this Indenture and any Guarantee or Notes without the consent of any Holder:

(a) to cure any ambiguity, omission, mistake, defect or inconsistency;

(b) to provide for uncertificated Notes of such series in addition to or in place of certificated Notes;

(c) to comply with Section 5.01 hereof;

(d) to provide the assumption of the Issuers' or any Guarantor' s obligations to the Holders;

(e) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under this Indenture of any such Holder;

(f) to add covenants for the benefit of the Holders or to surrender any right or power conferred upon any Issuer or Guarantor;

(g) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act;

(h) to evidence and provide for the acceptance and appointment under this Indenture of a successor Trustee thereunder pursuant to the requirements thereof;

(i) to provide for the issuance of exchange notes or private exchange notes, which are identical to exchange notes except that they are not freely transferable;

(j) to add a Guarantor under this Indenture;

(k) to conform the text of this Indenture, Guarantees or the Notes to any provision of the "Description of Notes" section of the Offering Circular to the extent that such provision in such "Description of Notes" section was intended to be a verbatim recitation of a provision of this Indenture, Guarantee or Notes;

(l) to make any amendment to the provisions of this Indenture relating to the transfer and legending of Notes as permitted by this Indenture, including, without limitation to facilitate the issuance and

administration of the Notes; *provided, however*, that (i) compliance with this Indenture as so amended would not result in Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not materially and adversely affect the rights of Holders to transfer Notes; or

(m) to make any other modifications to the Notes or the Indenture of a formal, minor or technical nature or necessary to correct a manifest error , so long as such modification does not adversely affect the rights of any Holder of the Notes in any material respect.

Upon the request of the Issuers accompanied by a resolution of their respective boards of directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee shall join with the Issuers and the Guarantors in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise. Notwithstanding the foregoing, except to the extent required by law, no Opinion of Counsel shall be required in connection with the addition of a Guarantor under this Indenture upon execution and delivery by such Guarantor and the Trustee of a supplemental indenture to this Indenture, the form of which is attached as Exhibit D hereto, and delivery of an Officer' s Certificate.

Section 9.02. *With Consent of Holders of Notes.* Except as provided below in this Section 9.02, the Issuers and the Trustee may amend or supplement this Indenture, the Notes and the Guarantees with the consent of the Holders of at least a majority in principal amount of the Notes (including Additional Notes, if any) then outstanding voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Section 6.04 and Section 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium and Additional Interest, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Guarantees or the Notes may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes (including Additional Notes, if any) voting as a single class (including consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes). Section 2.08 hereof and Section 2.09 hereof shall determine which Notes are considered to be "outstanding" for the purposes of this Section 9.02.

Upon the request of the Issuers accompanied by a resolution of their respective boards of directors authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence

satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee shall join with the Issuers in the execution of such amended or supplemental indenture unless such amended or supplemental indenture directly affects the Trustee' s own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amended or supplemental indenture.

It shall not be necessary for the consent of the Holders of Notes under this Section 9.02 to approve the particular form of any proposed amendment or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Issuers shall mail to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Issuers to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver.

Without the consent of each affected Holder of Notes, an amendment or waiver under this Section 9.02 may not (with respect to any Notes held by a non-consenting Holder):

(a) reduce the principal amount of such Notes whose Holders must consent to an amendment, supplement or waiver;

(b) reduce the principal of or change the fixed final maturity of any such Note or alter or waive the provisions with respect to the redemption of such Notes (other than provisions relating to Section 3.09, Section 4.10 and Section 4.14 hereof to the extent that any such amendment or waiver does not have the effect of reducing the principal of or changing the fixed final maturity of any such Note or altering or waiving the provisions with respect to the redemption of such Notes);

(c) reduce the rate of or change the time for payment of interest on any Note;

(d) waive a Default in the payment of principal of or premium, if any, or interest on the Notes, except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the Notes and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in this Indenture or any Guarantee which cannot be amended or modified without the consent of all Holders;

(e) make any Note payable in money other than that stated therein;

(f) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of or premium, if any, or interest on the Notes;

(g) make any change in these amendment and waiver provisions;

(h) impair the right of any Holder to receive payment of principal of, or interest on such Holder' s Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder' s Notes;

(i) make any change to or modify the ranking of the Notes in a manner that would adversely affect the Holders; or

(j) except as expressly permitted by this Indenture, modify the Guarantees of any Significant Subsidiary in any manner adverse to the Holders of the Notes.

Section 9.03. *Compliance with Trust Indenture Act.* Every amendment or supplement to this Indenture or the Notes shall be set forth in an amended or supplemental indenture that complies with the Trust Indenture Act as then in effect.

Section 9.04. *Revocation and Effect of Consents.* Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder' s Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

The Issuers may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, supplement, or waiver. If a record date is fixed, then, notwithstanding the preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only such Persons, shall be entitled to consent to such amendment, supplement, or waiver or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date unless the consent of the requisite number of Holders has been obtained.

Section 9.05. *Notation on or Exchange of Notes.* The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note

thereafter authenticated. The Issuers in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

Section 9.06. *Trustee to Sign Amendments, Etc.* The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Issuers may not sign an amendment, supplement or waiver until the board of directors approves it. In executing any amendment, supplement or waiver, the Trustee shall be entitled to receive and (subject to Section 7.01 hereof) shall be fully protected in relying upon, in addition to the documents required by Section 12.04 hereof, an Officer' s Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Issuers and any Guarantors party thereto, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof (including Section 9.03). Notwithstanding the foregoing, no Opinion of Counsel will be required for the Trustee to execute any amendment or supplement adding a new Guarantor under this Indenture.

Section 9.07. *Payment for Consent.* Neither the Issuers nor any Affiliate of the Issuers shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such consideration is offered to all Holders and is paid to all Holders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

ARTICLE 10
GUARANTEES

Section 10.01. *Guarantee.* Subject to this Article 10, each of the Guarantors hereby, jointly and severally, unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Issuers hereunder or thereunder, that: (a) the principal of, interest, premium and Additional Interest, if any, on the Notes shall be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Issuers to the Holders or the Trustee hereunder or thereunder shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (b) in

case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

The Guarantors hereby agree that their obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuers, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuers, any right to require a proceeding first against the Issuers, protest, notice and all demands whatsoever and covenants that this Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

Each Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees) incurred by the Trustee or any Holder in enforcing any rights under this Section 10.01.

If any Holder or the Trustee is required by any court or otherwise to return to the Issuers, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Issuers or the Guarantors, any amount paid either to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Guarantee. The Guarantors shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Guarantees.

Each Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Issuers for liquidation, reorganization, should the Issuers become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Issuers' assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes or Guarantees, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Notes shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

In case any provision of any Guarantee shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

The Guarantee issued by any Guarantor shall be a general unsecured senior obligation of such Guarantor and shall be *pari passu* in right of payment with or senior to all Indebtedness of such Guarantor, if any.

Each payment to be made by a Guarantor in respect of its Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

Section 10.02. *Limitation on Guarantor Liability.* Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of each Guarantor shall be limited to the maximum amount as will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 10, result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under applicable law. Each Guarantor that makes a payment under its Guarantee shall be entitled upon payment in full of all guaranteed obligations under this Indenture to a contribution from each other Guarantor in an amount equal to such other Guarantor' s *pro rata* portion of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with GAAP.

Section 10.03. *Execution and Delivery.* To evidence its Guarantee set forth in Section 10.01 hereof, each Guarantor hereby agrees that this Indenture shall be executed on behalf of such Guarantor by its President, one of its Vice Presidents or one of its Assistant Vice Presidents.

Each Guarantor hereby agrees that its Guarantee set forth in Section 10.01 hereof shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

If an Officer whose signature is on this Indenture no longer holds that office at the time the Trustee authenticates the Note, the Guarantee shall be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Guarantors.

If required by Section 4.15 hereof, the Company shall cause any Restricted Subsidiary that is not a Guarantor to comply with the provisions of Section 4.15 hereof and this Article 10, to the extent applicable.

Section 10.04. *Subrogation.* Each Guarantor shall be subrogated to all rights of Holders of Notes against the Issuers in respect of any amounts paid by any Guarantor pursuant to the provisions of Section 10.01 hereof; *provided* that, if an Event of Default has occurred and is continuing, no Guarantor shall be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Issuers under this Indenture or the Notes shall have been paid in full.

Section 10.05. *Benefits Acknowledged.* Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the guarantee and waivers made by it pursuant to its Guarantee are knowingly made in contemplation of such benefits.

Section 10.06. *Release of Guarantees.* A Guarantee by a Guarantor shall be automatically and unconditionally released and discharged, and no further action by such Guarantor, the Issuers or the Trustee is required for the release of such Guarantor' s Guarantee, upon:

(a) (i) any sale, exchange or transfer (by merger or otherwise) of the Capital Stock of such Guarantor (including any sale, exchange or transfer), after which the applicable Guarantor is no longer a Restricted Subsidiary or all or substantially all the assets of such Guarantor which sale, exchange or transfer is made in compliance with the applicable provisions of this Indenture;

(ii) the release or discharge of the guarantee by such Guarantor of the Senior Credit Facilities or the guarantee which

resulted in the creation of such Guarantee, except a discharge or release by or as a result of payment under such guarantee;

(iii) the proper designation of any Restricted Subsidiary that is a Guarantor as an Unrestricted Subsidiary; or

(iv) the Issuers exercising their Legal Defeasance option or Covenant Defeasance option in accordance with Article 8 hereof or the Issuers' obligations under this Indenture being discharged in accordance with the terms of this Indenture; and

(b) such Guarantor delivering to the Trustee an Officer' s Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in this Indenture relating to such transaction have been complied with.

ARTICLE 11

SATISFACTION AND DISCHARGE

Section 11.01. *Satisfaction and Discharge.* This Indenture shall be discharged and shall cease to be of further effect as to all Notes, when either:

(a) all Notes theretofore authenticated and delivered, except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust, have been delivered to the Trustee for cancellation; or

(b) (i) all Notes not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise, shall become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuers and any Issuer or Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders of the Notes, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(ii) no Default (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness) with respect to this Indenture or the Notes shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit

and such deposit will not result in a breach or violation of, or constitute a default under the Senior Credit Facilities or any other material agreement or instrument (other than this Indenture) to which any Issuer or Guarantor is a party or by which any Issuer or Guarantor is bound (other than that resulting from any borrowing of funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness, including the Senior Subordinated Notes, and the granting of Liens in connection therewith);

(iii) the Issuers have paid or caused to be paid all sums payable by them under this Indenture; and

(iv) the Issuers have delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Notes at maturity or the redemption date, as the case may be.

In addition, the Issuers must deliver an Officer' s Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money shall have been deposited with the Trustee pursuant to subclause (i) of clause (b) of this Section 11.01, the provisions of Section 11.02 and Section 8.06 hereof shall survive.

Section 11.02. *Application of Trust Money.* Subject to the provisions of Section 8.06 hereof, all money deposited with the Trustee pursuant to Section 11.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuers acting as their own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium and Additional Interest, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 11.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuers' and any Guarantor' s obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.01 hereof; *provided* that if the Issuers have made any payment of principal of, premium and Additional Interest, if any, or interest on any Notes because of the reinstatement of its obligations, the Issuers shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

ARTICLE 12

MISCELLANEOUS

Section 12.01. *Trust Indenture Act Controls.* If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by Trust Indenture Act Section 318(c), the imposed duties shall control.

Section 12.02. *Notices.* Any notice or communication by the Issuers, any Guarantor or the Trustee to the others is duly given if in writing and delivered in person or mailed by first-class mail (registered or certified, return receipt requested), fax or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Issuers and/or any Guarantor:

Education Management LLC
210 Sixth Avenue
Pittsburgh, Pennsylvania 15222-2603
Attention: General Counsel

If to the Trustee:

The Bank of New York
101 Barclay Street, Floor 8W
New York, New York 10286
Fax No.: (212) 815-3272
Attention: Corporate Trust Administration

The Issuers, any Guarantor or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five calendar days after being deposited in the mail, postage prepaid, if mailed by first-class mail; when receipt acknowledged, if faxed; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery; *provided* that any notice or communication delivered to the Trustee shall be deemed effective upon actual receipt thereof.

Any notice or communication to a Holder shall be mailed by first-class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Any notice or communication shall also be so mailed to any Person described in Trust Indenture Act Section 313(c), to the extent required by the Trust Indenture Act. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Issuers mail a notice or communication to Holders, they shall mail a copy to the Trustee and each Agent at the same time.

Section 12.03. *Communication by Holders of Notes with Other Holders of Notes.* Holders may communicate pursuant to Trust Indenture Act Section 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Issuers, the Trustee, the Registrar and anyone else shall have the protection of Trust Indenture Act Section 312(c).

Section 12.04. *Certificate and Opinion as to Conditions Precedent.* Upon any request or application by the Issuers or any of the Guarantors to the Trustee to take any action under this Indenture, the Issuers or such Guarantor, as the case may be, shall furnish to the Trustee:

(a) An Officer' s Certificate in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 12.05 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(b) An Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 12.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 12.05. *Statements Required in Certificate or Opinion.* Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to Section 4.04 hereof or Trust Indenture Act Section 314(a)(4)) shall comply with the provisions of Trust Indenture Act Section 314(e) and shall include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with (and, in the case of an Opinion of Counsel, may be limited to reliance on an Officer' s Certificate as to matters of fact); and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

Section 12.06. *Rules by Trustee and Agents.* The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 12.07. *No Personal Liability of Directors, Officers, Employees and Stockholders.* No director, officer, employee, incorporator or stockholder of any Issuer or Guarantor or any of their parent companies shall have any liability for any obligations of the Issuers or the Guarantors under the Notes, the Guarantees or this Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 12.08. *Governing Law.* THIS INDENTURE, THE NOTES AND ANY GUARANTEE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 12.09. *Waiver of Jury Trial.* EACH OF THE ISSUERS, THE GUARANTORS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 12.10. *Force Majeure.* In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services.

Section 12.11. *No Adverse Interpretation of Other Agreements.* This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Restricted Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 12.12. *Successors.* All agreements of the Issuers in this Indenture and the Notes shall bind their successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 10.06 hereof.

Section 12.13. *Severability.* In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 12.14. *Counterpart Originals.* The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

Section 12.15. *Table of Contents, Headings, Etc.* The Table of Contents, Cross-Reference Table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

Section 12.16. *Qualification of Indenture.* The Issuers and the Guarantors shall qualify this Indenture under the Trust Indenture Act in accordance with the terms and conditions of the Registration Rights Agreement and shall pay all reasonable costs and expenses (including attorneys' fees and expenses for the Issuers, the Guarantors and the Trustee) incurred in connection therewith, including, but not limited to, costs and expenses of qualification of this Indenture and the Notes and printing this Indenture and the Notes. The Trustee shall be entitled to receive from the Issuers and the Guarantors any such Officer' s Certificates, Opinions of Counsel or other documentation as it may reasonably request in connection with any such qualification of this Indenture under the Trust Indenture Act.

[Signatures on following page]

EDUCATION MANAGEMENT LLC

By: /s/ John R. McKeman, Jr.

Name: John R. McKeman, Jr.

Title: Chairman and Chief Executive Officer

EDUCATION MANAGEMENT FINANCE CORP.

By: /s/ John R. McKeman, Jr.

Name: John R. McKeman, Jr.

Title: President and Chief Executive Officer

AID Restaurant, Inc.

By: /s/ Simon Lumley

Name: Simon Lumley
Title: President, Secretary and Treasurer

AIH Restaurant, Inc.

By: /s/ Larry Horn

Name: Larry Horn
Title: President, Secretary and Treasurer

AIIM Restaurant, Inc.

By: /s/ Joseph L. Marzano, Jr.

Name: Joseph L. Marzano, Jr.
Title: President, Secretary and Treasurer

Academic Review, Inc.
Association for Advanced Training in the Behavioral Sciences
Argosy University Family Center, Inc.
Brown Mackie Holding Company
The Connecting Link, Inc.
EDMC Marketing and Advertising, Inc.
EDMC Aviation, Inc.
Higher Education Services, Inc.
MCM University Plaza, Inc.

By: /s/ J. Devitt Kramer

Name: J. Devitt Kramer
Title: Secretary

THE BANK OF NEW YORK, as Trustee

By: /s/ Mary Lagumina

Name: Mary Lagumina

Title: Vice President

[Face of Note]

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Regulation S Temporary Global Note Legend, if applicable pursuant to the provisions of the Indenture]

CUSIP [ ]
ISIN [ ][1]

[[RULE 144A][REGULATION S] GLOBAL NOTE
representing up to
$_____]
8 3/4% Senior Notes due 2014

[$_____]

No. ____

EDUCATION MANAGEMENT LLC
EDUCATION MANAGEMENT FINANCE CORP.

promises to pay to CEDE & CO. or registered assigns, the principal sum [set forth on the Schedule of Exchanges of Interests in the Global Note attached hereto] [of _____ United States Dollars] on June 1, 2014.

Interest Payment Dates: June 1 and December 1

Record Dates: May 15 and November 15

[1] Rule 144A Note CUSIP: 28140JAA8
ISIN: USU27895AA69
Regulation S Note CUSIP: U27895AA6

IN WITNESS HEREOF, the Issuers have caused this instrument to be duly executed.

Dated: June 1, 2006

EDUCATION MANAGEMENT LLC

By: /s/ John R. McKeman, Jr.

Name: John R. McKeman, Jr.

Title: Chairman and Chief Executive Officer

EDUCATION MANAGEMENT FINANCE CORP.

By: /s/ John R. McKeman, Jr.

Name: John R. McKeman, Jr.

Title: President and Chief Executive Officer

This is one of the Notes referred to in the within-mentioned Indenture:

THE BANK OF NEW YORK, as Trustee

By: /s/ Mary Lagumina

Name: Mary Lagumina
Title: Vice President

[Back of Note]

8 3/4% Senior Notes due 2014

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. INTEREST. Education Management LLC, a Delaware limited liability company, and Education Management Finance Corp., a Delaware corporation (collectively, the "**Issuers**"), promise to pay interest on the principal amount of this Note at 8 3/4% per annum from June 1, 2006[2] until maturity and shall pay the Additional Interest, if any, payable pursuant to the Registration Rights Agreement referred to below. The Issuers will pay interest and Additional Interest, if any, semi-annually in arrears on June 1 and December 1 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each, an "**Interest Payment Date**"). Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; *provided* that the first Interest Payment Date shall be December 1, 2006. The Issuers will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at the interest rate on the Notes; they shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest and Additional Interest, if any, (without regard to any applicable grace periods) from time to time on demand at the interest rate on the Notes. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

2. METHOD OF PAYMENT. The Issuers will pay interest on the Notes and Additional Interest, if any, to the Persons who are registered Holders of Notes at the close of business on the May 15 or November 15 (whether or not a Business Day), as the case may be, next preceding the Interest Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. Payment of interest and Additional Interest, if any, may be made by check mailed to the Holders at their addresses set forth in the register of Holders, *provided* that payment by wire transfer of immediately available funds will be required with respect to principal of and interest, premium and Additional Interest, if any, on, all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to the Issuers or the Paying Agent. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

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[2] With respect to the Initial Notes.

3. PAYING AGENT AND REGISTRAR. Initially, The Bank of New York, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Issuers may change any Paying Agent or Registrar without notice to the Holders. The Issuers or any of their respective Subsidiaries may act in any such capacity.

4. INDENTURE. The Issuers issued the Notes under an Indenture, dated as of June 1, 2006 (the "**Indenture**"), among the Issuers, the Guarantors named therein and the Trustee. This Note is one of a duly authorized issue of notes of the Issuers designated as its 8 3/4% Senior Notes due 2014. The Issuers shall be entitled to issue Additional Notes pursuant to Section 2.01 and 4.09 of the Indenture. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (the "**Trust Indenture Act**"). The Notes are subject to all such terms, and Holders are referred to the Indenture and such Act for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

5. OPTIONAL REDEMPTION.

(a) Except as described below under clauses 5(b) and 5(c) hereof, the Notes will not be redeemable at the Issuers' option before June 1, 2010.

(b) At any time prior to June 1, 2010, the Issuers may redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' prior notice mailed by first class mail to the registered address of each Holder of Notes, at a redemption price equal to 100% of the principal amount of the Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest and Additional Interest, if any, to the date of redemption (the "**Redemption Date**"), subject to the rights of Holders of Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date.

(c) Until June 1, 2009, the Issuers may, at their option, redeem up to 35% of the aggregate principal amount of Notes issued by them at a redemption price equal to 108.75% of the aggregate principal amount thereof, plus accrued and unpaid interest thereon and Additional Interest, if any, to the applicable Redemption Date, subject to the right of Holders of Notes of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, with the net cash proceeds of one or more Equity Offerings; *provided* that at least 50% of the sum of the aggregate principal amount of Notes originally issued under the Indenture and any Additional Notes that are Notes issued under the Indenture after the Issue Date remains outstanding immediately after the occurrence of each such redemption; *provided further* that each such redemption occurs within 90 days of the date of closing of each such Equity Offering. Notice of any redemption upon any Equity Offering may be given prior to the redemption thereof, and any such redemption or notice may, at the Issuers'

discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Equity Offering.

(d) On and after June 1, 2010, the Issuers may redeem the Notes, in whole or in part, upon not less than 30 nor more than 60 days' prior notice by first-class mail, postage prepaid, with a copy to the Trustee, to each Holder of Notes at the address of such Holder appearing in the security register, at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth below, plus accrued and unpaid interest thereon and Additional Interest, if any, to the applicable Redemption Date, subject to the right of Holders of Notes of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, if redeemed during the twelve month period beginning on June 1 of each of the years indicated below:

Year	Percentage
2010	104.375%
2011	102.188%
2012 and thereafter	100.000%

(e) Any redemption pursuant to this paragraph 5 shall be made pursuant to the provisions of Section 3.01 through Section 3.06 of the Indenture.

6. MANDATORY REDEMPTION. The Issuers shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

7. NOTICE OF REDEMPTION. Subject to Section 3.03 of the Indenture, notice of redemption will be mailed by first-class mail at least 30 days but not more than 60 days before the redemption date (except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with Article 8 or Article 11 of the Indenture) to each Holder whose Notes are to be redeemed at its registered address. Notes in denominations larger than $2,000 may be redeemed in part but only in multiples of $1,000 in excess of $2,000, unless all of the Notes held by a Holder are to be redeemed. On and after the redemption date interest ceases to accrue on Notes or portions thereof called for redemption.

8. OFFERS TO REPURCHASE.

(a) Upon the occurrence of a Change of Control, the Issuers shall make an offer (a "**Change of Control Offer**") to each Holder to repurchase all or any part (equal to $2,000 or a multiple of $1,000 in excess thereof) of each Holder' s Notes at a purchase price equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest and Additional Interest thereon, if any, to the date of purchase (the "**Change of Control Payment**"). The Change of Control Offer shall be made in accordance with Section 4.14 of the Indenture.

(b) If the Company or any of its Restricted Subsidiaries consummates an Asset Sale, within 10 Business Days of each date that Excess Proceeds exceed $25.0 million, the Issuers shall commence an offer to all Holders of the Notes and, if required by the terms of any Indebtedness that is *pari passu* with the Notes ("**Pari Passu Indebtedness**"), to the holders of such Pari Passu Indebtedness (an "**Asset Sale Offer**"), to purchase the maximum principal amount of Notes (including any Additional Notes) and such other Pari Passu Indebtedness that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof plus accrued and unpaid interest and Additional Interest thereon, if any, to the date fixed for the closing of such offer, in accordance with the procedures set forth in the Indenture. To the extent that the aggregate amount of Notes (including any Additional Notes) and such Pari Passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Issuers may use any remaining Excess Proceeds for general corporate purposes, subject to other covenants contained in the Indenture. If the aggregate principal amount of Notes or the Pari Passu Indebtedness surrendered by such holders thereof exceeds the amount of Excess Proceeds, the Trustee shall select the Notes and such Pari Passu Indebtedness to be purchased on a *pro rata* basis based on the accreted value or principal amount of the Notes or such Pari Passu Indebtedness tendered. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero. Additionally, the Issuers, at their option, may make an Asset Sale Offer using proceeds form any Asset Sale at any time after consummation of such Asset Sale. Upon consummation of such Asset Sale Offer, any Net Proceeds not required to be used to purchase Notes shall not be deemed excess proceeds. Holders of Notes that are the subject of an offer to purchase will receive an Asset Sale Offer from the Issuers prior to any related purchase date and may elect to have such Notes purchased by completing the form entitled "**Option of Holder to Elect Purchase**" attached to the Notes.

9. DENOMINATIONS, TRANSFER, EXCHANGE. The Notes are in registered form without coupons in denominations of $2,000 and multiples of $1,000 in excess thereof. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Issuers may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Issuers need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Issuers need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed.

10. PERSONS DEEMED OWNERS. The registered Holder of a Note may be treated as its owner for all purposes.

11. AMENDMENT, SUPPLEMENT AND WAIVER. The Indenture, the Guarantees or the Notes may be amended or supplemented as provided in the Indenture.

12. DEFAULTS AND REMEDIES. The Events of Default relating to the Notes are defined in Section 6.01 of the Indenture. If any Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency with respect to the Company, all outstanding Notes will become due and payable immediately without further action or notice. Holders may not enforce the Indenture, the Notes or the Guarantees except as provided in the Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Notes notice of any continuing Default (except a Default relating to the payment of principal, premium, if any, Additional Interest, if any, or interest) if it determines that withholding notice is in their interest. The Holders of a majority in aggregate principal amount of the Notes then outstanding by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default or and its consequences under the Indenture except a continuing Default in payment of the principal of, premium, if any, Additional Interest, if any, or interest on, any of the Notes held by a non-consenting Holder. The Issuers and each Guarantor (to the extent that such Guarantor is so required under the Trust Indenture Act) are required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Issuers are required within thirty days after becoming aware of any Default, to deliver to the Trustee a statement specifying such Default and what action the Issuers propose to take with respect thereto.

13. AUTHENTICATION. This Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until authenticated by the manual signature of the Trustee.

14. ADDITIONAL RIGHTS OF HOLDERS OF RESTRICTED GLOBAL NOTES AND RESTRICTED DEFINITIVE NOTES. In addition to the rights provided to Holders of Notes under the Indenture, Holders of Restricted Global Notes and Restricted Definitive Notes shall have all the rights set forth in the Registration Rights Agreement, dated as of June 1, 2006, among the Issuers, the Guarantors named therein and the other parties named on the signature pages thereof (the "**Registration Rights Agreement**"), including the right to receive Additional Interest (as defined in the Registration Rights Agreement).

15. GOVERNING LAW. THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THE INDENTURE, THE NOTES AND THE GUARANTEES.

16. CUSIP NUMBERS. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuers have caused CUSIP numbers to be printed on the Notes and the Trustee may use

CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

The Issuers will furnish to any Holder upon written request and without charge a copy of the Indenture and/or the Registration Rights Agreement. Requests may be made to the Issuers at the following address:

Education Management LLC
810 Sixth Avenue
Pittsburgh, Pennsylvania 15222-2603
Attention: General Counsel

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to:

_____

(Insert assignee' legal name)

_____

(Insert assignee' s soc. sec. or tax I.D. no.)

_____

_____

_____

_____

(Print or type assignee' s name, address and zip code)

and irrevocably appoint

_____

to transfer this Note on the books of the Issuers. The agent may substitute another to act for him.

Date: _____

Your Signature:

_____

(Sign exactly as your name appears
on the face of this Note)

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuers pursuant to Section 4.10 or Section 4.14 of the Indenture, check the appropriate box below:

☐ Section 4.10 ☐ Section 4.14

If you want to elect to have only part of this Note purchased by the Issuers pursuant to Section 4.10 or Section 4.14 of the Indenture, state the amount you elect to have purchased:

$_____

Date: _____

Your Signature:

_____

(Sign exactly as your name appears on the face of this Note)

Tax Identification No.:

_____

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE[1]*

The initial outstanding principal amount of this Global Note is $_____. The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global or Definitive Note for an interest in this Global Note, have been made:

Date of Exchange	Amount of decrease in Principal Amount	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease or increase	Signature of authorized officer of Trustee or Note Custodian

* This schedule should be included only if the Note is issued in global form.

FORM OF CERTIFICATE OF TRANSFER

Education Management LLC and Education Management Finance Corp.
810 Sixth Avenue
Pittsburgh, Pennsylvania 15222-2603
Attention: General Counsel

The Bank of New York
101 Barclay Street, Floor 8W
New York, New York 10286
Fax No.: (212) 815-3272
Attention: Corporate Trust Administration

Re: 8 3/4% Senior Notes due 2014

Reference is hereby made to the Indenture, dated as of June 1, 2006 (the "**Indenture**"), among Education Management LLC, Education Management Finance Corp. (together with Education Management LLC, the "**Issuers**"), the Guarantors named therein and the Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____ (the "**Transferor**") owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of $_____ in such Note[s] or interests (the "**Transfer**"), to _____ (the "**Transferee**"), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. ☐ CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE 144A GLOBAL NOTE OR A DEFINITIVE NOTE PURSUANT TO RULE 144A. The Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "**Securities Act**"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "**qualified institutional buyer**" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States.

2. ☐ CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE REGULATION S GLOBAL NOTE OR A

DEFINITIVE NOTE PURSUANT TO REGULATION S. The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Restricted Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer enumerated in the Indenture and the Securities Act.

3. ☐ CHECK AND COMPLETE IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE DEFINITIVE NOTE PURSUANT TO ANY PROVISION OF THE SECURITIES ACT OTHER THAN RULE 144A OR REGULATION S. The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) ☐ such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act;

or

(b) ☐ such Transfer is being effected to the Issuers or a subsidiary thereof;

or

(c) ☐ such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act.

4. ☐ CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE OR OF AN UNRESTRICTED DEFINITIVE NOTE.

(a) ☐ CHECK IF TRANSFER IS PURSUANT TO RULE 144. (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(b) ☐ CHECK IF TRANSFER IS PURSUANT TO REGULATION S. (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(c) ☐ CHECK IF TRANSFER IS PURSUANT TO OTHER EXEMPTION. (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuers.

[Insert Name of Transferor]

By:

_____

Name:
Title:

Dated: _____

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP 28140JAA8), or

(ii) ☐ Regulation S Global Note (CUSIP U27895AA6), or

(b) ☐ a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP 28140JAA8), or

(ii) ☐ Regulation S Global Note (U27895AA6), or

(iii) ☐ Unrestricted Global Note (CUSIP); or

(b) ☐ a Restricted Definitive Note; or

(c) ☐ an Unrestricted Definitive Note, in accordance with the terms of the Indenture.

FORM OF CERTIFICATE OF EXCHANGE

Education Management LLC and Education Management Finance Corp.
810 Sixth Avenue
Pittsburgh, Pennsylvania 15222-2603
Attention: General Counsel

The Bank of New York
101 Barclay Street, Floor 8W
New York, New York 10286
Fax No.: (212) 815-3272
Attention: Corporate Trust Administration

Re: 8 3/4% Senior Notes due 2014

Reference is hereby made to the Indenture, dated as of June 1, 2006 (the "**Indenture**"), among Education Management LLC, Education Management Finance Corp. (together with Education Management LLC, the "**Issuers**"), the Guarantors named therein and the Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____ (the "**Owner**") owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of $_____ in such Note[s] or interests (the "**Exchange**"). In connection with the Exchange, the Owner hereby certifies that:

1) EXCHANGE OF RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN A RESTRICTED GLOBAL NOTE FOR UNRESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN AN UNRESTRICTED GLOBAL NOTE

a) ☐ CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE. In connection with the Exchange of the Owner' s beneficial interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner' s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the United States Securities Act of 1933, as amended (the "**Securities Act**"), (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest

in an Unrestricted Global Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

b) ☐ CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO UNRESTRICTED DEFINITIVE NOTE. In connection with the Exchange of the Owner' s beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner' s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

c) ☐ CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE. In connection with the Owner' s Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner' s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

d) ☐ CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO UNRESTRICTED DEFINITIVE NOTE. In connection with the Owner' s Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner' s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

2) EXCHANGE OF RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL NOTES FOR

RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL NOTES

a) ☐ CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO RESTRICTED DEFINITIVE NOTE. In connection with the Exchange of the Owner' s beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner' s own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

b) ☐ CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE. In connection with the Exchange of the Owner' s Restricted Definitive Note for a beneficial interest in the [CHECK ONE] ☐ 144A Global Note ☐ Regulation S Global Note, with an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner' s own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuers and are dated _____.

[Insert Name of Transferor]

By:

_____

Name:
Title:

Dated: _____

[FORM OF SUPPLEMENTAL INDENTURE TO BE DELIVERED BY SUBSEQUENT GUARANTORS]

Supplemental Indenture (this "**Supplemental Indenture**"), dated as of _____, among _____ (the "**Guaranteeing Subsidiary**"), a subsidiary of Education Management LLC, a Delaware limited liability company (the "**Company**"), and The Bank of New York, as trustee (the "**Trustee**").

WITNESSETH

WHEREAS, each of the Company, Education Management Finance Corp. (together with the Company, the "**Issuers**") and the Guarantors (as defined in the Indenture referred to below) has heretofore executed and delivered to the Trustee an indenture (the "**Indenture**"), dated as of June 1, 2006, providing for the issuance of an unlimited aggregate principal amount of 8 3/4% Senior Notes due 2014 (the "**Notes**");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Issuers' Obligations under the Notes and the Indenture on the terms and conditions set forth herein and under the Indenture (the "**Guarantee**"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

Section 1. Capitalized terms used herein and not otherwise defined herein are used as defined in the Indenture.

Section 2. Each Guaranteeing Subsidiary, by its execution of this Supplemental Indenture, agrees to be a Guarantor under the Indenture and to be bound by the terms of the Indenture applicable to Guarantors, including, but not limited to, Article 11 thereof.

Section 3. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary.

Section 3. This Supplemental Indenture shall be governed by and construed in accordance with the laws of the State of New York.

Section 4. This Supplemental Indenture may be signed in various counterparts which together will constitute one and the same instrument.

Section 5. This Supplemental Indenture is an amendment supplemental to the Indenture and the Indenture and this Supplemental Indenture will henceforth be read together.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

[GUARANTEEING SUBSIDIARY]

By:

_____

Name:
Title:

THE BANK OF NEW YORK, as Trustee

By:

_____

Name:
Title:

Exhibit 4.2

INDENTURE

Dated as of June 1, 2006

Among

EDUCATION MANAGEMENT LLC,

EDUCATION MANAGEMENT FINANCE CORP.,

THE GUARANTORS NAMED ON THE SIGNATURE PAGES HERETO

and

THE BANK OF NEW YORK,
as Trustee

10 1/4% SENIOR SUBORDINATED NOTES DUE 2016

CROSS-REFERENCE TABLE*

Trust Indenture Act Section	Indenture Section
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.10
(b)	7.10
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.05
(b)	14.03
(c)	14.03
313(a)	7.06
(b)(1)	N.A.
(b)(2)	7.06;7.07

(c)	7.06; 14.02
(d)	7.06
314(a)	4.03; 14.02; 14.05
(b)	N.A.
(c)(1)	14.04
(c)(2)	14.04
(c)(3)	N.A.
(d)	N.A.
(e)	14.05
(f)	N.A.
315(a)	7.01
(b)	7.05; 14.02
(c)	7.01
(d)	7.01
(e)	6.14
316(a)(last sentence)	2.09
(a)(1)(A)	6.05

(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	6.07
(c)	2.12; 9.04
317(a)(1)	6.08
(a)(2)	6.12
(b)	2.04
318(a)	14.01
(b)	N.A.
(c)	14.01

N.A. means not applicable.

* This Cross-Reference Table is not part of the Indenture.

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MISCELLANEOUS

INDENTURE, dated as of June 1, 2006, among Education Management LLC, a Delaware limited liability company (the "**Company**"), Education Management Finance Corp., a Delaware corporation (the "**Co-Issuer**" and, together with the Company, the "**Issuers**") the Guarantors (as defined herein) listed on the signature pages hereto and The Bank of New York, a New York banking corporation, as Trustee (the "**Trustee**")**.**

WITNESSETH

WHEREAS, the Issuers have duly authorized the creation of an issue of $385,000,000 aggregate principal amount of 10 1/4% Senior Subordinated Notes due 2016 (the "**Initial Notes**");

WHEREAS, each of the Issuers and each of the Guarantors has duly authorized the execution and delivery of this Indenture.

NOW, THEREFORE, the Issuers, the Guarantors and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders of the Notes.

ARTICLE 1

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01. *Definitions.*

"**144A Global Note**" means a Global Note substantially in the form of Exhibit A hereto, bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"**Acquired Indebtedness**" means, with respect to any specified Person,

(1) Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging with or into or becoming a Restricted Subsidiary of such specified Person, and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"**Acquisition**" means the transactions contemplated by the Transaction Agreement.

"**Additional Interest**" means all additional interest then owing pursuant to the Registration Rights Agreement.

"**Additional Notes**" means additional Notes (other than the Initial Notes and other than Exchange Notes for such Initial Notes) issued from time to time under this Indenture in accordance with Sections 2.01 and 4.09 hereof.

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"**Agent**" means any Registrar or Paying Agent.

"**Applicable Premium**" means, with respect to any Note on any Redemption Date, the greater of:

(1) 1.0% of the principal amount of such Note; and

(2) the excess, if any, of (a) the present value at such Redemption Date of (i) the redemption price of such Note at June 1, 2011 (each such redemption price being set forth in Section 3.07 hereof), plus (ii) all required interest payments due on such Note through June 1, 2011 (excluding accrued but unpaid interest to the Redemption Date), computed using a discount rate equal to the Treasury Rate as of such Redemption Date plus 50 basis points; over (b) the principal amount of such Note.

"**Applicable Procedures**" means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depositary, Euroclear and/or Clearstream that apply to such transfer or exchange.

"**Asset Sale**" means:

(1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a Sale and Lease Back Transaction) of the Company or any of its Restricted Subsidiaries (each referred to in this definition as a "**disposition**"); or

(2) the issuance or sale of Equity Interests of any Restricted Subsidiary (other than Preferred Stock of Restricted Subsidiaries issued in compliance with Section 4.09), whether in a single transaction or a series of related transactions;

in each case, other than:

(a) any disposition of Cash Equivalents or obsolete or worn out equipment in the ordinary course of business or any disposition of inventory or goods (or other assets) held for sale in the ordinary course of business;

(b) the disposition of all or substantially all of the assets of the Company in a manner permitted pursuant to the provisions described under Section 5.01(a) hereof or any disposition that constitutes a Change of Control pursuant to this Indenture;

(c) the making of any Restricted Payment or Permitted Investment that is permitted to be made, and is made, under Section 4.07 hereof;

(d) any disposition of assets or issuance or sale of Equity Interests of any Restricted Subsidiary in any transaction or series of transactions with an aggregate fair market value of less than $10.0 million;

(e) any disposition of property or assets or issuance of securities by a Restricted Subsidiary of the Company to the Company or by the Company or a Restricted Subsidiary of the Company to another Restricted Subsidiary of the Company;

(f) to the extent allowable under Section 1031 of the Internal Revenue Code of 1986, any exchange of like property (excluding any boot thereon) for use in a Similar Business;

(g) the lease, assignment or sub lease of any real or personal property in the ordinary course of business;

(h) any issuance or sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(i) foreclosures on assets; and

(j) any financing transaction with respect to property built or acquired by the Company or any Restricted Subsidiary after the Issue Date, including Sale and Lease Back Transactions and asset securitizations permitted by this Indenture.

"**Bankruptcy Law**" means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

"**Broker-Dealer**" has the meaning set forth in the Registration Rights Agreement.

"**Business Day**" means each day which is not a Legal Holiday.

"**Capital Stock**" means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"**Capitalized Lease Obligation**" means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) in accordance with GAAP.

"**Cash Equivalents**" means:

(1) United States dollars;

(2) such local currencies held by the Company or any Restricted Subsidiary from time to time in the ordinary course of business;

(3) securities issued or directly and fully and unconditionally guaranteed or insured by the U.S. government (or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government), with maturities of 24 months or less from the date of acquisition;

(4) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus of not less than $500.0 million in the case of U.S. banks and $100.0 million (or the U.S. dollar equivalent as of the date of determination) in the case of non U.S. banks;

(5) repurchase obligations for underlying securities of the types described in clauses (3) and (4) entered into with any financial institution meeting the qualifications specified in clause (4) above;

(6) commercial paper rated at least P 1 by Moody' s or at least A 1 by S&P and in each case maturing within 24 months after the date of creation thereof;

(7) marketable short term money market and similar securities having a rating of at least P 2 or A 2 from either Moody' s or S&P, respectively (or, if at any time neither Moody' s nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency) and in each case maturing within 24 months after the date of creation thereof;

(8) investment funds investing 95% of their assets in securities of the types described in clauses (1) through (7) above;

(9) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an Investment Grade Rating from either Moody' s or S&P with maturities of 24 months or less from the date of acquisition;

(10) Indebtedness or Preferred Stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody' s with maturities of 24 months or less from the date of acquisition; and

(11) Investments with average maturities of 24 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody' s.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clauses (1) and (2) above, *provided* that such amounts are converted into any currency listed in clauses (1) and (2) as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

"**Change of Control**" means the occurrence of any of the following:

(1) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person other than a Permitted Holder; or

(2) the Company becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d 5(b)(1) under the Exchange Act), other than the Permitted Holders, in

a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d 3 under the Exchange Act, or any successor provision) of 50% or more of the total voting power of the Voting Stock of the Company or any of its direct or indirect parent companies holding directly or indirectly 100% of the total voting power of the Voting Stock of the Company.

"**Clearstream**" means Clearstream Banking, Société Anonyme.

"**Company**" has the meaning set forth in the recitals hereto; provided that when used in the context of determining the fair market value of an asset or liability under this Indenture, "**Company**" shall be deemed to mean the board of directors of the Company when the fair market value is equal to or in excess of $50.0 million (unless otherwise expressly stated).

"**Consolidated Depreciation and Amortization Expense**" means with respect to any Person for any period, the total amount of depreciation and amortization expense, including the amortization of deferred financing fees of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"**Consolidated Interest Expense**" means, with respect to any Person for any period, without duplication, the sum of:

(1) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (a) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (b) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (c) non cash interest payments (but excluding any non cash interest expense attributable to the movement in the mark to market valuation of Hedging Obligations or other derivative instruments pursuant to GAAP), (d) the interest component of Capitalized Lease Obligations, and (e) net payments, if any, pursuant to interest rate Hedging Obligations with respect to Indebtedness, and excluding (v) accretion or accrual of discounted liabilities not constituting Indebtedness, (w) any expense resulting from the discounting of any Indebtedness in connection with the application of purchase accounting in connection with any acquisition, (x) any Additional Interest with respect to the Notes or the Senior Notes (as hereinafter defined), (y) amortization of deferred financing fees, debt issuance costs, commissions, fees and expenses and (z) any expensing of bridge, commitment and other financing fees; plus

(2) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; less

(3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

"**Consolidated Net Income**" means, with respect to any Person for any period, the aggregate of the Net Income, of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, and otherwise determined in accordance with GAAP; *provided, however*, that, without duplication,

(1) any after tax effect of extraordinary, non recurring or unusual gains or losses (less all fees and expenses relating thereto) or expenses (including relating to the Transaction to the extent incurred on or prior to June 30, 2007), severance, relocation costs and curtailments or modifications to pension and post-retirement employee benefit plans and other restructuring costs shall be excluded,

(2) the Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(3) any after tax effect of income (loss) from disposed or discontinued operations and any net after tax gains or losses on disposal of disposed, abandoned or discontinued operations shall be excluded,

(4) any after tax effect of gains or losses (less all fees and expenses relating thereto) attributable to asset dispositions other than in the ordinary course of business, as determined in good faith by the Company, shall be excluded,

(5) the Net Income for such period of any Person that is not a Subsidiary, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; provided that Consolidated Net Income of the Company shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash (or to the extent converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period,

(6) solely for the purpose of determining the amount available for Restricted Payments under clause (iii)(a) of Section 4.07(a) hereof, the Net Income for such period of any Restricted Subsidiary (other than any Guarantor) shall be excluded if the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not at the date of determination wholly permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, or governmental

regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived, provided that Consolidated Net Income of the Company will be increased by the amount of dividends or other distributions or other payments actually paid in cash (or to the extent converted into cash) to the Company or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein,

(7) effects of adjustments (including the effects of such adjustments pushed down to the Company and its Restricted Subsidiaries) in the property and equipment, software and other intangible assets, deferred revenue and debt line items in such Person' s consolidated financial statements pursuant to GAAP resulting from the application of purchase accounting in relation to the Transaction or any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded,

(8) any after tax effect of income (loss) from the early extinguishment of Indebtedness or Hedging Obligations or other derivative instruments shall be excluded,

(9) any impairment charge or asset write off, in each case, pursuant to GAAP and the amortization of intangibles arising pursuant to GAAP shall be excluded,

(10) any non cash compensation expense recorded from grants of stock appreciation or similar rights, stock options, restricted stock or other rights shall be excluded, and

(11) accruals and reserves that are established within twelve months after the Issue Date that are so required to be established as a result of the Transaction in accordance with GAAP shall be excluded.

Notwithstanding the foregoing, for the purpose of Section 4.07 hereof only (other than clause (iii)(d) of Section 4.07(a) hereof), there shall be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by the Company and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from the Company and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by the Company or any of its Restricted Subsidiaries, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case only to the extent such amounts increase the amount of Restricted Payments permitted under clause (iii)(d) of Section 4.07(a) hereof.

"**Consolidated Net Tangible Assets**" means the total amount of assets (less applicable reserves and other properly deductible items) after deducting (i) all current liabilities (excluding the amount of those which are by their terms

extendable or renewable at the option of the obligor to a date more than 12 months after the date as of which the amount is being determined) and (2) all goodwill, tradenames, patents, unamortized debt discount and expense and other intangible assets, all as set forth on the most recent balance sheet of the Company and its consolidated Restricted Subsidiaries and determined in accordance with GAAP.

"**Contingent Obligations**" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness ("**primary obligations**") of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent,

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor,

(2) to advance or supply funds

(a) for the purchase or payment of any such primary obligation, or

(b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"**Corporate Trust Office of the Trustee**" shall be at the address of the Trustee specified in Section 14.02 hereof or such other address as to which the Trustee may give notice to the Holders and the Issuers.

"**Credit Facilities**" means, with respect to the Company or any of its Restricted Subsidiaries, one or more debt facilities, including the Senior Credit Facilities, or other financing arrangements (including, without limitation, commercial paper facilities or indentures) providing for revolving credit loans, term loans, letters of credit or other long term indebtedness, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof and any indentures or credit facilities or commercial paper facilities that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount permitted to be borrowed thereunder or alters the maturity thereof (provided that such increase in borrowings is permitted under Section 4.09 hereof) or adds Restricted Subsidiaries as additional borrowers or

guarantors thereunder and whether by the same or any other agent, lender or group of lenders.

"**Custodian**" means the Trustee, as custodian with respect to the Notes in global form, or any successor entity thereto.

"**Default**" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"**Definitive Note**" means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06(c) hereof, substantially in the form of Exhibit A hereto, except that such Note shall not bear the Global Note Legend and shall not have the "Schedule of Exchanges of Interests in the Global Note" attached thereto.

"**Depositary**" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 hereof as the Depositary with respect to the Notes, and any and all successors thereto appointed as Depositary hereunder and having become such pursuant to the applicable provision of this Indenture.

"**Designated Non-cash Consideration**" means the fair market value of non-cash consideration received by the Company or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer' s Certificate, setting forth the basis of such valuation, executed by the principal financial officer of the Company, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of or collection on such Designated Non-cash Consideration.

"**Designated Preferred Stock**" means Preferred Stock of the Company or any parent company thereof (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Company or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer' s Certificate executed by the principal financial officer of the Company or the applicable parent corporation thereof, as the case may be, on the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in clause (iii) of Section 4.07(a) hereof.

"**Designated Senior Indebtedness**" means:

(1) any Indebtedness outstanding under the Senior Credit Facilities; and

(2) any other Senior Indebtedness permitted under this Indenture, the principal amount of which is $50.0 million or more and that has been designated by the Company as "Designated Senior Indebtedness."

"**Disqualified Stock**" means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is putable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than solely as a result of a change of control or asset sale) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than solely as a result of a change of control or asset sale), in whole or in part, in each case prior to the date 91 days after the earlier of the maturity date of the Notes or the date the Notes are no longer outstanding; *provided, however*, that if such Capital Stock is issued to any plan for the benefit of employees of the Company or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Company or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

"**EBITDA**" means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period

(1) increased (without duplication) by:

(a) provision for taxes based on income or profits or capital, including, without limitation, state, franchise and similar taxes (such as the Pennsylvania capital tax) and foreign withholding taxes of such Person paid or accrued during such period deducted (and not added back) in computing Consolidated Net Income; *plus*

(b) Fixed Charges of such Person for such period (including (x) net losses or Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk and (y) costs of surety bonds in connection with financing activities, in each case, to the extent included in Fixed Charges) to the extent the same was deducted (and not added back) in calculating such Consolidated Net Income; *plus*

(c) Consolidated Depreciation and Amortization Expense of such Person for such period to the extent the same were deducted (and not added back) in computing Consolidated Net Income; *plus*

(d) any expenses or charges (other than depreciation or amortization expense) related to any Equity Offering, Permitted Investment, acquisition, disposition, recapitalization or the incurrence of Indebtedness permitted to be incurred by this Indenture (including a refinancing thereof) (whether or not successful), including (i) such fees, expenses or charges related to the offering of the Notes, the Senior Notes and the Credit Facilities

and (ii) any amendment or other modification of the Notes or the Senior Notes, and, in each case, deducted (and not added back) in computing Consolidated Net Income; *plus*

(e) the amount of any restructuring charge or reserve deducted (and not added back) in such period in computing Consolidated Net Income, including any one time costs incurred in connection with acquisitions after the Issue Date and costs related to the closure and/or consolidation of facilities; *plus*

(f) any other non cash charges, including any write offs or write downs, reducing Consolidated Net Income for such period (other than any such non-cash charges that represent an accrual or reserve for potential cash items in any future period, and excluding amortization of a prepaid cash item that was paid in a prior period); *plus*

(g) the amount of any minority interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any non-Wholly-Owned Subsidiary deducted (and not added back) in such period in calculating Consolidated Net Income; *plus*

(h) the amount of management, monitoring, consulting and advisory fees and related expenses paid in such period to the Investors to the extent otherwise permitted under clause (c) of Section 4.11 hereof; *plus*

(i) any costs or expense incurred by the Company or a Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement reducing Consolidated Net Income, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of the Company as equity (other than Disqualified Stock) or net cash proceeds of an issuance of Equity Interest of the Company (other than Disqualified Stock) solely to the extent that such net cash proceeds are excluded from the calculation set forth in clause (iii) of Section 4.07(a) hereof and the calculation set forth in clause (xii) of Section 4.09(b) hereof; *plus*

(j) any fees and expenses incurred during such period, or any amortization thereof for such period, in connection with any acquisition, disposition, Investment, Asset Sale, issuance or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (in each case, including any such transaction

consummated prior to the Issue Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction shall be excluded;

(2) decreased by (without duplication) non cash gains increasing Consolidated Net Income of such Person for such period, excluding any non-cash gains to the extent they represent the reversal of an accrual or reserve for a potential cash item that reduced EBITDA in any prior period, and

(3) increased or decreased by (without duplication):

(a) any net gain or loss resulting in such period from Hedging Obligations and the application of Statement of Financial Accounting Standards No. 133; *plus or minus*, as applicable,

(b) any net gain or loss resulting in such period from currency translation gains or losses related to currency remeasurements of Indebtedness (including any net loss or gain resulting from hedge agreements for currency exchange risk).

"**EMU**" means economic and monetary union as contemplated in the Treaty on European Union.

"**Equity Interests**" means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

"**Equity Offering**" means any public or private sale of common stock or Preferred Stock (excluding Disqualified Stock) of the Company or any of its direct or indirect parent companies to the extent contributed to the Company as common equity, other than:

(1) public offerings with respect to the Company' s or any direct or indirect parent company' s common stock registered on Form S-8;

(2) issuances to any Subsidiary of the Company; and

(3) any such public or private sale that constitutes an Excluded Contribution.

"**euro**" means the single currency of participating member states of the EMU.

"**Euroclear**" means Euroclear S.A./N.V., as operator of the Euroclear system.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Exchange Notes**" means the Notes issued in the Exchange Offer pursuant to Section 2.06(f) hereof.

"**Exchange Offer**" has the meaning set forth in the Registration Rights Agreement.

"**Exchange Offer Registration Statement**" has the meaning set forth in the Registration Rights Agreement.

"**Excluded Contribution**" means net cash proceeds, marketable securities or Qualified Proceeds received by the Company from

(1) contributions to its common equity capital, and

(2) the sale (other than to a Subsidiary of the Company or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Company) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Company,

in each case designated as Excluded Contributions pursuant to an officer' s certificate executed by the principal financial officer of the Company on the date such capital contributions are made or the date such Equity Interests are sold, as the case may be, which are excluded from the calculation set forth in clause (iii) of Section 4.07(a) hereof.

"**Fixed Charge Coverage Ratio**" means, with respect to any Person for any period, the ratio of EBITDA of such Person for such period to the Fixed Charges of such Person for such period. In the event that the Company or any Restricted Subsidiary incurs, assumes, guarantees, redeems, retires, defeases or extinguishes any Indebtedness (other than Indebtedness repaid under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) or issues or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to or simultaneously with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "**Fixed Charge Coverage Ratio Calculation Date**"), then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, redemption, retirement, defeasance or extinguishment of Indebtedness, or such issuance or redemption of Disqualified Stock or Preferred Stock, as if the same had occurred at the beginning of the applicable four quarter period.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, mergers, consolidations and disposed operations (as determined in accordance with GAAP) that have been made by the Company or

any of its Restricted Subsidiaries during the four quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Fixed Charge Coverage Ratio Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, mergers, consolidations and disposed operations (and the change in any associated fixed charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the four quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Company or any of its Restricted Subsidiaries since the beginning of such period shall have made any Investment, acquisition, disposition, merger, consolidation or disposed operation that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, disposition, merger, consolidation or disposed operation had occurred at the beginning of the applicable four quarter period.

For purposes of this definition, whenever *pro forma* effect is to be given to a transaction, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Company. If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Fixed Charge Coverage Ratio Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period except as set forth in the first paragraph of this definition. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Company may designate.

"**Fixed Charges**" means, with respect to any Person for any period, the sum of:

(1) Consolidated Interest Expense of such Person for such period;

(2) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock during such period; and

(3) all dividends or other distributions accrued (excluding items eliminated in consolidation) on any series of Disqualified Stock during such period.

"**Foreign Subsidiary**" means, with respect to any Person, any Restricted Subsidiary of such Person that is not organized or existing under the laws of the United States, any State thereof, the District of Columbia, or any territory thereof and any Restricted Subsidiary of such Foreign Subsidiary.

"**GAAP**" means generally accepted accounting principles in the United States which are in effect on the Issue Date.

"**Global Note Legend**" means the legend set forth in Section 2.06(g)(ii) hereof, which is required to be placed on all Global Notes issued under this Indenture.

"**Global Notes**" means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes, substantially in the form of Exhibit A hereto, issued in accordance with Section 2.01, 2.06(b), 2.06(d) or 2.06(f) hereof.

"**Government Securities**" means securities that are:

(1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

(2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America,

which, in either case, are not callable or redeemable at the option of the issuers thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such Government Securities or a specific payment of principal of or interest on any such Government Securities held by such custodian for the account of the holder of such depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Securities or the specific payment of principal of or interest on the Government Securities evidenced by such depository receipt.

"**guarantee**" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

"**Guarantee**" means the guarantee by any Guarantor of the Issuers' Obligations under this Indenture.

"**Guarantor**" means, each Restricted Subsidiary that Guarantees the Notes in accordance with the terms of this Indenture.

"**Hedging Obligations**" means, with respect to any Person, the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contract, currency swap agreement or similar agreement providing for the transfer or mitigation of interest rate or currency risks either generally or under specific contingencies.

"**Holder**" means the Person in whose name a Note is registered on the Registrar' s books.

"**Indebtedness**" means, with respect to any Person, without duplication:

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent:

(a) in respect of borrowed money;

(b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof);

(c) representing the balance deferred and unpaid of the purchase price of any property (including Capitalized Lease Obligations), except (i) any such balance that constitutes a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business and (ii) any earn-out obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP; or

(d) representing any Hedging Obligations;

if and to the extent that any of the foregoing Indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of a third Person (whether or not such items would appear upon the balance sheet of the such obligor

or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person;

provided, however, that notwithstanding the foregoing, Indebtedness shall be deemed not to include Contingent Obligations incurred in the ordinary course of business.

"**Indenture**" means this Indenture, as amended or supplemented from time to time.

"**Independent Financial Advisor**" means an accounting, appraisal, investment banking firm or consultant to Persons engaged in Similar Businesses of nationally recognized standing that is, in the good faith judgment of the Company, qualified to perform the task for which it has been engaged.

"**Indirect Participant**" means a Person who holds a beneficial interest in a Global Note through a Participant.

"**Initial Notes**" has the meaning set forth in the recitals hereto.

"**Initial Purchasers**" means Credit Suisse Securities (USA) LLC, Goldman, Sachs & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated and Banc of America Securities LLC.

"**Interest Payment Date**" means June 1 and December 1 of each year to stated maturity.

"**Investment Grade Rating**" means a rating equal to or higher than Baa3 (or the equivalent) by Moody' s and BBB (or the equivalent) by S&P, or an equivalent rating by any other Rating Agency.

"**Investments**" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, trade credit, advances to customers, commission, travel and similar advances to officers and employees, in each case made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet (excluding the footnotes) of the Company in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. For purposes of the definition of "**Unrestricted Subsidiary**" and Section 4.07 hereof:

(1) "**Investments**" shall include the portion (proportionate to the Company' s equity interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Company at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided, however*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Company' s "Investment" in such Subsidiary at the time of such redesignation; less

(b) the portion (proportionate to the Company' s Equity Interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer, in each case as determined in good faith by the Company.

"**Investors**" means Goldman Sachs Capital Partners, Providence Equity Partners, Inc. (and Leeds Equity Partners, if it exercises the option to purchase equity of the Company' s parent outstanding on the Issue Date) and each of their respective Affiliates but not including, however, any portfolio companies of any of the foregoing.

"**Issue Date**" means June 1, 2006.

"**Issuers**" has the meaning set forth in the recitals hereto.

"**Issuers' Order**" means a written request or order signed on behalf of each Issuer by an Officer of such Issuer, who must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of such Issuer, and delivered to the Trustee.

"**Legal Holiday**" means a Saturday, a Sunday or a day on which commercial banking institutions are not required to be open in the State of New York.

"**Letter of Transmittal**" means the letter of transmittal to be prepared by the Issuers and sent to all Holders of the Notes for use by such Holders in connection with the Exchange Offer.

"**Lien**" means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest, preference, priority or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other

agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; provided that in no event shall an operating lease be deemed to constitute a Lien.

"**Moody' s**" means Moody' s Investors Service, Inc. and any successor to its rating agency business.

"**Net Income**" means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

"**Net Proceeds**" means the aggregate cash proceeds received by the Company or any of its Restricted Subsidiaries in respect of any Asset Sale, including any cash received upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale, net of the direct costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration, including legal, accounting and investment banking fees, and brokerage and sales commissions, any relocation expenses incurred as a result thereof, taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), amounts required to be applied to the repayment of principal, premium, if any, and interest on Senior Indebtedness required (other than required by clause (i) of Section 4.10(b) hereof) to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Company or any of its Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Company or any of its Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

"**Non-U.S. Person**" means a Person who is not a U.S. Person.

"**Notes**" means the Initial Notes and more particularly means any Note authenticated and delivered under this Indenture. For all purposes of this Indenture, the term "**Notes**" shall also include any Additional Notes that may be issued under a supplemental indenture. For purposes of this Indenture, all references to Notes to be issued or authenticated upon transfer, replacement or exchange shall be deemed to refer to Notes of the applicable series.

"**Obligations**" means any principal, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and banker' s

acceptances), damages and other liabilities, and guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Indebtedness.

"**Offering Circular**" means the offering circular, dated May 19, 2006, relating to the sale of the Initial Notes and the Senior Notes.

"**Officer**" means the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the applicable Issuer.

"**Officer' s Certificate**" means a certificate signed on behalf of each Issuer by an Officer of such Issuer, who must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of such Issuer, that meets the requirements set forth in this Indenture.

"**Opinion of Counsel**" means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Issuers or the Trustee.

"**Participant**" means, with respect to the Depositary, Euroclear or Clearstream, a Person who has an account with the Depositary, Euroclear or Clearstream, respectively (and, with respect to DTC, shall include Euroclear and Clearstream).

"**Permitted Asset Swap**" means the concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and cash or Cash Equivalents between the Company or any of its Restricted Subsidiaries and another Person; *provided*, that any cash or Cash Equivalents received must be applied in accordance with Section 4.10 hereof.

"**Permitted Holders**" means each of the Investors and members of management of the Company (or its direct parent) who are holders of Equity Interests of the Company (or any of its direct or indirect parent companies) on the Issue Date and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members; *provided*, that, in the case of such group and without giving effect to the existence of such group or any other group, such Investors and members of management, collectively, have beneficial ownership of more than 50% of the total voting power of the Voting Stock of the Company or any of its direct or indirect parent companies.

"**Permitted Investments**" means:

(1) any Investment in the Company or any of its Restricted Subsidiaries;

(2) any Investment in cash and Cash Equivalents;

(3) any Investment by the Company or any of its Restricted Subsidiaries in a Person that is engaged in a Similar Business if as a result of such Investment:

(a) such Person becomes a Restricted Subsidiary; or

(b) such Person, in one transaction or a series of related transactions, is merged or consolidated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Company or a Restricted Subsidiary,

and, in each case, any Investment held by such Person; *provided*, that such Investment was not acquired by such Person in contemplation of such acquisition, merger, consolidation or transfer;

(4) any Investment in securities or other assets not constituting cash or Cash Equivalents and received in connection with an Asset Sale made pursuant to the provisions of Section 4.10 hereof or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing on the Issue Date;

(6) any Investment acquired by the Company or any of its Restricted Subsidiaries:

(a) in exchange for any other Investment or accounts receivable held by the Company or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable; or

(b) as a result of a foreclosure by the Company or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(7) Hedging Obligations permitted under clause (x) of Section 4.09(b) hereof;

(8) any Investment in a Similar Business having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (8) that are at that time outstanding, not to exceed 3.0% of Total Assets at the time of such Investment (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(9) Investments the payment for which consists of Equity Interests (exclusive of Disqualified Stock) of the Company, or any of its direct or indirect parent companies; *provided, however*, that such Equity Interests will not increase the amount available for Restricted Payments under clause (iii) of Section 4.07(a) hereof;

(10) guarantees of Indebtedness permitted under Section 4.09 hereof;

(11) Investments consisting of purchases and acquisitions of inventory, supplies, material or equipment;

(12) additional Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (12) that are at that time outstanding (without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of cash or marketable securities), not to exceed 1.5% of Total Assets at the time of such Investment (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(13) advances to, or guarantees of Indebtedness of, employees not in excess of $5.0 million outstanding at any one time, in the aggregate;

(14) loans and advances to officers, directors and employees for business related travel expenses, moving expenses and other similar expenses, in each case incurred in the ordinary course of business or consistent with past practices or to fund such Person' s purchase of Equity Interests of the Company or any direct or indirect parent company thereof; and

(15) any transaction to the extent it constitutes an Investment that is permitted and made in accordance with the provisions of Section 4.09(b) (except transactions described in clauses (ii), (vi), (vii) and (ix) thereof).

"**Permitted Junior Securities**" means:

(1) Equity Interests in the Company, any Guarantor or any direct or indirect parent of the Company; or

(2) unsecured debt securities that are subordinated to all Senior Indebtedness (and any debt securities issued in exchange for Senior Indebtedness) to substantially the same extent as, or to a greater extent than, the Notes and the related Guarantees are subordinated to Senior Indebtedness under this Indenture;

provided that the term "**Permitted Junior Securities**" shall not include any securities distributed pursuant to a plan of reorganization if the Indebtedness under the Senior Credit Facilities is treated as part of the same class as the Notes for purposes of such plan of reorganization; *provided further* that to the extent that any Senior Indebtedness of the Issuers or the Guarantors outstanding on the date of consummation of any such plan of reorganization is not paid in full in cash on such date, the holders of any such Senior Indebtedness not so paid in full in cash have consented to the terms of such plan of reorganization.

"**Permitted Liens**" means, with respect to any Person:

(1) pledges or deposits by such Person under workmen' s compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case incurred in the ordinary course of business;

(2) Liens imposed by law, such as carriers' , warehousemen' s and mechanics' Liens, in each case for sums not yet overdue for a period of more than 30 days or being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(3) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than 30 days or payable or subject to penalties for nonpayment or which are being contested in good faith by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(4) Liens in favor of the issuers of performance and surety bonds or bid bonds or with respect to other regulatory requirements or letters of credit issued pursuant to the request of and for the account of such Person in the ordinary course of its business;

(5) minor survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real properties or Liens incidental, to the conduct of the business of such Person or to the

ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(6) Liens securing Indebtedness permitted to be incurred pursuant to clauses (i) ("**Credit Facility Indebtedness**"), (iv), (xii)(b) or (xviii) of Section 4.09(b) hereof; *provided* that Liens securing Indebtedness permitted to be incurred pursuant to clause (xviii) extend only to the assets of Foreign Subsidiaries;

(7) Liens existing on the Issue Date;

(8) Liens on property or shares of stock of a Person at the time such Person becomes a Subsidiary; *provided, however*, such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary; *provided further, however*, that such Liens may not extend to any other property owned by the Company or any of its Restricted Subsidiaries;

(9) Liens on property at the time the Company or a Restricted Subsidiary acquired the property, including any acquisition by means of a merger or consolidation with or into the Company or any of its Restricted Subsidiaries; *provided, however*, that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition; *provided further, however*, that the Liens may not extend to any other property owned by the Company or any of its Restricted Subsidiaries;

(10) Liens securing Indebtedness or other obligations of a Restricted Subsidiary owing to the Company or another Restricted Subsidiary permitted to be incurred in accordance with Section 4.09 hereof;

(11) Liens securing Hedging Obligations so long as related Indebtedness is, and is permitted to be under this Indenture, secured by a Lien on the same property securing such Hedging Obligations;

(12) Liens on specific items of inventory of other goods and proceeds of any Person securing such Person' s obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(13) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Company or any of its Restricted Subsidiaries and do not secure any Indebtedness;

(14) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Company and its Restricted Subsidiaries in the ordinary course of business;

(15) Liens in favor of an Issuer or any Guarantor;

(16) Liens on equipment of the Company or any of its Restricted Subsidiaries granted in the ordinary course of business to the Issuers' clients;

(17) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clauses (6) (other than Liens securing Credit Facility Indebtedness), (7), (8) and (9); *provided, however*, that (a) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements on such property), and (b) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (6) (other than Liens securing Credit Facility Indebtedness), (7), (8) and (9) at the time the original Lien became a Permitted Lien under this Indenture, and (ii) an amount necessary to pay any fees and expenses, including premiums, related to such refinancing, refunding, extension, renewal or replacement;

(18) deposits made in the ordinary course of business to secure liability to insurance carriers;

(19) other Liens securing obligations incurred in the ordinary course of business which obligations do not exceed $15.0 million at any one time outstanding;

(20) Liens securing judgments for the payment of money not constituting an Event of Default under clause (5) of Section 6.01 hereof so long as such Liens are adequately bonded and any appropriate legal proceedings that may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;

(21) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(22) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code or any comparable or successor provision on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary

course of business, and (iii) in favor of banking institutions arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(23) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 4.09 hereof; *provided* that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

(24) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(25) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Company or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Company and its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Company or any of its Restricted Subsidiaries in the ordinary course of business; and

(26) during a Suspension Period only, Liens securing Indebtedness, and Indebtedness represented by Sale and Leaseback Transactions, in an amount that does not exceed 15% of Consolidated Net Tangible Assets of the Company and its Restricted Subsidiaries at any one time outstanding.

For purposes of this definition, the term "Indebtedness" shall be deemed to include interest on such Indebtedness. Additionally, solely for purposes of this definition and Section 4.12, any Indebtedness incurred during a Suspension Period that could have been incurred in compliance with an applicable provision under Section 4.09 were such covenant in effect at such time, may be deemed by the Company to have been so incurred.

"**Person**" means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"**Preferred Stock**" means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution, or winding up.

"**Private Placement Legend**" means the legend set forth in Section 2.06(g)(i) hereof to be placed on all Notes issued under this Indenture, except where otherwise permitted by the provisions of this Indenture.

"**QIB**" means a "**qualified institutional buyer**" as defined in Rule 144A.

"**Qualified Proceeds**" means assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business; *provided* that the fair market value of any such assets or Capital Stock shall be determined by the Company in good faith.

"**Rating Agencies**" means Moody' s and S&P or if Moody' s or S&P or both shall not make a rating on the Notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Issuers which shall be substituted for Moody' s or S&P or both, as the case may be.

"**Record Date**" for the interest or Additional Interest, if any, payable on any applicable Interest Payment Date means May 15 or November 15 (whether or not a Business Day) next preceding such Interest Payment Date.

"**Registration Rights Agreement**" means the Registration Rights Agreement with respect to the Notes and the Senior Notes dated as of the Issue Date, among the Issuers, the Guarantors and the Initial Purchasers, as such agreement may be amended, modified or supplemented from time to time and, with respect to any Additional Notes, one or more registration rights agreements between the Issuers and the other parties thereto, as such agreement(s) may be amended, modified or supplemented from time to time, relating to rights given by the Issuers to the purchasers of Additional Notes to register such Additional Notes under the Securities Act.

"**Regulation S**" means Regulation S promulgated under the Securities Act.

"**Regulation S Global Note**" means a Regulation S Temporary Global Note or Regulation S Permanent Global Note, as applicable.

"**Regulation S Permanent Global Note**" means a permanent Global Note in the form of Exhibit A hereto, bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Regulation S Temporary Global Note upon expiration of the Restricted Period.

"**Regulation S Temporary Global Note**" means a temporary Global Note in the form of Exhibit A hereto, bearing the Global Note Legend, the Private Placement Legend and the Regulation S Temporary Global Note Legend and deposited with or on behalf of and registered in the name of the Depositary or its

nominee, issued in a denomination equal to the outstanding principal amount of the Notes initially sold in reliance on Rule 903.

"**Regulation S Temporary Global Note Legend**" means the legend set forth in Section 2.06(g)(ii) hereof.

"**Related Business Assets**" means assets (other than cash or Cash Equivalents) used or useful in a Similar Business, *provided* that any assets received by the Company or a Restricted Subsidiary in exchange for assets transferred by the Company or a Restricted Subsidiary shall not be deemed to be Related Business Assets if they consist of securities of a Person, unless upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

"**Representative**" means any trustee, agent or representative (if any) for an issue of Senior Indebtedness of the Issuers.

"**Responsible Officer**" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person' s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"**Restricted Definitive Note**" means a Definitive Note bearing the Private Placement Legend.

"**Restricted Global Note**" means a Global Note bearing the Private Placement Legend.

"**Restricted Investment**" means an Investment other than a Permitted Investment.

"**Restricted Period**" means the 40-day distribution compliance period as defined in Regulation S.

"**Restricted Subsidiary**" means, at any time, any direct or indirect Subsidiary of the Company (including any Foreign Subsidiary) that is not then an Unrestricted Subsidiary; *provided, however*, that upon the occurrence of an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary shall be included in the definition of "Restricted Subsidiary."

"**Rule 144**" means Rule 144 promulgated under the Securities Act.

"**Rule 144A**" means Rule 144A promulgated under the Securities Act.

"**Rule 903**" means Rule 903 promulgated under the Securities Act.

"**Rule 904**" means Rule 904 promulgated under the Securities Act.

"**S&P**" means Standard & Poor' s, a division of The McGraw Hill Companies, Inc., and any successor to its rating agency business.

"**Sale and Lease Back Transaction**" means any arrangement providing for the leasing by the Company or any of its Restricted Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by the Company or such Restricted Subsidiary to a third Person in contemplation of such leasing.

"**SEC**" means the U.S. Securities and Exchange Commission.

"**Secured Indebtedness**" means any Indebtedness of the Company or any of its Restricted Subsidiaries secured by a Lien.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Senior Credit Facilities**" means the Credit Facility under the Credit and Guaranty Agreement to be entered into as of the Issue Date by and among Education Management Holdings LLC, the Company, the Guarantors party thereto, the lenders party thereto in their capacities as lenders thereunder and the Agents party thereto, including any guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements, refundings or refinancings thereof and any indentures or credit facilities or commercial paper facilities with banks or other institutional lenders or investors that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount borrowable thereunder or alters the maturity thereof (*provided* that such increase in borrowings is permitted under Section 4.09 hereof).

"**Senior Indebtedness**" means:

(1) all Indebtedness of the Issuers or any Guarantor outstanding under the Senior Credit Facilities or Senior Notes and related Guarantees (including interest accruing on or after the filing of any petition in bankruptcy or similar proceeding or for reorganization of any Issuer or any Guarantor (at the rate provided for in the documentation with respect thereto, regardless of whether or not a claim for post filing interest is allowed in such proceedings)), and any and all other fees, expense reimbursement obligations, indemnification amounts, penalties, and other amounts (whether existing on the Issue Date or thereafter created or incurred) and all obligations of any Issuer or any Guarantor to reimburse

any bank or other Person in respect of amounts paid under letters of credit, acceptances or other similar instruments;

(2) all Hedging Obligations (and guarantees thereof) owing to a Lender (as defined in the Senior Credit Facilities) or any Affiliate of such Lender (or any Person that was a Lender or an Affiliate of such Lender at the time the applicable agreement giving rise to such Hedging Obligation was entered into), *provided* that such Hedging Obligations are permitted to be incurred under the terms of this Indenture;

(3) any other Indebtedness of any Issuer or Guarantor permitted to be incurred under the terms of this Indenture, unless the instrument under which such Indebtedness is incurred expressly provides that it is on a parity with or subordinated in right of payment to the Senior Subordinated Notes or any related Guarantee; and

(4) all Obligations with respect to the items listed in the preceding clauses (1), (2) and (3);

provided, however, that Senior Indebtedness shall not include:

(a) any obligation of such Person to the Company or any of its Subsidiaries;

(b) any liability for federal, state, local or other taxes owed or owing by such Person;

(c) any accounts payable or other liability to trade creditors arising in the ordinary course of business;

(d) any Indebtedness or other Obligation of such Person which is subordinate or junior in any respect to any other Indebtedness or other Obligation of such Person; or

(e) that portion of any Indebtedness which at the time of incurrence is incurred in violation of this Indenture; *provided, however* that such Indebtedness shall be deemed not to have been incurred in violation of this Indenture for purposes of this clause if such Indebtedness consists of Designated Senior Indebtedness, and the holder(s) of such Indebtedness of their agent or representative (a) had no actual knowledge at the time of incurrence that the incurrence of such Indebtedness violated this Indenture and (b) shall have received a certificate from an officer of each of the Issuers to the effect that the incurrence of such Indebtedness does not violate the provisions of this Indenture.

"**Senior Notes**" means the $375,000,000 aggregate principal amount of the Issuers' 8 3/4% senior notes due 2014 issued on the Issue Date.

"**Senior Subordinated Indebtedness**" means:

(1) with respect to the Issuers, Indebtedness which ranks equal in right of payment to the Notes issued by the Issuers; and

(2) with respect to any Guarantor, Indebtedness which ranks equal in right of payment to the Guarantee of such entity of Notes.

"**Shelf Registration Statement**" means the Shelf Registration Statement as defined in the Registration Rights Agreement.

"**Significant Subsidiary**" means (i) the Co-Issuer or (ii) any Restricted Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the Issue Date.

"**Similar Business**" means any business conducted or proposed to be conducted by the Company and its Restricted Subsidiaries on the Issue Date or any business that is similar, reasonably related, incidental or ancillary thereto.

"**Sponsor Management Agreement**" means the management agreement between certain of the management companies associated with the Investors and the Company or one of its direct or indirect parent companies as in effect on the Issue Date.

"**Subordinated Indebtedness**" means, with respect to the Notes,

(1) any Indebtedness of the Issuers which is by its terms subordinated in right of payment to the Notes, and

(2) any Indebtedness of any Guarantor which is by its terms subordinated in right of payment to the Guarantee of such entity of the Notes.

"**Subsidiary**" means, with respect to any Person:

(1) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof or is consolidated under GAAP with such Person at such time; and

(2) any partnership, joint venture, limited liability company or similar entity of which

(x) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise, and

(y) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

"**Total Assets**" means the total assets of the Company and its Restricted Subsidiaries on a consolidated basis, as shown on the most recent balance sheet of the Company or such other Person as may be expressly stated.

"**Transaction**" means the merger contemplated by the Transaction Agreement, the issuance of the Notes and the Senior Notes and borrowings under the Senior Credit Facilities as in effect on the Issue Date to finance the merger contemplated by the Transaction Agreement and repay certain debt.

"**Transaction Agreement**" means the Agreement and Plan of Merger dated as of March 3, 2006 between Education Management Corporation and EM Acquisition Corporation, as the same may be amended prior to the Issue Date.

"**Treasury Rate**" means, as of any Redemption Date, the yield to maturity as of such Redemption Date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to the Redemption Date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the Redemption Date to June 1, 2011; *provided, however*, that if the period from the Redemption Date to June 1, 2011 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended (15 U.S.C. §§ 77aaa-777bbbb).

"**Trustee**" means The Bank of New York, as trustee, until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"**Unrestricted Definitive Note**" means one or more Definitive Notes that do not bear and are not required to bear the Private Placement Legend.

"**Unrestricted Global Note**" means a permanent Global Note, substantially in the form of Exhibit A attached hereto, that bears the Global Note

Legend and that has the "Schedule of Exchanges of Interests in the Global Note" attached thereto, and that is deposited with or on behalf of and registered in the name of the Depositary, representing Notes that do not bear the Private Placement Legend.

"**Unrestricted Subsidiary**" means:

(1) any Subsidiary of the Company which at the time of determination is an Unrestricted Subsidiary (as designated by the Company, as provided below); and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Company may designate any Subsidiary of the Company (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any property of, the Company or any Subsidiary of the Company (other than solely any Subsidiary of the Subsidiary to be so designated); *provided* that

(1) any Unrestricted Subsidiary must be an entity of which the Equity Interests entitled to cast at least a majority of the votes that may be cast by all Equity Interests having ordinary voting power for the election of directors or Persons performing a similar function are owned, directly or indirectly, by the Company;

(2) such designation complies with Section 4.07 hereof; and

(3) each of:

(a) the Subsidiary to be so designated; and

(b) its Subsidiaries

has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Company or any Restricted Subsidiary.

The Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that, immediately after giving effect to such designation, no Default shall have occurred and be continuing and either:

(1) the Company could incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test described in Section 4.09(a) hereof; or

(2) the Fixed Charge Coverage Ratio for the Company and its Restricted Subsidiaries would be greater than such ratio for the Company and its Restricted Subsidiaries immediately prior to such designation,

in each case on a *pro forma* basis taking into account such designation.

Any such designation by the Company shall be notified by the Company to the Trustee by promptly filing with the Trustee a copy of the resolution of the board of directors of the Company or any committee thereof giving effect to such designation and an Officer' s Certificate certifying that such designation complied with the foregoing provisions.

"**U.S. Person**" means a U.S. person as defined in Rule 902(k) under the Securities Act.

"**Voting Stock**" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the board of directors of such Person.

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

(1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment; by

(2) the sum of all such payments.

"**Wholly-Owned Subsidiary**" of any Person means a Subsidiary of such Person, 100% of the outstanding Equity Interests of which (other than directors' qualifying shares) shall at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

Section 1.02. *Other Definitions.*

Term	Defined in Section
Acceptable Commitment	4.10
Affiliate Transaction	4.11
Asset Sale Offer	4.10
Authentication Order	2.02
Blockage Notice	10.03
Change of Control Offer	4.14
Change of Control Payment	4.14

Term	Defined in Section
Covenant Defeasance	8.03
Covenant Suspension Event	4.16
DTC	2.03
Event of Default	6.01
Excess Proceeds	4.10
Guarantee Blockage Notice	12.03
Guarantee Payment Blockage Period	12.03
Guarantor Payment Default	12.03
incur	4.09
Legal Defeasance	8.02
Non-Guarantor Payment Default	12.03
Non-Payment Default	10.03
Note Register	2.03
Offer Amount	3.09
Offer Period	3.09
Pari Passu Indebtedness	4.10
pay its Guarantee	12.03

pay the Notes	10.03
Paying Agent	2.03
Payment Blockage Period	10.03
Payment Default	10.03
Purchase Date	3.09
Redemption Date	3.07
Refinancing Indebtedness	4.09
Refunding Capital Stock	4.07
Registrar	2.03
Restricted Payments	4.07
Second Commitment	4.10
Successor Company	5.01
Successor Person	5.01
Suspended Covenants	4.16
Suspension Period	4.16
Treasury Capital Stock	4.07

Section 1.03. *Incorporation by Reference of Trust Indenture Act.* Whenever this Indenture refers to a provision of the Trust Indenture Act, the provision is incorporated by reference in and made a part of this Indenture.

The following Trust Indenture Act terms used in this Indenture have the following meanings:

"**indenture securities**" means the Notes;

"**indenture security Holder**" means a Holder of a Note;

"**indenture to be qualified**" means this Indenture;

"**indenture trustee**" or "**institutional trustee**" means the Trustee; and

"**obligor**" on the Notes and the Guarantees means the Issuers and the Guarantors, respectively, and any successor obligor upon the Notes and the Guarantees, respectively.

All other terms used in this Indenture that are defined by the Trust Indenture Act, defined by Trust Indenture Act reference to another statute or defined by SEC rule under the Trust Indenture Act have the meanings so assigned to them.

Section 1.04. *Rules of Construction.* Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(c) "or" is not exclusive;

(d) words in the singular include the plural, and in the plural include the singular;

(e) "will" shall be interpreted to express a command;

(f) provisions apply to successive events and transactions;

(g) references to sections of, or rules under, the Securities Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time;

(h) unless the context otherwise requires, any reference to an "Article," "Section" or "clause" refers to an Article, Section or clause, as the case may be, of this Indenture; and

(i) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause or other subdivision.

Section 1.05. *Acts of Holders. (a)* Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments

or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Issuers. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Note, shall be sufficient for any purpose of this Indenture and (subject to Section 7.01) conclusive in favor of the Trustee and the Issuers, if made in the manner provided in this Section 1.05.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient.

(c) The ownership of Notes shall be proved by the Note Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of any action taken, suffered or omitted by the Trustee or the Issuers in reliance thereon, whether or not notation of such action is made upon such Note.

(e) The Issuers may, in the circumstances permitted by the Trust Indenture Act, set a record date for purposes of determining the identity of Holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or take any other act, or to vote or consent to any action by vote or consent authorized or permitted to be given or taken by Holders. Unless otherwise specified, if not set by the Issuers prior to the first solicitation of a Holder made by any Person in respect of any such action, or in the case of any such vote, prior to such vote, any such record date shall be the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished to the Trustee prior to such solicitation.

(f) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Holders of each such different part.

(g) Without limiting the generality of the foregoing, a Holder, including DTC, as the Holder of a Global Note, may make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders, and DTC as the Holder of a Global Note may provide its proxy or proxies to the beneficial owners of interests in any such Global Note through such depositary' s standing instructions and customary practices.

(h) The Issuers may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in any Global Note held by DTC entitled under the procedures of such depositary to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders. If such a record date is fixed, the Holders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Holders remain Holders after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other action shall be valid or effective if made, given or taken more than 90 days after such record date.

ARTICLE 2
THE NOTES

Section 2.01. *Form and Dating; Terms. (a)* General. The Notes and the Trustee' s certificate of authentication shall be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rules or usage. Each Note shall be dated the date of its authentication. The Notes shall be in denominations of $2,000 and multiples of $1,000 in excess thereof.

(b) Global Notes. Notes issued in global form shall be substantially in the form of Exhibit A attached hereto (including the Global Note Legend thereon and the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Notes issued in definitive form shall be substantially in the form of Exhibit A attached hereto (but without the Global Note Legend thereon and without the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Each Global Note shall represent such of the outstanding Notes as shall be specified in the "Schedule of Exchanges of Interests in the Global Note" attached thereto and each shall provide that it shall represent up to the aggregate principal amount of Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as applicable, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) Temporary Global Notes. Notes offered and sold in reliance on Regulation S shall be issued initially in the form of the Regulation S Temporary Global Note, which shall be deposited on behalf of the purchasers of the Notes represented thereby with the Trustee, as custodian for the Depositary, and registered in the name of the Depositary or the nominee of the Depositary for the accounts of designated agents holding on behalf of Euroclear or Clearstream, duly executed by each Issuer and authenticated by the Trustee as hereinafter provided. The Restricted Period shall be terminated upon the receipt by the Trustee of:

(i) a written certificate from the Depositary, together with copies of certificates from Euroclear and Clearstream certifying that they have received certification of non-United States beneficial ownership of 100% of the aggregate principal amount of the Regulation S Temporary Global Note (except to the extent of any beneficial owners thereof who acquired an interest therein during the Restricted Period pursuant to another exemption from registration under the Securities Act and who shall take delivery of a beneficial ownership interest in a 144A Global Note bearing a Private Placement Legend, all as contemplated by Section 2.06(b) hereof); and

(ii) an Officer' s Certificate from each Issuer.

Following the termination of the Restricted Period, beneficial interests in the Regulation S Temporary Global Note shall be exchanged for beneficial interests in the Regulation S Permanent Global Note pursuant to the Applicable Procedures. Simultaneously with the authentication of the Regulation S Permanent Global Note, the Trustee shall cancel the Regulation S Temporary Global Note. The aggregate principal amount of the Regulation S Temporary Global Note and the Regulation S Permanent Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided.

(d) Terms. The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is unlimited.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Issuers, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

The Notes shall be subject to repurchase by the Issuers pursuant to an Asset Sale Offer as provided in Section 4.10 hereof or a Change of Control Offer as provided in Section 4.14 hereof. The Notes shall not be redeemable, other than as provided in Article 3.

Additional Notes ranking *pari passu* with the Initial Notes may be created and issued from time to time by the Issuers without notice to or consent of the Holders and shall be consolidated with and form a single class with the Initial Notes and shall have the same terms as to status, redemption or otherwise as the Initial Notes; *provided* that the Issuers' ability to issue Additional Notes shall be subject to the Issuers' compliance with Section 4.09 hereof. Any Additional Notes shall be issued with the benefit of an indenture supplemental to this Indenture.

(e) Euroclear and Clearstream Procedures Applicable. The provisions of the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" and the "General Terms and Conditions of Clearstream Banking" and "Customer Handbook" of Clearstream shall be applicable to transfers of beneficial interests in the Regulation S Temporary Global Note and the Regulation S Permanent Global Notes that are held by Participants through Euroclear or Clearstream.

Section 2.02. *Execution and Authentication.* At least one Officer of each Issuer shall execute the Notes on behalf of such Issuer by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note shall nevertheless be valid.

A Note shall not be entitled to any benefit under this Indenture or be valid or obligatory for any purpose until authenticated substantially in the form of Exhibit A attached hereto, as the case may be, by the manual or facsimile signature of the Trustee. The signature shall be conclusive evidence that the Note has been duly authenticated and delivered under this Indenture.

On the Issue Date, the Trustee shall, upon receipt of an Issuers' Order (an "**Authentication Order**"), authenticate and deliver the Initial Notes. In addition, at any time, from time to time, the Trustee shall upon an Authentication Order authenticate and deliver any Additional Notes and Exchange Notes for an aggregate principal amount specified in such Authentication Order for such Additional Notes or Exchange Notes issued hereunder.

The Trustee may appoint an authenticating agent acceptable to the Issuers to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Issuers.

Section 2.03. *Registrar and Paying Agent.* The Issuers shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("**Registrar**") and an office or agency where Notes may be presented for payment ("**Paying Agent**"). The Registrar shall keep a register of the Notes ("**Note Register**") and of their transfer and exchange. The Issuers may appoint

one or more co-registrars and one or more additional paying agents. The term "**Registrar**" includes any co-registrar and the term "**Paying Agent**" includes any additional paying agent. The Issuers may change any Paying Agent or Registrar without prior notice to any Holder. The Issuers shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Issuers fail to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Issuers or any of their respective Subsidiaries may act as Paying Agent or Registrar.

The Issuers initially appoint The Depository Trust Company ("**DTC**") to act as Depositary with respect to the Global Notes.

The Issuers initially appoint the Trustee to act as the Paying Agent and Registrar for the Notes and to act as Custodian with respect to the Global Notes.

Section 2.04. *Paying Agent to Hold Money in Trust.* The Issuers shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or Additional Interest, if any, or interest on the Notes, and will notify the Trustee of any default by the Issuers in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Issuers at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than an Issuer or a Subsidiary) shall have no further liability for the money. If an Issuer or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Issuers, the Trustee shall serve as Paying Agent for the Notes.

Section 2.05. *Holder Lists.* The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders and shall otherwise comply with Trust Indenture Act Section 312(a). If the Trustee is not the Registrar, the Issuers shall furnish to the Trustee at least two Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes and the Issuers shall otherwise comply with Trust Indenture Act Section 312(a).

Section 2.06. *Transfer and Exchange. (a)* Transfer and Exchange of Global Notes. Except as otherwise set forth in this Section 2.06, a Global Note may be transferred, in whole and not in part, only to another nominee of the Depositary or to a successor Depositary or a nominee of such successor Depositary. A beneficial interest in a Global Note may not be exchanged for a Definitive Note unless (i) the Depositary (x) notifies the Issuers that it is unwilling or unable to continue as Depositary for such Global Note or (y) has

ceased to be a clearing agency registered under the Exchange Act and, in either case, a successor Depositary is not appointed by the Issuers within 120 days or (ii) there shall have occurred and be continuing a Default with respect to the Notes. Upon the occurrence of any of the preceding events in (i) or (ii) above, Definitive Notes delivered in exchange for any Global Note or beneficial interests therein will be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depositary (in accordance with its customary procedures). Global Notes also may be exchanged or replaced, in whole or in part, as provided in Sections 2.07 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 and 2.10 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Note, except for Definitive Notes issued subsequent to any of the preceding events in (i) or (ii) above and pursuant to Section 2.06(c) hereof. A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a); *provided, however*, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b), (c) or (f) hereof.

(b) Transfer and Exchange of Beneficial Interests in the Global Notes. The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(i) Transfer of Beneficial Interests in the Same Global Note. Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend; *provided, however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Temporary Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(i).

(ii) All Other Transfers and Exchanges of Beneficial Interests in Global Notes. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(i) hereof, the transferor of such beneficial interest must deliver to the Registrar either (A) (1) a written order from a Participant or an Indirect Participant given

to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase or (B) (1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in (1) above; *provided* that in no event shall Definitive Notes be issued upon the transfer or exchange of beneficial interests in the Regulation S Temporary Global Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903. Upon consummation of an Exchange Offer by the Issuers in accordance with Section 2.06(f) hereof, the requirements of this Section 2.06(b)(ii) shall be deemed to have been satisfied upon receipt by the Registrar of the instructions contained in the Letter of Transmittal delivered by the Holder of such beneficial interests in the Restricted Global Notes. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(h) hereof.

(iii) Transfer of Beneficial Interests to Another Restricted Global Note. A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.06(b)(ii) hereof and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in the 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof; or

(B) if the transferee will take delivery in the form of a beneficial interest in the Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof.

(iv) Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an Unrestricted Global Note. A beneficial interest in any Restricted Global Note may be

exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.06(b)(ii) hereof and:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the holder of the beneficial interest to be transferred, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Broker-Dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Issuers;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to subparagraph (B) or (D) above at a time when an Unrestricted Global Note has not yet been issued, the Issuers shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to subparagraph (B) or (D) above.

Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

(c) Transfer or Exchange of Beneficial Interests for Definitive Notes.

(i) Beneficial Interests in Restricted Global Notes to Restricted Definitive Notes. If any holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then, upon the occurrence of any of the events in paragraph (i) or (ii) of Section 2.06(a) hereof and receipt by the Registrar of the following documentation:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such holder substantially in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to the Company or any of its Restricted Subsidiaries, a certificate

substantially in the form of Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(F) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h) hereof, and the Issuers shall execute and the Trustee shall authenticate and mail to the Person designated in the instructions a Definitive Note in the applicable principal amount. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee shall mail such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c)(i) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(ii) Beneficial Interests in Regulation S Temporary Global Note to Definitive Notes. Notwithstanding Sections 2.06(c)(i)(A) and (C) hereof, a beneficial interest in the Regulation S Temporary Global Note may not be exchanged for a Definitive Note or transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) of the Securities Act, except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

(iii) Beneficial Interests in Restricted Global Notes to Unrestricted Definitive Notes. A holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only upon the occurrence of any of the events in subsection (i) or (ii) of Section 2.06(a) hereof and if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the holder of such beneficial interest, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Broker-Dealer, (2) a Person participating in the distribution of the

Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Issuers;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note, a certificate from such holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iv) Beneficial Interests in Unrestricted Global Notes to Unrestricted Definitive Notes. If any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon the occurrence of any of the events in subsection (i) or (ii) of Section 2.06(a) hereof and satisfaction of the conditions set forth in Section 2.06(b)(ii) hereof, the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h) hereof, and the Issuers shall execute and the Trustee shall authenticate and mail to the Person designated in the instructions a Definitive Note in the applicable principal amount. Any Definitive Note

issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(iv) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from or through the Depositary and the Participant or Indirect Participant. The Trustee shall mail such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(iv) shall not bear the Private Placement Legend.

(d) Transfer and Exchange of Definitive Notes for Beneficial Interests.

(i) Restricted Definitive Notes to Beneficial Interests in Restricted Global Notes. If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;

(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to the Company or any of its Restricted Subsidiaries, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(F) if such Restricted Definitive Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the applicable Restricted Global Note, in the case of clause (B) above, the applicable 144A Global Note, and in the case of clause (C) above, the applicable Regulation S Global Note.

(ii) Restricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes. A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Broker-Dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Issuers;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the Holder of such Definitive Notes proposes to exchange such Notes for a beneficial interest in the Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(c) thereof; or

(2) if the Holder of such Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of a beneficial interest in the Unrestricted Global Note, a certificate from such Holder

substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.06(d)(ii), the Trustee shall cancel the Definitive Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(iii) Unrestricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes. A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraph (ii)(B), (ii)(D) or (iii) above at a time when an Unrestricted Global Note has not yet been issued, the Issuers shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

(e) Transfer and Exchange of Definitive Notes for Definitive Notes. Upon request by a Holder of Definitive Notes and such Holder' s compliance with the provisions of this Section 2.06(e), the Registrar shall register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(e):

(i) Restricted Definitive Notes to Restricted Definitive Notes. Any Restricted Definitive Note may be transferred to and registered in the

name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer will be made pursuant to a QIB in accordance with Rule 144A, then the transferor must deliver a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904 then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; or

(C) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications required by item (3) thereof, if applicable.

(ii) Restricted Definitive Notes to Unrestricted Definitive Notes. Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Broker-Dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Issuers;

(B) any such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) any such transfer is effected by a Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such

Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or

(2) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) Unrestricted Definitive Notes to Unrestricted Definitive Notes. A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(f) Exchange Offer. Upon the occurrence of the Exchange Offer in accordance with the Registration Rights Agreement, the Issuers shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate (i) one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of the beneficial interests in the Restricted Global Notes tendered for acceptance by Persons that certify in the applicable Letters of Transmittal that (x) they are not Broker-Dealers, (y) they are not participating in a distribution of the Exchange Notes and (z) they are not affiliates (as defined in Rule 144) of the Issuers, and accepted for exchange in the Exchange Offer and (ii) Unrestricted Definitive Notes in an aggregate principal amount equal to the principal amount of the Restricted Definitive Notes tendered for acceptance by Persons that certify in the applicable Letters of Transmittal that (x) they are not Broker-Dealers, (y) they are not participating in a distribution of the Exchange Notes and (z) they are not affiliates (as defined in Rule 144) of the Issuers, and accepted for exchange in the Exchange Offer. Concurrently with the issuance of such Notes, the Trustee shall cause the aggregate principal amount of the applicable Restricted Global Notes to be reduced accordingly, and the Issuers shall execute and the Trustee shall authenticate and mail to the Persons designated by the Holders of Definitive Notes so accepted Unrestricted Definitive Notes in the applicable principal amount. Any Notes that remain outstanding after the consummation of the

Exchange Offer, and Exchange Notes issued in connection with the Exchange Offer, shall be treated as a single class of securities under this Indenture.

(g) Legends. The following legends shall appear on the face of all Global Notes and Definitive Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture:

(i) Private Placement Legend. (A) Except as permitted by subparagraph (B) below, each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY RESELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO THE ISSUERS OR ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT (IF AVAILABLE), (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (E) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL IF THE ISSUERS SO REQUEST), OR (F) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON"

HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT."

(B) Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraph (b)(iv), (c)(iii), (c)(iv), (d)(ii), (d)(iii), (e)(ii), (e)(iii) or (f) of this Section 2.06 (and all Notes issued in exchange therefor or substitution thereof) shall not bear the Private Placement Legend.

(ii) Global Note Legend. Each Global Note shall bear a legend in substantially the following form:

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06(h) OF THE INDENTURE, (II) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (III) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (IV) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE ISSUERS. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("DTC") TO THE ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER

ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

(iii) Regulation S Temporary Global Note Legend. The Regulation S Temporary Global Note shall bear a legend in substantially the following form:

"THE RIGHTS ATTACHING TO THIS REGULATION S TEMPORARY GLOBAL NOTE, AND THE CONDITIONS AND PROCEDURES GOVERNING ITS EXCHANGE FOR CERTIFICATED NOTES, ARE AS SPECIFIED IN THE INDENTURE (AS DEFINED HEREIN)."

(h) Cancellation and/or Adjustment of Global Notes. At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(i) General Provisions Relating to Transfers and Exchanges.

(i) To permit registrations of transfers and exchanges, the Issuers shall execute and the Trustee shall authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 hereof or at the Registrar' s request.

(ii) No service charge shall be made to a holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Issuers may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes

or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.07, 2.10, 3.06, 3.09, 4.10, 4.14 and 9.05 hereof).

(iii) Neither the Registrar nor the Issuers shall be required to register the transfer of or exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(iv) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes shall be the valid obligations of the Issuers, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(v) The Issuers shall not be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.02 hereof and ending at the close of business on the day of selection, (B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part or (C) to register the transfer of or to exchange a Note between a Record Date and the next succeeding Interest Payment Date.

(vi) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuers may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of (and premium, if any) and interest (including Additional Interest, if any) on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuers shall be affected by notice to the contrary.

(vii) Upon surrender for registration of transfer of any Note at the office or agency of the Issuers designated pursuant to Section 4.02 hereof, the Issuers shall execute, and the Trustee shall authenticate and mail, in the name of the designated transferee or transferees, one or more replacement Notes of any authorized denomination or denominations of a like aggregate principal amount.

(viii) At the option of the Holder, Notes may be exchanged for other Notes of any authorized denomination or denominations of a like aggregate principal amount upon surrender of the Notes to be exchanged at such office or agency. Whenever any Global Notes or Definitive Notes are so surrendered for exchange, the Issuers shall execute, and the Trustee shall authenticate and mail, the replacement Global Notes and Definitive

Notes which the Holder making the exchange is entitled to in accordance with the provisions of Section 2.02 hereof.

(ix) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

Section 2.07. *Replacement Notes.* If any mutilated Note is surrendered to the Trustee, the Registrar or the Issuers and the Trustee receives evidence to its satisfaction of the ownership and destruction, loss or theft of any Note, the Issuers shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Note if the Trustee' s requirements are met. If required by the Trustee or the Issuers, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Issuers to protect the Issuers, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Issuers may charge for their expenses in replacing a Note.

Every replacement Note is a contractual obligation of the Issuers and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08. *Outstanding Notes.* The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because an Issuer or an Affiliate of an Issuer holds the Note.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than an Issuer, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

Section 2.09. *Treasury Notes.* In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by an Issuer, or by any Affiliate of an Issuer, shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or

consent, only Notes that a Responsible Officer of the Trustee knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee' s right to deliver any such direction, waiver or consent with respect to the Notes and that the pledgee is not an Issuer or any obligor upon the Notes or any Affiliate of an Issuer or of such other obligor.

Section 2.10. *Temporary Notes.* Until certificates representing Notes are ready for delivery, the Issuers may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of certificated Notes but may have variations that the Issuers consider appropriate for temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, the Issuers shall prepare and the Trustee shall authenticate definitive Notes in exchange for temporary Notes.

Holders and beneficial holders, as the case may be, of temporary Notes shall be entitled to all of the benefits accorded to Holders, or beneficial holders, respectively, of Notes under this Indenture.

Section 2.11. *Cancellation.* The Issuers at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee or, at the direction of the Trustee, the Registrar or the Paying Agent and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall destroy cancelled Notes (subject to the record retention requirement of the Exchange Act). Certification of the destruction of all cancelled Notes shall be delivered to the Issuers. The Issuers may not issue new Notes to replace Notes that they have paid or that have been delivered to the Trustee for cancellation.

Section 2.12. *Defaulted Interest.* If the Issuers default in a payment of interest on the Notes, they shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Issuers shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment, and at the same time the Issuers shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such defaulted interest as provided in this Section 2.12. The Trustee shall fix or cause to be fixed each such special record date and payment date; *provided* that no such special record date shall be less than 10 days prior to the related payment date for such defaulted interest. The Trustee shall promptly notify the Issuers of such special record date. At least 15 days before

the special record date, the Issuers (or, upon the written request of the Issuers, the Trustee in the name and at the expense of the Issuers) shall mail or cause to be mailed, first-class postage prepaid, to each Holder a notice at his or her address as it appears in the Note Register that states the special record date, the related payment date and the amount of such interest to be paid.

Subject to the foregoing provisions of this Section 2.12 and for greater certainty, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

Section 2.13. *CUSIP Numbers.* The Issuers in issuing the Notes may use CUSIP numbers (if then generally in use) and, if so, the Trustee shall use CUSIP numbers in notices of redemption as a convenience to Holders; *provided*, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuers will as promptly as practicable notify the Trustee of any change in the CUSIP numbers.

ARTICLE 3
REDEMPTION

Section 3.01. *Notices to Trustee.* If the Issuers elect to redeem Notes pursuant to Section 3.07 hereof, they shall furnish to the Trustee, at least 2 Business Days before notice of redemption is required to be mailed or caused to be mailed to Holders pursuant to Section 3.03 hereof but not more than 60 days before a redemption date, an Officer' s Certificate setting forth (a) the paragraph or subparagraph of such Note and/or Section of this Indenture pursuant to which the redemption shall occur, (b) the redemption date, (c) the principal amount of the Notes to be redeemed and (d) the redemption price.

Section 3.02. *Selection of Notes to Be Redeemed or Purchased.* If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee shall select the Notes to be redeemed or purchased (a) if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Notes are listed or (b) on a *pro rata* basis or, to the extent that selection on a *pro rata* basis is not practicable, by lot or by such other method the Trustee considers fair and appropriate. In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased shall be selected, unless otherwise provided herein, not less than 30 days nor more than 60 days prior to the redemption date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee shall promptly notify the Issuers in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected shall be in amounts of $2,000 or multiples of $1,000 in excess thereof; no Notes of $2,000 or less can be redeemed in part, except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder, even if not $2,000 or a multiple of $1,000 in excess thereof, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03. *Notice of Redemption.* Subject to Section 3.09 hereof, the Issuers shall mail or cause to be mailed by first-class mail notices of redemption at least 30 days but not more than 60 days prior to the redemption date to each Holder of Notes to be redeemed at such Holder' s registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with Article 8 or Article 13 hereof. Except as set forth in Section 3.07(b) hereof, notices of redemption may not be conditional.

The notice shall identify the Notes to be redeemed and shall state:

(a) the redemption date;

(b) the redemption price;

(c) if any Note is to be redeemed in part only, the portion of the principal amount of that Note that is to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion of the original Note representing the same indebtedness to the extent not redeemed will be issued in the name of the Holder of the Notes upon cancellation of the original Note;

(d) the name and address of the Paying Agent;

(e) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(f) that, unless the Issuers default in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;

(g) the paragraph or subparagraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed;

(h) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes; and

(i) if in connection with a redemption pursuant to Section 3.07(b) hereof, any condition to such redemption.

At the Issuers' request, the Trustee shall give the notice of redemption in the names of the Issuers and at their expense; *provided* that the Issuers shall have delivered to the Trustee, at least 5 Business Days before notice of redemption is required to be mailed or caused to be mailed to Holders pursuant to this Section 3.03 (unless a shorter notice shall be agreed to by the Trustee), an Officer' s Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04. *Effect of Notice of Redemption.* Once notice of redemption is mailed in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price (except as provided for in Section 3.07(b) hereof). The notice, if mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the Holder of any Note designated for redemption in whole or in part shall not affect the validity of the proceedings for the redemption of any other Note. Subject to Section 3.05 hereof, on and after the redemption date, interest ceases to accrue on Notes or portions of Notes called for redemption.

Section 3.05. *Deposit of Redemption or Purchase Price.* Prior to 10:00 a.m. (New York City time) on the redemption or purchase date, the Issuers shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued and unpaid interest (including Additional Interest, if any) on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent shall promptly return to the Issuers any money deposited with the Trustee or the Paying Agent by the Issuers in excess of the amounts necessary to pay the redemption price of, and accrued and unpaid interest on, all Notes to be redeemed or purchased.

If the Issuers comply with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest shall cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after a Record Date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest to the redemption or purchase date shall be paid to the Person in whose name such Note was registered at the close of business on such Record Date. If any Note called for redemption or purchase shall not be so paid upon surrender for redemption or purchase because of the failure of the Issuers to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase

date until such principal is paid, and to the extent lawful on any interest accrued to the redemption or purchase date not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06. *Notes Redeemed or Purchased in Part.* Upon surrender of a Note that is redeemed or purchased in part, the Issuers shall issue and the Trustee shall authenticate for the Holder at the expense of the Issuers a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered representing the same indebtedness to the extent not redeemed or purchased; *provided* that each new Note will be in a principal amount of $2,000 or a multiple of $1,000 in excess thereof. It is understood that, notwithstanding anything in this Indenture to the contrary, only an Authentication Order and not an Opinion of Counsel or Officer' s Certificate is required for the Trustee to authenticate such new Note.

Section 3.07. *Optional Redemption.* (a) At any time prior to June 1, 2011, the Issuers may redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' prior notice mailed by first class mail to the registered address of each Holder of Notes, at a redemption price equal to 100% of the principal amount of the Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest and Additional Interest, if any, to the date of redemption (the "**Redemption Date**"), subject to the rights of Holders of Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date.

(b) Until June 1, 2009, the Issuers may, at their option, redeem up to 35% of the aggregate principal amount of Notes issued by it at a redemption price equal to 110.25% of the aggregate principal amount thereof, plus accrued and unpaid interest thereon and Additional Interest, if any, to the applicable Redemption Date, subject to the right of Holders of Notes of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, with the net cash proceeds of one or more Equity Offerings; *provided* that at least 50% of the sum of the aggregate principal amount of Notes originally issued under this Indenture and any Additional Notes that are Notes issued under this Indenture after the Issue Date remains outstanding immediately after the occurrence of each such redemption; *provided further* that each such redemption occurs within 90 days of the date of closing of each such Equity Offering. Notice of any redemption upon any Equity Offering may be given prior to the redemption thereof, and any such redemption or notice may, at the Issuers' discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Equity Offering.

(c) Except pursuant to clause (a) or (b) of this Section 3.07, the Notes will not be redeemable at the Issuers' option prior to June 1, 2011.

(d) On and after June 1, 2011, the Issuers may redeem the Notes, in whole or in part, upon not less than 30 nor more than 60 days' prior notice by first-class mail, postage prepaid, with a copy to the Trustee, to each Holder of

Notes at the address of such Holder appearing in the security register, at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth below, plus accrued and unpaid interest thereon and Additional Interest, if any, to the applicable Redemption Date, subject to the right of Holders of Notes of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, if redeemed during the twelve month period beginning on June 1 of each of the years indicated below:

Year	Percentage
2011	105.125%
2012	103.417%
2013	101.708%
2014 and thereafter	100.000%

(e) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Section 3.01 through Section 3.06 hereof.

Section 3.08. *Mandatory Redemption.* The Issuers shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

Section 3.09. *Offers to Repurchase by Application of Excess Proceeds.* (a) In the event that, pursuant to Section 4.10 hereof, the Issuers shall be required to commence an Asset Sale Offer, they shall follow the procedures specified below.

(b) The Asset Sale Offer shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the "**Offer Period**"). No later than five Business Days after the termination of the Offer Period (the "**Purchase Date**"), the Issuers shall apply all Excess Proceeds (the "**Offer Amount**") to the purchase of Notes and, if required, Pari Passu Indebtedness (on a *pro rata* basis, if applicable), or, if less than the Offer Amount has been tendered, all Notes and Pari Passu Indebtedness tendered in response to the Asset Sale Offer. Payment for any Notes so purchased shall be made in the same manner as interest payments are made.

(c) If the Purchase Date is on or after a Record Date and on or before the related Interest Payment Date, any accrued and unpaid interest and Additional Interest, if any, up to but excluding the Purchase Date, shall be paid to the Person in whose name a Note is registered at the close of business on such Record Date, and no additional interest shall be payable to Holders who tender Notes pursuant to the Asset Sale Offer.

(d) Upon the commencement of an Asset Sale Offer, the Issuers shall send, by first-class mail, a notice to each of the Holders, with a copy to the Trustee. The notice shall contain all instructions and materials necessary to enable

such Holders to tender Notes pursuant to the Asset Sale Offer. The Asset Sale Offer shall be made to all Holders and holders of Pari Passu Indebtedness. The notice, which shall govern the terms of the Asset Sale Offer, shall state:

(i) that the Asset Sale Offer is being made pursuant to this Section 3.09 and Section 4.10 hereof and the length of time the Asset Sale Offer shall remain open;

(ii) the Offer Amount, the purchase price and the Purchase Date;

(iii) that any Note not tendered or accepted for payment shall continue to accrue interest;

(iv) that, unless the Issuers default in making such payment, any Note accepted for payment pursuant to the Asset Sale Offer shall cease to accrue interest after the Purchase Date;

(v) that Holders electing to have a Note purchased pursuant to an Asset Sale Offer may elect to have Notes purchased in denominations of $2,000 and multiples of $1,000 in excess thereof;

(vi) that Holders electing to have a Note purchased pursuant to any Asset Sale Offer shall be required to surrender the Note, with the form entitled "**Option of Holder to Elect Purchase**" attached to the Note completed, or transfer by book-entry transfer, to the Issuers, the Depositary, if appointed by the Issuers, or a Paying Agent at the address specified in the notice at least three days before the Purchase Date;

(vii) that Holders shall be entitled to withdraw their election if any of the Issuers, the Depositary or the Paying Agent, as the case may be, receives, not later than the expiration of the Offer Period, a telegram, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;

(viii) that, if the aggregate principal amount of Notes and Pari Passu Indebtedness surrendered by the holders thereof exceeds the Offer Amount, the Trustee shall select the Notes and such Pari Passu Indebtedness to be purchased on a *pro rata* basis based on the accreted value or principal amount of the Notes or such Pari Passu Indebtedness tendered (with such adjustments as may be deemed appropriate by the Trustee so that only Notes in denominations of $2,000, or multiples of $1,000 in excess thereof, shall be purchased); and

(ix) that Holders whose Notes were purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion

of the Notes surrendered (or transferred by book-entry transfer) representing the same indebtedness to the extent not repurchased.

(e) On or before the Purchase Date, the Issuers shall, to the extent lawful, (i) accept for payment, on a *pro rata* basis to the extent necessary, the Offer Amount of Notes or portions thereof validly tendered pursuant to the Asset Sale Offer, or if less than the Offer Amount has been tendered, all Notes tendered and (ii) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer' s Certificate stating the aggregate principal amount of Notes or portions thereof so tendered.

(f) The Issuers, the Depositary or the Paying Agent, as the case may be, shall promptly mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes properly tendered by such Holder and accepted by the Issuers for purchase, and the Issuers shall promptly issue a new Note, and the Trustee, upon receipt of an Authentication Order, shall authenticate and mail or deliver (or cause to be transferred by book-entry) such new Note to such Holder (it being understood that, notwithstanding anything in this Indenture to the contrary, no Opinion of Counsel or Officer' s Certificate is required for the Trustee to authenticate and mail or deliver such new Note) in a principal amount equal to any unpurchased portion of the Note surrendered representing the same indebtedness to the extent not repurchased; *provided*, that each such new Note shall be in a principal amount of $2,000 or a multiple of $1,000 in excess thereof. Any Note not so accepted shall be promptly mailed or delivered by the Issuers to the Holder thereof. The Issuers shall publicly announce the results of the Asset Sale Offer on or as soon as practicable after the Purchase Date.

Other than as specifically provided in this Section 3.09 or Section 4.10 hereof, any purchase pursuant to this Section 3.09 shall be made pursuant to the applicable provisions of Section 3.01 through Section 3.06 hereof.

ARTICLE 4
COVENANTS

Section 4.01. *Payment of Notes.* The Issuers shall pay or cause to be paid the principal of, premium, if any, Additional Interest, if any, and interest on the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, Additional Interest, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than an Issuer or a Subsidiary, holds as of noon Eastern Time on the due date money deposited by the Issuers in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due.

The Issuers shall pay all Additional Interest, if any, in the same manner on the dates and in the amounts set forth in the Registration Rights Agreement.

The Issuers shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to the then applicable interest rate on the Notes to the extent lawful; they shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest and Additional Interest (without regard to any applicable grace period) at the same rate to the extent lawful.

Section 4.02. *Maintenance of Office or Agency.* The Issuers shall maintain in the Borough of Manhattan in the City of New York an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Issuers in respect of the Notes and this Indenture may be served. The Issuers shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuers shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Issuers may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Issuers of their obligation to maintain an office or agency in the Borough of Manhattan in the City of New York for such purposes. The Issuers shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Issuers hereby designate the Corporate Trust Office of the Trustee as one such office or agency of the Issuers in accordance with Section 2.03 hereof.

Section 4.03. *Reports and Other Information.* (a) Notwithstanding that the Company may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise report on an annual and quarterly basis on forms provided for such annual and quarterly reporting pursuant to rules and regulations promulgated by the SEC, the Company shall file with the SEC (and make available to the Trustee and Holders of the Notes (without exhibits), without cost to any Holder, within 15 days after the Company files them with the SEC) from and after the Issue Date,

(i) within 90 days (or any other time period then in effect under the rules and regulations of the Exchange Act with respect to the filing of a Form 10-K by a non-accelerated filer) after the end of each fiscal year, annual reports on Form 10-K, or any successor or comparable form, containing the information required to be contained therein, or required in such successor or comparable form;

(ii) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, reports on Form 10-Q containing all quarterly information that would be required to be contained in Form 10-Q, or any successor or comparable form;

(iii) promptly from time to time after the occurrence of an event required to be therein reported, such other reports on Form 8-K, or any successor or comparable form; and

(iv) any other information, documents and other reports that the Company would be required to file with the SEC if it were subject to Section 13 or 15(d) of the Exchange Act;

in each case, in a manner that complies in all material respects with the requirements specified in such form; *provided* that the Company shall not be so obligated to file such reports with the SEC if the SEC does not permit such filing, in which event the Company shall make available such information to prospective purchasers of Notes, in addition to providing such information to the Trustee and the Holders of the Notes, in each case within 15 days after the time the Company would be required to file such information with the SEC, if it were subject to Sections 13 or 15(d) of the Exchange Act. In addition, to the extent not satisfied by the foregoing, the Company shall furnish to Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(b) In the event that any direct or indirect parent company of the Company becomes a guarantor of the Notes, the Company may satisfy its obligations under this Section 4.03 with respect to financial information relating to the Company by furnishing financial information relating to such parent; *provided* that the same is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such parent, on the one hand, and the information relating to the Company and its Restricted Subsidiaries on a standalone basis, on the other hand.

(c) Notwithstanding the foregoing, the requirements of this Section 4.03 shall be deemed satisfied prior to the commencement of the Exchange Offer or the effectiveness of the Shelf Registration Statement (i) by the filing with the SEC of any Registration Statement, and any amendments thereto, with such financial information that satisfies Regulation S-X of the Securities Act or (ii) by posting reports that would be required to be filed substantially in the form required by the SEC on the Company' s website (or that of any of its parent companies) or providing such reports the Trustee, with financial information that satisfies Regulation S-X of the Securities Act, subject to exceptions consistent with the presentation of financial information in the Offering Circular, to the extent filed within the times specified in Section 4.03(a) hereof.

Section 4.04. *Compliance Certificate.* (a) Each Issuer and each Guarantor (to the extent that such Guarantor is so required under the Trust Indenture Act) shall deliver to the Trustee, within 90 days after the end of each fiscal year ending after the Issue Date, a certificate from the principal executive officer, principal financial officer or principal accounting officer stating that a review of the activities of such Issuer and, in the case of the Company, its Restricted Subsidiaries, during the preceding fiscal year has been made under the supervision of the signing Officer with a view to determining whether such Issuer has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to such Officer signing such certificate, that to the best of his or her knowledge such Issuer has kept, observed, performed and fulfilled each and every condition and covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions, covenants and conditions of this Indenture (or, if a Default shall have occurred, describing all such Defaults of which he or she may have knowledge and what action such Issuer is taking or proposes to take with respect thereto).

(b) When any Default has occurred and is continuing under this Indenture, or if the Trustee or the holder of any other evidence of Indebtedness of the Issuers or any of their respective Subsidiaries gives any notice or takes any other action with respect to a claimed Default, the Issuers shall promptly (which shall be no more than five (5) Business Days) deliver to the Trustee by registered or certified mail or by facsimile transmission an Officer' s Certificate specifying such event and what action the Issuers propose to take with respect thereto.

Section 4.05. *Taxes.* The Company shall pay, and the Company shall cause each of its Restricted Subsidiaries to pay, prior to delinquency, all material taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate negotiations or proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders of the Notes.

Section 4.06. *Stay, Extension and Usury Laws.* Each of the Issuers and each of the Guarantors covenant (to the extent that they may lawfully do so) that they shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and each of the Issuers and each of the Guarantors (to the extent that they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and covenant that they shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07. *Limitation on Restricted Payments. (a)* The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

(i) declare or pay any dividend or make any payment or distribution on account of the Company' s, or any of its Restricted Subsidiaries' Equity Interests, including any dividend or distribution payable in connection with any merger or consolidation other than:

(A) dividends or distributions by the Company payable solely in Equity Interests (other than Disqualified Stock) of the Company; or

(B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly Owned Subsidiary, a majority of such class is owned by the Company or another Restricted Subsidiary and the Company or a Restricted Subsidiary receives at least its *pro rata* share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities;

(ii) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Company or any direct or indirect parent of the Company, including in connection with any merger or consolidation;

(iii) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value in each case, prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness, other than:

(A) Indebtedness permitted under clauses (vii) and (viii) of Section 4.09(b) hereof; or

(B) the purchase, repurchase or other acquisition of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of purchase, repurchase or acquisition; or

(iv) make any Restricted Investment

(all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as "**Restricted Payments**"), unless, at the time of such Restricted Payment:

(1) no Default shall have occurred and be continuing or would occur as a consequence thereof;

(2) immediately after giving effect to such transaction on a *pro forma* basis, the Company could incur $1.00 of additional Indebtedness under Section 4.09(a) hereof; and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Company and its Restricted Subsidiaries after the Issue Date (including Restricted Payments permitted by clauses (i), (ii) (with respect to the payment of dividends pursuant to clause (b)), (v), (vi), (ix) and (xiv) (to the extent not deducted in calculating Consolidated Net Income) of Section 4.07(b) hereof, but excluding all other Restricted Payments permitted by Section 4.07(b) hereof), is less than the sum of (without duplication):

(a) 50% of the Consolidated Net Income of the Company for the period (taken as one accounting period) beginning April 1, 2006, to the end of the Company' s most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment, or, in the case such Consolidated Net Income for such period is a deficit, minus 100% of such deficit; plus

(b) 100% of the aggregate net cash proceeds and the fair market value, as determined in good faith by the Company, of marketable securities or other property received by the Company since immediately after the Issue Date (other than net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness, Disqualified Stock or Preferred Stock pursuant to clause (xii)(a) of Section 4.09(b) hereof) from the issue or sale of:

(i) (A) Equity Interests of the Company, including Treasury Capital Stock, but excluding cash proceeds and the fair market value, as determined in good faith by the Company, of marketable securities or other property received from the sale of:

(x) Equity Interests to members of management, directors or consultants of the Company, any direct or indirect parent company of the Company and the Company' s Subsidiaries after the Issue Date to the extent such amounts have been applied to Restricted Payments made in accordance with clause (iv) of Section 4.07(b) hereof; and

(y) Designated Preferred Stock and

and (B) to the extent such net cash proceeds are actually contributed to the Company, Equity Interests of any direct

or indirect parent company of the Company (excluding contributions of the proceeds from the sale of Designated Preferred Stock of such parent company or contributions to the extent such amounts have been applied to Restricted Payments made in accordance with clause (iv) of Section 4.07(b) hereof); or

(ii) debt securities of the Company that have been converted into or exchanged for such Equity Interests of the Company;

provided, however, that this clause (b) shall not include the proceeds from (W) Refunding Capital Stock, (X) Equity Interests or convertible debt securities of the Company sold to a Subsidiary, as the case may be, (Y) Disqualified Stock or debt securities that have been converted into Disqualified Stock or (Z) Excluded Contributions; plus

(c) 100% of the aggregate amount of cash and the fair market value, as determined in good faith by the Company, of marketable securities or other property contributed to the capital of the Company following the Issue Date (other than net cash proceeds (i) to the extent such net cash proceeds have been used to incur Indebtedness, Disqualified Stock or Preferred Stock pursuant to clause (xii)(a) of Section 4.09(b) hereof, (ii) contributed by a Subsidiary or (iii) constituting an Excluded Contribution); plus

(d) 100% of the aggregate amount received (which amount shall not increase Consolidated Net Income) in cash and the fair market value, as determined in good faith by the Company, of marketable securities or other property received by means of:

(i) the sale or other disposition (other than to the Company or a Restricted Subsidiary) of Restricted Investments made by the Company or its Restricted Subsidiaries and repurchases and redemptions of such Restricted Investments from the Company or its Restricted Subsidiaries and repayments of loans or advances, which constitute Restricted Investments by the Company or its Restricted Subsidiaries, in each case after the Issue Date; or, without duplication,

(ii) the sale (other than to the Company or a Restricted Subsidiary) of the stock of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary (other than in each case to the extent the Investment in such Unrestricted Subsidiary was made by

the Company or a Restricted Subsidiary pursuant to clause (vii) of Section 4.07(b) hereof or to the extent such Investment constituted a Permitted Investment) or a dividend from an Unrestricted Subsidiary after the Issue Date; *plus*

(e) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary after the Issue Date, the fair market value of the Investment in such Unrestricted Subsidiary, as determined by the Company in good faith or if, in the case of an Unrestricted Subsidiary, such fair market value may exceed $40.0 million, in writing by an Independent Financial Advisor, at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary, except to the extent the Investment in such Unrestricted Subsidiary was made by the Company or a Restricted Subsidiary pursuant to clause (vii) of Section 4.07(b) hereof or to the extent such Investment constituted a Permitted Investment.

(b) The foregoing provisions of Section 4.07(a) hereof shall not prohibit:

(i) the payment of any dividend within 60 days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of this Indenture;

(ii) (A) the redemption, repurchase, retirement or other acquisition of any Equity Interests ("**Treasury Capital Stock**") or Subordinated Indebtedness of the Issuers or any Equity Interests of any direct or indirect parent company of the Company, in exchange for, or out of the proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary) of, Equity Interests of the Company or any direct or indirect parent company of the Company to the extent contributed to the Company as common equity (in each case, other than any Disqualified Stock) ("**Refunding Capital Stock**") and (B) if immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon was permitted under clause (vi) of this Section 4.07(b), the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any direct or indirect parent company of the Company) in an aggregate amount per year no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(iii) the redemption, repurchase or other acquisition or retirement of Subordinated Indebtedness of the Issuers or a Guarantor made in exchange for, or out of the proceeds of the substantially

concurrent sale of, new Indebtedness of the Issuers or a Guarantor, as the case may be, which is incurred in compliance with Section 4.09 hereof so long as:

(A) the principal amount or accreted value of such new Indebtedness does not exceed the principal amount of (or accreted value, if applicable), plus any accrued and unpaid interest on, the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired for value, plus the amount of any reasonable premium to be paid (including reasonable tender premiums) any reasonable fees and expenses incurred in connection with the issuance of such new Indebtedness;

(B) such new Indebtedness is subordinated to the Notes or the applicable Guarantee at least to the same extent as such Subordinated Indebtedness so purchased, exchanged, redeemed, repurchased, acquired or retired for value;

(C) such new Indebtedness has a final scheduled maturity date equal to or later than the final scheduled maturity date of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired; and

(D) such new Indebtedness has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired;

(iv) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) of the Company or any of its direct or indirect parent companies held by any future, present or former employee, director or consultant of the Company, any of its Subsidiaries or any of its direct or indirect parent companies pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement; *provided, however*, that the aggregate Restricted Payments made under this clause (iv) do not exceed in any calendar year $15.0 million (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum (without giving effect to the following proviso) of $30.0 million in any calendar year; *provided further* that such amount in any calendar year may be increased by an amount not to exceed:

(A) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Company and, to the extent contributed to the Company as equity (other than Disqualified Stock), Equity Interests of any of the Company' s direct or indirect

parent companies, in each case to members of management, directors or consultants of the Company, any of its Subsidiaries or any of its direct or indirect parent companies that occurs after the Issue Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments; plus

(B) the cash proceeds of key man life insurance policies received by the Company or its Restricted Subsidiaries after the Issue Date; less

(C) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (A) and (B) of this clause (iv);

and *provided further* that cancellation of Indebtedness owing to the Company or any of its Restricted Subsidiaries from members of management of the Company, any of the Company' s direct or indirect parent companies or any of the Company' s Restricted Subsidiaries in connection with a repurchase of Equity Interests of the Company or any of its direct or indirect parent companies will not be deemed to constitute a Restricted Payment for purposes of this Section 4.07 or any other provision of this Indenture;

(v) the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Company or any of its Restricted Subsidiaries issued in accordance with Section 4.09 hereof to the extent such dividends are included in the definition of "**Fixed Charges**";

(vi) (A) the declaration and payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) issued by the Company after the Issue Date;

(B) the declaration and payment of dividends to a direct or indirect parent company of the Company, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) of such parent corporation issued after the Issue Date, *provided* that the amount of dividends paid pursuant to this clause (B) shall not exceed the aggregate amount of cash actually contributed to the Company from the sale of such Designated Preferred Stock; or

(C) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to clause (ii) of this Section 4.07(b);

provided, however, in the case of each of (A) and (C) of this clause (vi), that for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date of issuance of such Designated Preferred Stock, after giving effect to such issuance or declaration on a *pro forma* basis, the Company and its Restricted Subsidiaries on a consolidated basis would have had a Fixed Charge Coverage Ratio of at least 2.00 to 1.00;

(vii) Investments in Unrestricted Subsidiaries having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (vii) that are at the time outstanding, without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of cash or marketable securities, not to exceed 2.0% of Total Assets at the time of such Investment (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(viii) repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(ix) the declaration and payment of dividends on the Company' s common stock (or the payment of dividends to any direct or indirect parent entity to fund a payment of dividends on such entity' s common stock), following the first public offering of the Company' s common stock or the common stock of any of its direct or indirect parent companies after the Issue Date, of up to 6% per annum of the net cash proceeds received by or contributed to the Company in or from any such public offering, other than public offerings with respect to the Company' s common stock registered on Form S-8 and other than any public sale constituting an Excluded Contribution;

(x) Restricted Payments that are made with Excluded Contributions;

(xi) other Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (xi) not to exceed the greater of (x) $60.0 million or (y) 1.5% of Total Assets at the time made;

(xii) any Restricted Payment made as part of the Transaction and the fees and expenses related thereto or owed to Affiliates (including dividends to any direct or indirect parent of the Company to permit payment by such parent of such costs), in each case to the extent permitted by (or, in the case of a dividend to fund such payment, to the extent such payment, if made by the Company, would be permitted by) Section 4.11 hereof;

(xiii) the repurchase, redemption or other acquisition or retirement for value of any Subordinated Indebtedness in accordance with the provisions similar to those described under Section 4.10 and Section 4.14 hereof; *provided* that all Notes tendered by Holders in connection with a Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed or acquired for value;

(xiv) the declaration and payment of dividends by the Company to, or the making of loans to, any direct or indirect parent in amounts required for any direct or indirect parent companies to pay, in each case without duplication,

(A) franchise taxes and other fees, taxes and expenses required to maintain their corporate existence;

(B) federal, state and local income taxes, to the extent such income taxes are attributable to the income of the Company and its Restricted Subsidiaries and, to the extent of the amount actually received from its Unrestricted Subsidiaries, in amounts required to pay such taxes to the extent attributable to the income of such Unrestricted Subsidiaries; *provided* that in each case the amount of such payments in any fiscal year does not exceed the amount that the Company and its Restricted Subsidiaries would be required to pay in respect of federal, state and local taxes for such fiscal year were the Company, its Restricted Subsidiaries and its Unrestricted Subsidiaries (to the extent described above) to pay such taxes separately from any such parent entity;

(C) customary salary, bonus and other benefits payable to officers and employees of any direct or indirect parent company of the Company to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Company and its Restricted Subsidiaries;

(D) general corporate operating and overhead costs and expenses of any direct or indirect parent company of the Company to the extent such costs and expenses are attributable to the ownership or operation of the Company and its Restricted Subsidiaries; and

(E) fees and expenses other than to Affiliates of the Company (it being understood that Goldman, Sachs & Co. shall not be deemed an Affiliate of the Company' s direct or indirect parent company by its Affiliates) related to any unsuccessful equity or debt offering of such parent entity; and

(xv) the distribution, dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to the Company or a Restricted Subsidiary by Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, the primary assets of which are (i) cash and/or Cash Equivalents or (ii) were contributed to such Unrestricted Subsidiary in anticipation of such distribution, dividend or other payment, as determined in good faith by the Company);

provided, however, that at the time of, and after giving effect to, any Restricted Payment permitted under clauses (vii), (xi) or (xv) of this Section 4.07(b), no Default shall have occurred and be continuing or would occur as a consequence thereof.

(c) The Company shall not permit any Unrestricted Subsidiary to become a Restricted Subsidiary except pursuant to the last sentence of the definition of "**Unrestricted Subsidiary.**" For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Company and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated shall be deemed to be Restricted Payments in an amount determined as set forth in the last sentence of the definition of "**Investment.**" Such designation shall be permitted only if a Restricted Payment in such amount would be permitted at such time, whether pursuant to Section 4.07(a) hereof or under clause (vii), (x) or (xi) of Section 4.07(b) hereof, or pursuant to the definition of "**Permitted Investments,**" and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary.

Section 4.08. *Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries. (a)* The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any such Restricted Subsidiary to:

(i) (A) pay dividends or make any other distributions to the Company or any of its Restricted Subsidiaries on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or

(B) pay any Indebtedness owed to the Company or any of its Restricted Subsidiaries;

(ii) make loans or advances to the Company or any of its Restricted Subsidiaries; or

(iii) sell, lease or transfer any of its properties or assets to the Company or any of its Restricted Subsidiaries.

(b) The restrictions in Section 4.08(a) hereof shall not apply to encumbrances or restrictions existing under or by reason of:

(i) contractual encumbrances or restrictions in effect on the Issue Date, including pursuant to the Senior Credit Facilities and the related documentation;

(ii) the indenture governing the Senior Notes, this Indenture, the Senior Notes and the Notes;

(iii) purchase money obligations for property acquired in the ordinary course of business that impose restrictions of the nature discussed in clause (iii) of Section 4.08(a) hereof on the property so acquired;

(iv) applicable law or any applicable rule, regulation or order;

(v) any agreement or other instrument of a Person acquired by the Company or any of its Restricted Subsidiaries in existence at the time of such acquisition (but not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired;

(vi) contracts for the sale of assets, including customary restrictions with respect to a Subsidiary of the Company pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Subsidiary;

(vii) Secured Indebtedness otherwise permitted to be incurred pursuant to Section 4.09 hereof and Section 4.12 hereof that limit the right of the debtor to dispose of the assets securing such Indebtedness;

(viii) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(ix) other Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries or other Restricted Subsidiaries that are not Guarantors permitted to be incurred subsequent to the Issue Date pursuant to the provisions of Section 4.09 hereof;

(x) customary provisions in joint venture agreements and other similar agreements relating solely to such joint venture;

(xi) customary provisions contained in leases or licenses of intellectual property and other agreements, in each case, entered into in the ordinary course of business; and

(xii) any encumbrances or restrictions of the type referred to in clauses (i), (ii) and (iii) of Section 4.08(a) hereof imposed by any

amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i) through (xi) of this Section 4.08(b); *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Company, no more restrictive with respect to such encumbrance and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 4.09. *Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock. (a)* The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, "**incur**" and collectively, an "**incurrence**") with respect to any Indebtedness (including Acquired Indebtedness) and the Company shall not issue any shares of Disqualified Stock and shall not permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock; *provided, however*, that the Company may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any of its Restricted Subsidiaries may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock, if the Fixed Charge Coverage Ratio on a consolidated basis for the Company and its Restricted Subsidiaries' most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued would have been at least 2.00 to 1.00, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such four quarter period; *provided, further* that the maximum amount that Restricted Subsidiaries that are not Guarantors may incur pursuant to the foregoing shall not exceed $50.0 million.

(b) The provisions of Section 4.09(a) hereof shall not apply to:

(i) the incurrence of Indebtedness under Credit Facilities by the Company or any of its Restricted Subsidiaries and the issuance and creation of letters of credit and bankers' acceptances thereunder (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof), up to an aggregate principal amount of $1,685.0 million outstanding at any one time, less principal payments actually made by the borrower thereunder in respect of Indebtedness thereunder with Net Proceeds from an Asset Sale;

(ii) the incurrence by the Company and any Guarantor of Indebtedness represented by (A) the Notes (including any Guarantee) (other than any Additional Notes) or the Senior Notes (including Guarantees thereof) and (B) any Notes or Senior Notes (including Guarantees thereof) issued in exchange for the Notes or the Senior Notes pursuant to the Registration Rights Agreement;

(iii) Indebtedness of the Company and its Restricted Subsidiaries in existence on the Issue Date (other than Indebtedness described in clauses (i) and (ii) of this Section 4.09(b));

(iv) Indebtedness (including Capitalized Lease Obligations), Disqualified Stock and Preferred Stock incurred by the Company or any of its Restricted Subsidiaries, to finance the purchase, lease or improvement of property (real or personal) or equipment (other than software) that is used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets, in an aggregate principal amount at the date of such incurrence (including all Refinancing Indebtedness (as defined in clause (xii) hereof) incurred to refinance any other Indebtedness incurred pursuant to this clause (iv)) not to exceed the greater of (x) $160.0 million and (y) 4% of Total Assets; provided, however, that such Indebtedness exists at the date of such purchase or transaction, or is created within 270 days thereafter (it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this clause (iv) shall cease to be deemed incurred or outstanding for purposes of this clause (iv) but shall be deemed incurred for the purposes of the first paragraph of this covenant from and after the first date on which the Company or such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under the first paragraph of this covenant without reliance on this clause (iv));

(v) Indebtedness incurred by the Company or any of its Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit issued in the ordinary course of business, including letters of credit in respect of workers' compensation claims, or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims; *provided, however*, that upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 30 days following such drawing or incurrence;

(vi) Indebtedness arising from agreements of the Company or its Restricted Subsidiaries providing for indemnification, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with the disposition of any business, assets or a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all

or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition; *provided, however*, that

(A) such Indebtedness is not reflected on the balance sheet of the Company, or any of its Restricted Subsidiaries (Contingent Obligations referred to in a footnote to financial statements and not otherwise reflected on the balance sheet will not be deemed to be reflected on such balance sheet for purposes of this clause (vi)(A)); and

(B) the maximum assumable liability in respect of all such Indebtedness shall at no time exceed the gross proceeds including non-cash proceeds (the fair market value of such non-cash proceeds being measured at the time received and without giving effect to any subsequent changes in value) actually received by the Company and its Restricted Subsidiaries in connection with such disposition;

(vii) Indebtedness of the Company to a Restricted Subsidiary; *provided* that any such Indebtedness owing to a Restricted Subsidiary that is not the Co-Issuer or a Guarantor is expressly subordinated in right of payment to the Notes; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Restricted Subsidiary ceasing to be a such Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Company or another Restricted Subsidiary) shall be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause (vii);

(viii) Indebtedness of a Restricted Subsidiary to the Company or another Restricted Subsidiary; *provided* that if a Guarantor incurs such Indebtedness to a Restricted Subsidiary that is not the Co-Issuer or a Guarantor, such Indebtedness is expressly subordinated in right of payment to the Notes or the Guarantee of the Notes of such Guarantor; *provided further* that any subsequent transfer of any such Indebtedness (except to the Company or another Restricted Subsidiary) shall be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause (viii);

(ix) shares of Preferred Stock of a Restricted Subsidiary issued to the Company or another Restricted Subsidiary, *provided* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock (except to the Company or another of its Restricted Subsidiaries) shall be deemed in each case to be an issuance of such shares of Preferred Stock not permitted by this clause (ix);

(x) Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes) for the purpose of limiting interest rate risk with respect to any Indebtedness permitted to be incurred pursuant to this Section 4.09, exchange rate risk or commodity pricing risk;

(xi) obligations in respect of performance, bid, appeal and surety bonds and completion guarantees provided by the Company or any of its Restricted Subsidiaries in the ordinary course of business;

(xii) (A) Indebtedness or Disqualified Stock of the Company and Indebtedness, Disqualified Stock or Preferred Stock of the Company or any Restricted Subsidiary equal to 200.0% of the net cash proceeds received by the Company since immediately after the Issue Date from the issue or sale of Equity Interests of the Company or cash contributed to the capital of the Company (in each case, other than proceeds of Disqualified Stock or sales of Equity Interests to the Company or any of its Subsidiaries) as determined in accordance with clauses (iii)(b) and (iii)(c) of Section 4.07(a) hereof to the extent such net cash proceeds or cash have not been applied pursuant to such clauses to make Restricted Payments or to make other Investments, payments or exchanges pursuant to Section 4.07(b) hereof or to make Permitted Investments (other than Permitted Investments specified in clauses (i), (ii) and (iii) of the definition thereof) and (B) Indebtedness or Disqualified Stock of the Company and Indebtedness, Disqualified Stock or Preferred Stock of the Company or any Restricted Subsidiary not otherwise permitted hereunder in an aggregate principal amount or liquidation preference, which when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred pursuant to this Section 4.09(b)(xii)(B), does not at any one time outstanding exceed $150.0 million (it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this Section 4.09(b)(xii)(B) shall cease to be deemed incurred or outstanding for purposes of this Section 4.09(b)(xii)(B) but shall be deemed incurred for the purposes of Section 4.09(a) hereof from and after the first date on which the Company or such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under Section 4.09(a) hereof without reliance on this Section 4.09(b)(xii)(B));

(xiii) the incurrence or issuance by the Company or any Restricted Subsidiary of Indebtedness, Disqualified Stock or Preferred Stock which serves to refund or refinance any Indebtedness, Disqualified Stock or Preferred Stock incurred as permitted under Section 4.09(a) hereof and clauses (ii), (iii), (iv) and (xii)(A) of this Section 4.09(b), this clause (xiii) and clause (xiv) of this Section 4.09(b), including additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay

premiums (including reasonable tender premiums), defeasance costs and fees in connection therewith (the "**Refinancing Indebtedness**") prior to its respective maturity; *provided, however*, that such Refinancing Indebtedness:

(A) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being refunded or refinanced,

(B) to the extent such Refinancing Indebtedness refinances (1) Indebtedness subordinated or *pari passu* to the Notes or any Guarantee thereof, such Refinancing Indebtedness is subordinated or *pari passu* to the Notes or the Guarantee at least to the same extent as the Indebtedness being refinanced or refunded or (2) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively, and

(C) shall not include:

(1) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Company that is not an Issuer or a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of the Company;

(2) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Company that is not an Issuer or a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or

(3) Indebtedness, Disqualified Stock or Preferred Stock of the Company or a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary;

and *provided further* that subclause (A) of this clause (xiii) will not apply to any refunding or refinancing of any Indebtedness outstanding under any Senior Indebtedness;

(xiv) Indebtedness, Disqualified Stock or Preferred Stock of (x) the Company or a Restricted Subsidiary incurred to finance an acquisition or (y) Persons that are acquired by the Company or any Restricted Subsidiary or merged into the Company or a Restricted Subsidiary in accordance with the terms of this Indenture; *provided* that after giving effect to such acquisition or merger, either

(a) the Company would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) hereof, or

(b) the Fixed Charge Coverage Ratio of the Company and the Restricted Subsidiaries is greater than immediately prior to such acquisition or merger;

(xv) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, *provided* that such Indebtedness is extinguished within two Business Days of its incurrence;

(xvi) Indebtedness of the Company or any of its Restricted Subsidiaries supported by a letter of credit issued pursuant to the Credit Facilities, in a principal amount not in excess of the stated amount of such letter of credit;

(xvii) (A) any guarantee by the Company or a Restricted Subsidiary of Indebtedness or other obligations of any Restricted Subsidiary so long as the incurrence of such Indebtedness incurred by such Restricted Subsidiary is permitted under the terms of this Indenture,

(B) any guarantee by a Restricted Subsidiary of Indebtedness of the Company provided that such guarantee is incurred in accordance with Section 4.15 hereof, or

(C) any incurrence by the Co-Issuer of Indebtedness as a co-issuer of Indebtedness of the Company that was permitted to be incurred by another provision of this covenant; and

(xviii) Indebtedness of Foreign Subsidiaries of the Company incurred not to exceed at any one time outstanding and together with any other Indebtedness incurred under this clause (xviii) 5.0% of the Total Assets of the Foreign Subsidiaries (it being understood that any Indebtedness incurred pursuant to this clause (xviii) shall cease to be deemed incurred or outstanding for purposes of this clause (xviii) but shall be deemed incurred for the purposes of Section 4.09(a) hereof from and after the first date on which the Company or such Restricted Subsidiary could have incurred such Indebtedness under Section 4.09(a) hereof without reliance on this clause(xviii)).

(c) For purposes of determining compliance with this Section 4.09:

(i) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) meets the criteria of more than one of the categories of permitted Indebtedness, Disqualified

Stock or Preferred Stock described in clauses (i) through (xviii) of Section 4.09(b) hereof or is entitled to be incurred pursuant to Section 4.09(a) hereof, the Company, in its sole discretion, shall classify or reclassify such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) and shall only be required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock in one of the above clauses; and

(ii) at the time of incurrence, the Company shall be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in Sections 4.09(a) and 4.09(b) hereof;

provided that all Indebtedness outstanding under the Credit Facilities on the Issue Date shall be treated as incurred on the Issue Date under clause (i) of Section 4.09(b) hereof.

Accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness, Disqualified Stock or Preferred Stock shall not be deemed to be an incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 4.09 but shall be included as Fixed Charges.

For purposes of determining compliance with any U.S. dollar denominated restriction on the incurrence of Indebtedness, the U.S. dollar equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced.

The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing.

Section 4.10. *Asset Sales.* (a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, consummate an Asset Sale, unless:

(i) the Company or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal

to the fair market value (as determined in good faith by the Company) of the assets sold or otherwise disposed of; and

(ii) except in the case of a Permitted Asset Swap, at least 75% of the consideration therefor received by the Company or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; *provided* however, that for purposes of this Section 4.10 and for no other purpose, each of the following shall be deemed to be in cash:

(A) any liabilities (as shown on the Company' s or such Restricted Subsidiary' s most recent balance sheet or in the footnotes thereto) of the Company or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the Notes or, in the case of liabilities of a Guarantor, the Guarantee of such Guarantor, that are assumed by the transferee of any such assets and for which the Company and all of its Restricted Subsidiaries have been validly released by all creditors in writing,

(B) any securities received by the Company or such Restricted Subsidiary from such transferee that are converted by the Company or such Restricted Subsidiary into cash (to the extent of the cash received) within 180 days following the closing of such Asset Sale, and

(C) any Designated Non-cash Consideration received by the Company or such Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (C) that is at that time outstanding, not to exceed 3.0% of Total Assets at the time of the receipt of such Designated Non-cash Consideration, with the fair market value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value.

(b) Within 450 days after the receipt of any Net Proceeds of any Asset Sale, the Company or such Restricted Subsidiary, at its option, may apply the Net Proceeds from such Asset Sale,

(i) to permanently reduce:

(A) Obligations under the Senior Indebtedness, and to correspondingly reduce commitments with respect thereto;

(B) Obligations under Indebtedness ranking *pari passu* with the Notes (and to correspondingly reduce commitments with respect thereto) or reduce Obligations under the Notes as provided under Section 3.07, through open-market purchases (to the extent such purchases are at or above 100% of

the principal amount thereof) or by making an Asset Sale Offer (in accordance with the procedures set forth under Section 4.10(c) hereof)); *provided* that in the case of a reduction of Obligations other than under the Notes, the Company shall use commercially reasonable efforts to equally and ratably reduce Obligations under the Notes as provided under Section 3.07 hereof, through open-market purchases (to the extent such purchases are at or above 100% of the principal amount thereof) or by making an offer (in accordance with the procedures set forth under Section 4.10(c) hereof) to all Holders to purchase their Notes at 100% of the principal amount thereof, plus the amount of accrued but unpaid interest, if any, on the amount of Notes that would otherwise be prepaid, or

(C) Indebtedness of a Restricted Subsidiary that is not the Co-Issuer or a Guarantor, other than Indebtedness owed to the Company or another Restricted Subsidiary,

(ii) to make (A) an Investment in any one or more businesses, *provided* that such Investment in any business is in the form of the acquisition of Capital Stock and results in the Company or another of its Restricted Subsidiaries, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (B) capital expenditures or (3) acquisitions of other assets, in each of (A), (B) and (C), used or useful in a Similar Business, or

(iii) to make an investment in (A) any one or more businesses, *provided* that such Investment in any business is in the form of the acquisition of Capital Stock and results in the Company or another of its Restricted Subsidiaries, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (B) properties or (C) acquisitions of other assets that, in each of (A), (B) and (C), replace the businesses, properties and/or assets that are the subject of such Asset Sale;

provided that, in the case of clauses (ii) and (iii) above, a binding commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment so long as the Company, or such other Restricted Subsidiary enters into such commitment with the good faith expectation that such Net Proceeds shall be applied to satisfy such commitment within 180 days of such commitment (an "**Acceptable Commitment**") provided further that if any Acceptable Commitment is later cancelled or terminated for any reason before such Net Proceeds are applied, then such Net Proceeds shall constitute Excess Proceeds.

(c) Any Net Proceeds from the Asset Sale that are not invested or applied as provided and within the time period set forth in Section 4.10(b) shall be

deemed to constitute "**Excess Proceeds.**" When the aggregate amount of Excess Proceeds exceeds $25.0 million, the Issuers shall make an offer to all Holders of the Notes and, if required by the terms of any Indebtedness that is *pari passu* with the Notes ("**Pari Passu Indebtedness**"), to the holders of such Pari Passu Indebtedness (an "**Asset Sale Offer**"), to purchase the maximum aggregate principal amount of the Notes and such Pari Passu Indebtedness that is a multiple of $1,000 (but in a minimum amount of $2,000) that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof, plus accrued and unpaid interest and Additional Interest, if any, to the date fixed for the closing of such offer, in accordance with the procedures set forth in this Indenture. The Issuers shall commence an Asset Sale Offer with respect to Excess Proceeds within ten Business Days after the date that Excess Proceeds exceed $25.0 million by mailing the notice required pursuant to the terms of this Indenture, with a copy to the Trustee.

To the extent that the aggregate amount of Notes and such Pari Passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Company may use any remaining Excess Proceeds for general corporate purposes, subject to other covenants contained in this Indenture. If the aggregate principal amount of Notes or the Pari Passu Indebtedness surrendered by such holders thereof exceeds the amount of Excess Proceeds, the Trustee shall select the Notes and such Pari Passu Indebtedness to be purchased on a *pro rata* basis based on the accreted value or principal amount of the Notes or such Pari Passu Indebtedness tendered. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero. Additionally, the Issuers, at their option, may make an Asset Sale Offer using proceeds from any Asset Sale at any time after consummation of such Asset Sale. Upon consummation of such Asset Sale Offer, any Net Proceeds not required to be used to purchase Notes pursuant to the terms of the Indenture shall not be deemed Excess Proceeds.

(d) Pending the final application of any Net Proceeds pursuant to this Section 4.10, the holder of such Net Proceeds may apply such Net Proceeds temporarily to reduce Indebtedness outstanding under a revolving credit facility or otherwise invest such Net Proceeds in any manner not prohibited by this Indenture.

(e) The Issuers shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of the Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuers shall comply with the applicable securities laws and regulations and shall not be deemed to have breached their obligations described in this Indenture by virtue thereof.

Section 4.11. *Transactions with Affiliates.* (a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, make any payment to, or

sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company (each of the foregoing, an "**Affiliate Transaction**") involving aggregate payments or consideration in excess of $5.0 million, unless:

(i) such Affiliate Transaction is on terms that are not materially less favorable to the Company or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person on an arm' s-length basis; and

(ii) the Company delivers to the Trustee with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate payments or consideration in excess of $10.0 million, a resolution adopted by the majority of the disinterested members of the board of directors of the Company approving such Affiliate Transaction and set forth in an Officer' s Certificate certifying that such Affiliate Transaction complies with clause (i) of this Section 4.11(a).

(b) The provisions of Section 4.11(a) hereof shall not apply to the following:

(i) transactions between or among the Company or any of its Restricted Subsidiaries;

(ii) Restricted Payments permitted by Section 4.07 hereof and the definition of "**Permitted Investments**";

(iii) the payment of management, consulting, monitoring and advisory fees and related expenses to the Investors pursuant to the Sponsor Management Agreement as in effect on the Issue Date, or any amendment thereto (so long as any such amendment is not disadvantageous to the Holders when taken as a whole as compared to the applicable agreement as in effect on the Issue Date);

(iv) the payment of reasonable and customary fees paid to, and indemnities provided on behalf of, officers, directors, employees or consultants of Company, any of its direct or indirect parent companies or any of its Restricted Subsidiaries;

(v) transactions in which the Company or any of its Restricted Subsidiaries, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favorable to the Company or its relevant Restricted Subsidiary than those that would have been

obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person on an arm' s-length basis;

(vi) any agreement as in effect as of the Issue Date, or any amendment thereto (so long as any such amendment is not disadvantageous to the Holders when taken as a whole as compared to the applicable agreement as in effect on the Issue Date);

(vii) the existence of, or the performance by the Company or any of its Restricted Subsidiaries of its obligations under the terms of, any stockholders agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Issue Date and any similar agreements which it may enter into thereafter; *provided, however*, that the existence of, or the performance by the Company or any of its Restricted Subsidiaries of obligations under any future amendment to any such existing agreement or under any similar agreement entered into after the Issue Date shall only be permitted by this clause (vii) to the extent that the terms of any such amendment or new agreement are not otherwise disadvantageous to the Holders when taken as a whole;

(viii) the Transaction and the payment of all fees and expenses related to the Transaction, in each case as disclosed in the Offering Circular;

(ix) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Indenture which are fair to the Company and its Restricted Subsidiaries, in the reasonable determination of the board of directors of the Company or the senior management thereof, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(x) the issuance of Equity Interests (other than Disqualified Stock) of the Company to any Permitted Holder or to any director, officer, employee or consultant;

(xi) payments by the Company or any of its Restricted Subsidiaries to any of the Investors (or their Affiliates) made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including, without limitation, in connection with acquisitions or divestitures which payments are approved by a majority of the board of directors of the Company in good faith;

(xii) payments or loans (or cancellation of loans) to employees or consultants of the Company, any of its direct or indirect parent

companies or any of its Restricted Subsidiaries and employment agreements, stock option plans and other similar arrangements with such employees or consultants which, in each case, are approved by the Company in good faith; and

(xiii) investments by the Investors in securities of the Company or any of its Restricted Subsidiaries so long as (A) the investment is being offered generally to other investors on the same or more favorable terms and (B) the investment constitutes less than 5% of the proposed or outstanding issue amount of such class of securities.

Section 4.12. *Liens.* The Company shall not, and shall not permit the Co-Issuer or any Guarantor to, directly or indirectly, create, incur, assume or suffer to exist any Lien (except Permitted Liens) that secures obligations under any Indebtedness ranking *pari passu* with or subordinated to the Notes or any related Guarantee, on any asset or property of the Company, the Co-Issuer or any Guarantor, or any income or profits therefrom, or assign or convey any right to receive income therefrom, unless:

(a) in the case of Liens securing Subordinated Indebtedness, the Notes and related Guarantees are secured by a Lien on such property, assets or proceeds that is senior in priority to such Liens; or

(b) in all other cases, the Notes or the Guarantees are equally and ratably secured, except that the foregoing shall not apply to (i) Liens securing the Notes and the related Guarantees and (ii) Liens securing Senior Indebtedness of the Company or any Guarantor.

Section 4.13. *Corporate Existence.* Subject to Article 5 hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect (a) its corporate existence, and the corporate, partnership or other existence of each of its Restricted Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Restricted Subsidiary and (b) the rights (charter and statutory), licenses and franchises of the Company and its Restricted Subsidiaries; *provided* that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of its Restricted Subsidiaries (other than the Co-Issuer), if the Company in good faith shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole.

Section 4.14. *Offer to Repurchase Upon Change of Control.* (a) If a Change of Control occurs, unless the Issuers have previously or concurrently mailed a redemption notice with respect to all the outstanding Notes as described under Section 3.07 hereof, the Issuers shall make an offer to purchase all of the Notes pursuant to the offer described below (the "**Change of Control Offer**") at a

price in cash (the "**Change of Control Payment**") equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest and Additional Interest, if any, to the date of purchase, subject to the right of Holders of the Notes of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date. Within 60 days following any Change of Control, the Issuers shall send notice of such Change of Control Offer by first-class mail, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the security register with a copy to the Trustee, with the following information:

(i) that a Change of Control Offer is being made pursuant to this Section 4.14 and that all Notes properly tendered pursuant to such Change of Control Offer will be accepted for payment by the Issuers;

(ii) the purchase price and the purchase date, which will be no earlier than 30 days nor later than 60 days from the date such notice is mailed (the "**Change of Control Payment Date**");

(iii) that any Note not properly tendered will remain outstanding and continue to accrue interest;

(iv) that unless the Issuers default in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;

(v) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender such Notes, with the form entitled "**Option of Holder to Elect Purchase**" on the reverse of such Notes completed, to the paying agent specified in the notice at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(vi) that Holders shall be entitled to withdraw their tendered Notes and their election to require the Issuers to purchase such Notes, *provided* that the paying agent receives, not later than the close of business on the 30th day following the date of the Change of Control notice, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder of the Notes, the principal amount of Notes tendered for purchase, and a statement that such Holder is withdrawing its tendered Notes and its election to have such Notes purchased;

(vii) that if the Issuers are redeeming less than all of the Notes, the Holders of the remaining Notes will be issued new Notes and such new Notes will be equal in principal amount to the unpurchased portion of the Notes surrendered. The unpurchased portion of the Notes must be equal to $2,000 or a multiple of $1,000 in excess thereof; and

(viii) the other instructions, as determined by the Issuers, consistent with this Section 4.14, that a Holder must follow.

The notice, if mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. If (a) the notice is mailed in a manner herein provided and (b) any Holder fails to receive such notice or a Holder receives such notice but it is defective, such Holder' s failure to receive such notice or such defect shall not affect the validity of the proceedings for the purchase of the Notes as to all other Holders that properly received such notice without defect. The Issuers shall comply with the requirements of Rule 14e 1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of Notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.14, the Issuers shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.14 by virtue thereof.

(b) On the Change of Control Payment Date, the Issuers shall, to the extent permitted by law,

(i) accept for payment all Notes issued by it or portions thereof properly tendered pursuant to the Change of Control Offer,

(ii) deposit with the Paying Agent an amount equal to the aggregate Change of Control Payment in respect of all Notes or portions thereof so tendered, and

(iii) deliver, or cause to be delivered, to the Trustee for cancellation the Notes so accepted together with an Officer' s Certificate to the Trustee stating that such Notes or portions thereof have been tendered to and purchased by the Issuers.

(c) The Issuers shall not be required to make a Change of Control Offer following a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.14 applicable to a Change of Control Offer made by the Issuers and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer. Notwithstanding anything to the contrary herein, a Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(d) Other than as specifically provided in this Section 4.14, any purchase pursuant to this Section 4.14 shall be made pursuant to the provisions of Sections Section 3.02, Section 3.05 and Section 3.06 hereof.

Section 4.15. *Limitation on Guarantees of Indebtedness by Restricted Subsidiaries.* The Company shall not permit any of its Wholly-Owned Subsidiaries that are Restricted Subsidiaries (and non-Wholly-Owned Subsidiaries if such non-Wholly-Owned Subsidiaries guarantee other capital markets debt securities), other than the Co-Issuer, a Guarantor or a Foreign Subsidiary guaranteeing Indebtedness of another Foreign Subsidiary, to guarantee the payment of any Indebtedness of the Issuers or any Guarantor unless:

(a) such Restricted Subsidiary within 30 days executes and delivers a supplemental indenture to this Indenture, the form of which is attached as Exhibit D hereto, providing for a Guarantee by such Restricted Subsidiary, except that with respect to a guarantee of Indebtedness of the Company, the Co-Issuer or any Guarantor:

(i) if the Notes or such Guarantor' s Guarantee are subordinated in right of payment to such Indebtedness, the Guarantee under the supplemental indenture shall be subordinated to such Restricted Subsidiary' s guarantee with respect to such Indebtedness substantially to the same extent as the Notes are subordinated to such Indebtedness; and

(ii) if such Indebtedness is by its express terms subordinated in right of payment to the Notes or such Guarantor' s Guarantee, any such guarantee by such Restricted Subsidiary with respect to such Indebtedness shall be subordinated in right of payment to such Guarantee substantially to the same extent as such Indebtedness is subordinated to the Notes; and

(b) such Restricted Subsidiary waives and shall not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Company or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Guarantee;

provided that this Section 4.15 shall not be applicable to any guarantee of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary.

Section 4.16. *Discharge and Suspension of Covenants*. (a) If after the Issue Date (i) the Notes have Investment Grade Ratings from both Rating Agencies and (ii) no Default has occurred and is continuing under this Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "**Covenant Suspension Event**"), the Company and its Restricted Subsidiaries will not be subject to the following covenants: Section 4.07 hereof, Section 4.08 hereof, Section 4.09 hereof, Section 4.10 hereof, Section 4.11 hereof, Section 4.14 hereof, Section 4.15 hereof, Section 4.17 hereof and clause (iv) of Section 5.01(a) (collectively, the "**Suspended Covenants**").

(b) In the event that the Company and its Restricted Subsidiaries are not subject to the Suspended Covenants under this Indenture for any period of time as a result of the foregoing, and on any subsequent date one or both of the Rating Agencies withdraw their Investment Grade Rating or downgrade the rating assigned to the Notes below an Investment Grade Rating, then the Company and its Restricted Subsidiaries shall thereafter again be subject to the Suspended Covenants under this Indenture with respect to future events. The period of time between the Suspension Date and the Reversion Date is referred to herein as the "**Suspension Period**." The Guarantees of the Guarantors will be suspended during the Suspension Period and reinstated upon termination thereof. Additionally, upon the occurrence of a Covenant Suspension Event, the amount of Excess Proceeds from Net Proceeds shall be reset at zero.

(c) Notwithstanding the foregoing, in the event of any reinstatement pursuant to Section 4.16(b), no action taken or omitted to be taken by the Company or any of its Restricted Subsidiaries prior to such reinstatement shall give rise to a Default or Event of Default under this Indenture with respect to the Notes; *provided* that (i) with respect to Restricted Payments made after any such reinstatement, the amount of Restricted Payments made will be calculated as though the covenant described in Section 4.07 hereof had been in effect prior to, but not during the Suspension Period; *provided* that any Subsidiaries designated as Unrestricted Subsidiaries during the Suspension Period shall automatically become Restricted Subsidiaries on the Reversion Date (subject to the Company' s right to subsequently designate them as Unrestricted in accordance with this Indenture) and (ii) all Indebtedness incurred, or Disqualified Stock issued, during the Suspension Period will be classified to have been incurred or issued pursuant to clause (iii) of Section 4.09(b).

(d) The Company shall deliver promptly to the Trustee an Officer' s Certificate notifying it of any Covenant Suspension Event or reinstatement of covenants under this Section 4.16.

Section 4.17. *Limitation on Layering.* Notwithstanding anything to the contrary, the Company shall not, and shall not permit the Co-Issuer or any Guarantor to, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) that is subordinate in right of payment to any Senior Indebtedness of the Company, the Co-Issuer or such Guarantor, as the case may be, unless such Indebtedness is either:

(a) equal in right of payment with the Notes or such Guarantor' s Guarantee of the Notes, as the case may be; or

(b) expressly subordinated in right of payment to the Notes or such Guarantor' s Guarantee of the Notes, as the case may be.

For the purposes of this Indenture, Indebtedness that is unsecured is not deemed to be subordinated or junior to Secured Indebtedness merely because it is

unsecured, and Senior Indebtedness is not deemed to be subordinated or junior to any other Senior Indebtedness merely because it has a junior priority with respect to the same collateral

Section 4.18. *Limitation on Activities of the Co-Issuer.* The Co-Issuer shall not hold any assets, become liable for any obligations or engage in any business activities; *provided* that it may be a co-obligor with respect to the Notes, the Senior Notes or any other Indebtedness issued by the Company, and may engage in any activities directly related thereto or necessary in connection therewith. The Co-Issuer shall be a Wholly-Owned Subsidiary of the Company at all times.

ARTICLE 5
SUCCESSORS

Section 5.01. *Merger, Consolidation or Sale of All or Substantially All Assets*. (a) The Company shall not consolidate or merge with or into or wind up into (whether or not the Company is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(i) either: (A) the Company is the surviving Person; or (B) the Person formed by or surviving any such consolidation or merger (if other than the Company) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation, partnership, trust or limited liability company organized or existing under the laws of the United States, any State thereof, the District of Columbia, or any territory thereof (such Person, as the case may be, being herein called the "**Successor Company**");

(ii) the Successor Company, if other than the Company, expressly assumes all the obligations of the Company under the Notes and the Registration Rights Agreement pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;

(iii) immediately after such transaction, no Default exists;

(iv) immediately after giving *pro forma* effect to such transaction and any related financing transactions, as if such transactions had occurred at the beginning of the applicable four quarter period,

(A) the Successor Company would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) hereof, or

(B) the Fixed Charge Coverage Ratio for the Successor Company, the Company and its Restricted Subsidiaries would be greater than such Ratio for the Company and its Restricted Subsidiaries immediately prior to such transaction;

(v) each Guarantor, unless it is the other party to the transactions described above, in which case Section 5.01(c)(i)(B) hereof shall apply, shall have by supplemental indenture confirmed that its Guarantee shall apply to such Person' s obligations under this Indenture, the Notes and the Registration Rights Agreement; and

(vi) the Company shall have delivered to the Trustee an Officer' s Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with this Indenture.

(b) Notwithstanding clauses (iii) and (iv) of Section 5.01(a) hereof,

(i) any Restricted Subsidiary may consolidate with or merge into or transfer all or part of its properties and assets to the Company, and

(ii) the Company may merge with an Affiliate of the Company as the case may be, solely for the purpose of reincorporating the Company in the United States or any State thereof, the District of Columbia or any territory thereof so long as the amount of Indebtedness of the Company and its Restricted Subsidiaries is not increased thereby.

(c) Subject to Section 11.06 governing release of a Guarantee upon the sale, disposition or transfer of a Guarantor, no Guarantor shall, and the Company shall not permit any Guarantor to, consolidate or merge with or into or wind up into (whether or not the Company or Guarantor is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(i) (A) such Guarantor is the surviving Person or the Person formed by or surviving any such consolidation or merger (if other than such Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation organized or existing under the laws of the jurisdiction of organization of such Guarantor, as the case may be, or the laws of the United States, any State thereof, the District of Columbia, or any territory thereof (such Guarantor or such Person, as the case may be, being herein called the "**Successor Person**");

(B) the Successor Person, if other than such Guarantor, expressly assumes all the obligations of such Guarantor under this Indenture and such Guarantor' s related Guarantee pursuant to supplemental indentures or other

documents or instruments in form reasonably satisfactory to the Trustee;

(C) immediately after such transaction, no Default exists; and

(D) the Company shall have delivered to the Trustee an Officer' s Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with this Indenture; or

(ii) the transaction is made in compliance with Section 4.10 hereof.

(d) Notwithstanding the foregoing, any Guarantor may merge into or transfer all or part of its properties and assets to another Guarantor or the Company.

(e) The Co-Issuer shall not consolidate with, merge into, sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of its property and assets to, any Person, or permit any Person to merge with or into the Co-Issuer unless:

(i) concurrently therewith, a corporate Wholly-Owned Restricted Subsidiary of the Company organized and validly existing under the laws of the United States or any jurisdiction thereof (which may be the continuing Person as a result of such transaction) shall expressly assume, by a supplemental Indenture, executed and delivered to the Trustee and in form and substance satisfactory to the Trustee, all of the obligations of an issuer under the notes, the Indenture and the Registration Rights Agreement; or

(ii) after giving effect thereto, at least one obligor on the notes shall be a corporation organized and validly existing under the laws of the United States or any jurisdiction thereof; and

(iii) immediately after such transaction, no Default or Event of Default will have occurred and be continuing.

Section 5.02. *Successor Substituted.* Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Company or the Co-Issuer in accordance with Section 5.01 hereof, the successor formed by such consolidation or into or with which the Company or the Co-Issuer, as the case may be, is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Indenture referring to the Company or the Co-Issuer, as the case may be,

shall refer instead to the successor corporation and not to the Company or the Co-Issuer, as the case may be), and may exercise every right and power of the Company or the Co-Issuer, as the case may be, under this Indenture with the same effect as if such successor Person had been named as the Company or the Co-Issuer, as the case may be, herein; *provided* that the predecessor Company shall not be relieved from the obligation to pay the principal of and interest and Additional Interest, if any, on the Notes except in the case of a sale, assignment, transfer, conveyance or other disposition of all of the assets of the Company that meets the requirements of Section 5.01 hereof.

ARTICLE 6

DEFAULTS AND REMEDIES

Section 6.01. *Events of Default*. (a) An "**Event of Default**" wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) default in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the Notes (whether or not prohibited by the subordination provisions of this Indenture);

(ii) default for 30 days or more in the payment when due of interest or Additional Interest on or with respect to the Notes (whether or not prohibited by the subordination provisions of this Indenture);

(iii) failure by the Issuers or any Guarantor for 60 days after receipt of written notice given by the Trustee or the Holders of not less 25% in principal amount of the Notes to comply with any of their respective obligations, covenants or agreements (other than a default referred to in clauses (i) and (ii) above) contained in this Indenture or the Notes;

(iv) default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries, other than Indebtedness owed to the Company or a Restricted Subsidiary, whether such Indebtedness or guarantee now exists or is created after the issuance of the Notes, if both:

(A) such default either results from the failure to pay any principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace periods) or relates to an obligation other than the obligation to pay principal of any such

Indebtedness at its stated final maturity and results in the holder or holders of such Indebtedness causing such Indebtedness to become due prior to its stated maturity; and

(B) the principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at stated final maturity (after giving effect to any applicable grace periods), or the maturity of which has been so accelerated, aggregate $50.0 million or more at any one time outstanding;

(v) failure by the Company or any Significant Subsidiary to pay final judgments aggregating in excess of $50.0 million, which final judgments remain unpaid, undischarged and unstayed for a period of more than 60 days after such judgment becomes final, and in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(vi) the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(A) commences proceedings to be adjudicated bankrupt or insolvent;

(B) consents to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under applicable Bankruptcy law;

(C) consents to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of it or for all or substantially all of its property;

(D) makes a general assignment for the benefit of its creditors; or

(E) generally is not paying its debts as they become due;

(vii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would

constitute a Significant Subsidiary, in a proceeding in which the Company or any such Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, is to be adjudicated bankrupt or insolvent;

(B) appoints a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, or for all or substantially all of the property of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary; or

(C) orders the liquidation of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 consecutive days; or

(viii) the Guarantee of any Significant Subsidiary shall for any reason cease to be in full force and effect or be declared null and void or any responsible officer of any Guarantor that is a Significant Subsidiary, as the case may be, denies that it has any further liability under its Guarantee or gives notice to such effect, other than by reason of the termination of this Indenture or the release of any such Guarantee in accordance with this Indenture.

(b) In the event of any Event of Default specified in clause (iv) of Section 6.01(a) hereof, such Event of Default and all consequences thereof (excluding any resulting payment default, other than as a result of acceleration of the Notes) shall be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if within 20 days after such Event of Default arose:

(i) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged; or

(ii) holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default; or

(iii) the default that is the basis for such Event of Default has been cured.

Section 6.02. *Acceleration*. (a) If any Event of Default (other than an Event of Default specified in clause (vi) or (vii) of Section 6.01(a) hereof with respect to the Company) occurs and is continuing under this Indenture, the Trustee or the Holders of at least 25% in principal amount of the then total outstanding Notes may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately; *provided, however*, that so long as any Indebtedness permitted to be incurred under this Indenture as part of the Senior Credit Facilities shall be outstanding, no such acceleration shall be effective until the earlier of:

(i) acceleration of any such Indebtedness under the Senior Credit Facilities; or

(ii) five Business Days after the giving of written notice of such acceleration to the Issuers and the administrative agent under the Senior Credit Facilities.

Upon the effectiveness of such declaration, such principal and interest shall be due and payable immediately. The Trustee shall have no obligation to accelerate the Notes if and so long as a committee of its Responsible Officers in good faith determines acceleration is not in the best interest of the Holders of the Notes.

Notwithstanding the foregoing, in the case of an Event of Default arising under clause (vi) or (vii) of Section 6.01(a) hereof with respect to the Company, all outstanding Notes shall be due and payable immediately without further action or notice.

The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may on behalf of all of the Holders rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest, Additional Interest, if any, or premium that has become due solely because of the acceleration) have been cured or waived.

Section 6.03. *Other Remedies.* If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 6.04. *Waiver of Past Defaults.* Holders of not less than a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default and its consequences hereunder, except a continuing Default in the payment of the principal of, premium, if any, Additional Interest, if any, or interest on, any Note held by a non-consenting Holder (including in connection with an Asset Sale Offer or a Change of Control Offer); *provided*, subject to Section 6.02 hereof, that the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05. *Control by Majority.* Holders of a majority in principal amount of the then total outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder of a Note or that would involve the Trustee in personal liability.

Section 6.06. *Limitation on Suits.* Subject to Section 6.07 hereof, no Holder of a Note may pursue any remedy with respect to this Indenture or the Notes unless:

(a) such Holder has previously given the Trustee notice that an Event of Default is continuing;

(b) Holders of at least 25% in principal amount of the total outstanding Notes have requested the Trustee to pursue the remedy;

(c) Holders of the Notes have offered the Trustee reasonable security or indemnity against any loss, liability or expense;

(d) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and

(e) Holders of a majority in principal amount of the total outstanding Notes have not given the Trustee a direction inconsistent with such request within such 60 day period.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note.

Section 6.07. *Rights of Holders of Notes to Receive Payment.* Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, premium, if any, and Additional Interest, if any, and interest on the Note, on or after the respective due dates expressed in the Note (including in connection with an Asset Sale Offer or a Change of Control Offer), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08. *Collection Suit by Trustee.* If an Event of Default specified in Section 6.01(a)(i) or (ii) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Issuers for the whole amount of principal of, premium, if any, and Additional Interest, if any, and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09. *Restoration of Rights and Remedies.* If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceedings, the Issuers, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding has been instituted.

Section 6.10. *Rights and Remedies Cumulative.* Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 2.07 hereof, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.11. *Delay or Omission Not Waiver.* No delay or omission of the Trustee or of any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 6.12. *Trustee May File Proofs of Claim.* The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes including the Co-Issuer and the Guarantors), its creditors or its property and shall be entitled and empowered to participate as a member in any official committee of creditors appointed in such matter and to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.13. *Priorities.* If the Trustee collects any money pursuant to this Article 6, it shall pay out the money in the following order:

(a) to the Trustee, its agents and attorneys for amounts due under Section 7.07 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

(b) to holders of Senior Indebtedness of the Issuers and, if such money or property has been collected from a Guarantor, to holders of Senior Indebtedness of such Guarantor, in each case to the extent required by Article 10 and/or Article 12 hereof, as applicable;

(c) to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and Additional Interest, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and Additional Interest, if any, and interest, respectively; and

(d) to the Company or to such party as a court of competent jurisdiction shall direct, including the Co-Issuer or a Guarantor, if applicable.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.13.

Section 6.14. *Undertaking for Costs*. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.14 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

ARTICLE 7
TRUSTEE

Section 7.01. *Duties of Trustee*. (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person' s own affairs.

(b) Except during the continuance of an Event of Default:

(i) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section 7.01.

(e) The Trustee shall be under no obligation to exercise any of its rights or powers under this Indenture at the request or direction of any of the Holders of the Notes unless the Holders have offered to the Trustee reasonable indemnity or security against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuers. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02. *Rights of Trustee*. (a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuers, personally or by agent or attorney at the sole cost of the Issuers and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(b) Before the Trustee acts or refrains from acting, it may require an Officer' s Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer' s Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from an Issuer shall be sufficient if signed by an Officer of such Issuer.

(f) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

(g) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture.

(h) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(j) In the event the Issuers are required to pay Additional Interest, the Issuers will provide written notice to the Trustee of the Issuers' obligation to pay Additional Interest no later than 15 days prior to the next Interest Payment Date, which notice shall set forth the amount of the Additional Interest to be paid by the Issuers. The Trustee shall not at any time be under any duty or responsibility to any Holders to determine whether the Additional Interest is payable and the amount thereof.

Section 7.03. *Individual Rights of Trustee.* The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuers or any Affiliate of the Issuers with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Section 7.10 and Section 7.11 hereof.

Section 7.04. *Trustee's Disclaimer.* The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Issuers' use of the proceeds from the Notes or any money paid to the Issuers or upon the Issuers' direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

Section 7.05. *Notice of Defaults.* If a Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to Holders of Notes a notice of the Default within 90 days after it occurs. Except in the case of a Default relating to the payment of principal, premium, if any, or interest on any Note, the Trustee may withhold from the Holders notice of any continuing Default if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders of the Notes. The Trustee shall not be deemed to know of any Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is such a Default is received by the Trustee at the Corporate Trust Office of the Trustee.

Section 7.06. *Reports by Trustee to Holders of the Notes.* Within 60 days after each May 15, beginning with the May 15 following the date of this Indenture, and for so long as Notes remain outstanding, the Trustee shall mail to the Holders of the Notes a brief report dated as of such reporting date that complies with Trust Indenture Act Section 313(a) (but if no event described in Trust Indenture Act Section 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also shall comply with Trust Indenture Act Section 313(b)(2). The Trustee shall also transmit by mail all reports as required by Trust Indenture Act Section 313(c).

A copy of each report at the time of its mailing to the Holders of Notes shall be mailed to the Issuers and filed with the SEC and each stock exchange on which the Notes are listed in accordance with Trust Indenture Act Section 313(d). The Issuers shall promptly notify the Trustee when the Notes are listed on any stock exchange.

Section 7.07. *Compensation and Indemnity.* The Issuers shall pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services hereunder as the parties shall agree in writing from time to time. The Trustee' s compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuers shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee' s agents and counsel.

The Issuers and the Guarantors, jointly and severally, shall indemnify the Trustee for, and hold the Trustee harmless against, any and all loss, damage, claims, liability or expense (including attorneys' fees) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder (including the costs and expenses of enforcing this Indenture against the Issuers or any of the Guarantors (including this Section 7.07) or defending itself against any claim whether asserted by any Holder, the Issuers or any Guarantor, or liability in connection with the acceptance, exercise or performance of any of its powers or duties hereunder). The Trustee shall notify the Issuers promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuers shall not relieve the Issuers of their obligations hereunder. The Issuers shall defend the claim and the Trustee may have separate counsel and the Issuers shall pay the fees and expenses of such counsel. The Issuers need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee' s own willful misconduct, negligence or bad faith.

The obligations of the Issuers under this Section 7.07 shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee.

To secure the payment obligations of the Issuers and the Guarantors in this Section 7.07, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(a)(vi) or (vii) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

The Trustee shall comply with the provisions of Trust Indenture Act Section 313(b)(2) to the extent applicable.

Section 7.08. *Replacement of Trustee.* A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee' s acceptance of appointment as provided in this Section 7.08. The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Issuers. The Holders of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Issuers in writing. The Issuers may remove the Trustee if:

(a) the Trustee fails to comply with Section 7.10 hereof;

(b) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(c) a custodian or public officer takes charge of the Trustee or its property; or

(d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Issuers shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Issuers.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Issuers' expense), the Issuers or the Holders of at least 10% in principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.10 hereof, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuers. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; *provided* all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.07 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Issuers' obligations under Section 7.07 hereof shall continue for the benefit of the retiring Trustee.

Section 7.09. *Successor Trustee by Merger, Etc.* If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee.

Section 7.10. *Eligibility; Disqualification.* There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any State thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $50,000,000 as set forth in its most recent published annual report of condition.

This Indenture shall always have a Trustee who satisfies the requirements of Trust Indenture Act Sections 310(a)(1), (2) and (5). The Trustee is subject to Trust Indenture Act Section 310(b).

Section 7.11. *Preferential Collection of Claims Against Issuers.* The Trustee is subject to Trust Indenture Act Section 311(a), excluding any creditor relationship listed in Trust Indenture Act Section 311(b). A Trustee who has resigned or been removed shall be subject to Trust Indenture Act Section 311(a) to the extent indicated therein.

ARTICLE 8

LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01. *Option to Effect Legal Defeasance or Covenant Defeasance.* The Issuers may, at their option and at any time, elect to have either Section 8.02 or Section 8.03 hereof applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

Section 8.02. *Legal Defeasance and Discharge.* Upon the Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Issuers and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes and Guarantees on the date the conditions set forth below are satisfied ("**Legal Defeasance**"). For this purpose, Legal Defeasance means that the Issuers shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in (a) and (b) below, and to have satisfied all their other obligations under such Notes and this Indenture including that of the Guarantors (and the Trustee, on demand of and at the expense of the Issuers, shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder:

(a) the rights of Holders of Notes to receive payments in respect of the principal of, premium, if any, and interest on the Notes when such payments are due solely out of the trust created pursuant to this Indenture referred to in Section 8.04 hereof;

(b) the Issuers' obligations with respect to Notes concerning issuing temporary Notes, registration of such Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payment and money for security payments held in trust;

(c) the rights, powers, trusts, duties and immunities of the Trustee, and the Issuer' s obligations in connection therewith; and

(d) this Section 8.02.

Subject to compliance with this Article 8, the Issuers may exercise their option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

Section 8.03. *Covenant Defeasance.* Upon the Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Issuers and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from their obligations under the covenants contained in Section 4.03, Section 4.04, Section 4.05, Section 4.07, Section 4.08, Section 4.09, Section 4.10, Section 4.11, Section 4.12, Section 4.13, Section 4.14, Section 4.15, and Section 4.17 hereof and clauses (iv) and (v) of Section 5.01(a), Section 5.01(c) and Section 5.01(d) hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied ("**Covenant Defeasance**"), and the Notes shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Issuers may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. In addition, upon the Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.03 hereof, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Section 6.01(a)(iii), Section 6.01(a)(iv), Section 6.01(a)(v), Section 6.01(a)(vi), (solely with respect to Restricted Subsidiaries that are Significant Subsidiaries), Section 6.01(a)(vii) (solely with respect to Restricted Subsidiaries that are Significant Subsidiaries) and Section 6.01(a)(viii) (solely with respect to Restricted Subsidiaries that are Significant Subsidiaries) hereof shall not constitute Events of Default.

Section 8.04. *Conditions to Legal or Covenant Defeasance.* The following shall be the conditions to the application of either Section 8.02 or Section 8.03 hereof to the outstanding Notes:

In order to exercise either Legal Defeasance or Covenant Defeasance with respect to the Notes:

(a) the Issuers must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Notes, cash in U.S. dollars,

Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest due on the Notes on the stated maturity date or on the redemption date, as the case may be, of such principal, premium, if any, or interest on such Notes and the Issuers must specify whether such Notes are being defeased to maturity or to a particular redemption date;

(b) in the case of Legal Defeasance, the Issuers shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions,

(i) the Issuers have received from, or there has been published by, the United States Internal Revenue Service a ruling, or

(ii) since the issuance of the Notes, there has been a change in the applicable U.S. federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, subject to customary assumptions and exclusions, the Holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes, as applicable, as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of Covenant Defeasance, the Issuers shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions, the Holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to such tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Default (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness, including the Senior Notes, and in each case the granting of Liens in connection therewith) shall have occurred and be continuing on the date of such deposit;

(e) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, the Senior Credit Facilities or any other material agreement or instrument (other than this Indenture) to which any Issuer or Guarantor is a party or by which any Issuer or Guarantor is bound (other than that resulting from any borrowing

of funds to be applied to make the deposit required to effect such Legal Defeasance or Covenant Defeasance and any similar and simultaneous deposit relating to other Indebtedness, including the Senior Notes, and the granting of Liens in connection therewith);

(f) the Issuers shall have delivered to the Trustee an Opinion of Counsel to the effect that, as of the date of such opinion and subject to customary assumptions and exclusions following the deposit, the trust funds will not be subject to the effect of Section 547 of Title 11 of the United States Code;

(g) the Issuers shall have delivered to the Trustee an Officer' s Certificate stating that the deposit was not made by the Issuers with the intent of defeating, hindering, delaying or defrauding any creditors of any Issuer or Guarantor or others; and

(h) the Issuers shall have delivered to the Trustee an Officer' s Certificate and an Opinion of Counsel (which Opinion of Counsel may be subject to customary assumptions and exclusions) each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance, as the case may be, have been complied with.

Section 8.05. *Deposited Money and Government Securities to Be Held in Trust; Other Miscellaneous Provisions.* Subject to Section 8.06 hereof, all money and Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "**Trustee**") pursuant to Section 8.04 hereof in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including an Issuer or a Guarantor acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium and Additional Interest, if any, and interest, but such money need not be segregated from other funds except to the extent required by law. Money and Government Securities so held in trust are not subject to Article 10 or Article 12 hereof.

The Issuers shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or Government Securities deposited pursuant to Section 8.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Anything in this Article 8 to the contrary notwithstanding, the Trustee shall deliver or pay to the Issuers from time to time upon the request of the Issuers any money or Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee

(which may be the opinion delivered under Section 8.04(a) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06. *Repayment to Issuers.* Any money deposited with the Trustee or any Paying Agent, or then held by the Issuers, in trust for the payment of the principal of, premium and Additional Interest, if any, or interest on any Note and remaining unclaimed for two years after such principal, and premium and Additional Interest, if any, or interest has become due and payable shall be paid to the Issuers on their request or (if then held by the Issuers) shall be discharged from such trust; and the Holder of such Note shall thereafter look only to the Issuers for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuers as trustee thereof, shall thereupon cease.

Section 8.07. *Reinstatement.* If the Trustee or Paying Agent is unable to apply any United States dollars or Government Securities in accordance with Section 8.02 or Section 8.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuers' obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or Section 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or Section 8.03 hereof, as the case may be; *provided* that, if the Issuers make any payment of principal of, premium and Additional Interest, if any, or interest on any Note following the reinstatement of its obligations, the Issuers shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE 9

AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01. *Without Consent of Holders of Notes.* Notwithstanding Section 9.02 hereof, the Issuers, any Guarantor (with respect to a Guarantee or this Indenture) and the Trustee may amend or supplement this Indenture and any Guarantee or Notes without the consent of any Holder:

(a) to cure any ambiguity, omission, mistake, defect or inconsistency;

(b) to provide for uncertificated Notes of such series in addition to or in place of certificated Notes;

(c) to comply with Section 5.01 hereof;

(d) to provide the assumption of the Issuers' or any Guarantor' s obligations to the Holders;

(e) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under this Indenture of any such Holder;

(f) to add covenants for the benefit of the Holders or to surrender any right or power conferred upon any Issuer or Guarantor;

(g) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act;

(h) to evidence and provide for the acceptance and appointment under this Indenture of a successor Trustee thereunder pursuant to the requirements thereof;

(i) to provide for the issuance of exchange notes or private exchange notes, which are identical to exchange notes except that they are not freely transferable;

(j) to add a Guarantor under this Indenture;

(k) to conform the text of this Indenture, Guarantees or the Notes to any provision of the "Description of Notes" section of the Offering Circular to the extent that such provision in such "Description of Notes" section was intended to be a verbatim recitation of a provision of this Indenture, Guarantee or Notes;

(l) to make any amendment to the provisions of this Indenture relating to the transfer and legending of Notes as permitted by this Indenture, including, without limitation to facilitate the issuance and administration of the Notes; *provided, however*, that (i) compliance with this Indenture as so amended would not result in Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not materially and adversely affect the rights of Holders to transfer Notes; or

(m) to make any other modifications to the Notes or the Indenture of a formal, minor or technical nature or necessary to correct a manifest error , so long as such modification does not adversely affect the rights of any Holder of the Notes in any material respect.

Upon the request of the Issuers accompanied by a resolution of their respective boards of directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee shall join with the Issuers and the Guarantors in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into such amended or supplemental indenture that affects

its own rights, duties or immunities under this Indenture or otherwise. Notwithstanding the foregoing, except to the extent required by law, no Opinion of Counsel shall be required in connection with the addition of a Guarantor under this Indenture upon execution and delivery by such Guarantor and the Trustee of a supplemental indenture to this Indenture, the form of which is attached as Exhibit D hereto, and delivery of an Officer' s Certificate.

Section 9.02. *With Consent of Holders of Notes.* Except as provided below in this Section 9.02, the Issuers and the Trustee may amend or supplement this Indenture, the Notes and the Guarantees with the consent of the Holders of at least a majority in principal amount of the Notes (including Additional Notes, if any) then outstanding voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Section 6.04 and Section 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium and Additional Interest, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Guarantees or the Notes may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes (including Additional Notes, if any) voting as a single class (including consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes). Section 2.08 hereof and Section 2.09 hereof shall determine which Notes are considered to be "outstanding" for the purposes of this Section 9.02.

Upon the request of the Issuers accompanied by a resolution of their respective boards of directors authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee shall join with the Issuers in the execution of such amended or supplemental indenture unless such amended or supplemental indenture directly affects the Trustee' s own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amended or supplemental indenture.

It shall not be necessary for the consent of the Holders of Notes under this Section 9.02 to approve the particular form of any proposed amendment or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Issuers shall mail to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Issuers to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver.

Without the consent of each affected Holder of Notes, an amendment or waiver under this Section 9.02 may not (with respect to any Notes held by a non-consenting Holder):

(a) reduce the principal amount of such Notes whose Holders must consent to an amendment, supplement or waiver;

(b) reduce the principal of or change the fixed final maturity of any such Note or alter or waive the provisions with respect to the redemption of such Notes (other than provisions relating to Section 3.09, Section 4.10 and Section 4.14 hereof to the extent that any such amendment or waiver does not have the effect of reducing the principal of or changing the fixed final maturity of any such Note or altering or waiving the provisions with respect to the redemption of such Notes);

(c) reduce the rate of or change the time for payment of interest on any Note;

(d) waive a Default in the payment of principal of or premium, if any, or interest on the Notes, except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the Notes and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in this Indenture or any Guarantee which cannot be amended or modified without the consent of all Holders;

(e) make any Note payable in money other than that stated therein;

(f) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of or premium, if any, or interest on the Notes;

(g) make any change in these amendment and waiver provisions;

(h) impair the right of any Holder to receive payment of principal of, or interest on such Holder' s Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder' s Notes;

(i) make any change in the subordination provisions hereof that would adversely affect the Holders; or

(j) except as expressly permitted by this Indenture, modify the Guarantees of any Significant Subsidiary in any manner adverse to the Holders of the Notes.

Section 9.03. *Compliance with Trust Indenture Act.* Every amendment or supplement to this Indenture or the Notes shall be set forth in an amended or supplemental indenture that complies with the Trust Indenture Act as then in effect.

Section 9.04. *Revocation and Effect of Consents.* Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder' s Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

The Issuers may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, supplement, or waiver. If a record date is fixed, then, notwithstanding the preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only such Persons, shall be entitled to consent to such amendment, supplement, or waiver or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date unless the consent of the requisite number of Holders has been obtained.

Section 9.05. *Notation on or Exchange of Notes.* The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Issuers in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

Section 9.06. *Trustee to Sign Amendments, Etc.* The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Issuers may not sign an amendment, supplement or waiver until the board of directors approves it. In executing any amendment, supplement or waiver, the Trustee shall be entitled to receive and (subject to Section 7.01 hereof) shall be fully protected in relying upon, in addition to the documents required by Section 14.04 hereof, an Officer' s Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation

of the Issuers and any Guarantors party thereto, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof (including Section 9.03). Notwithstanding the foregoing, no Opinion of Counsel will be required for the Trustee to execute any amendment or supplement adding a new Guarantor under this Indenture.

Section 9.07. *Payment for Consent.* Neither the Issuers nor any Affiliate of the Issuers shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such consideration is offered to all Holders and is paid to all Holders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

ARTICLE 10
SUBORDINATION

Section 10.01. *Agreement to Subordinate.* The Issuers agree, and each Holder by accepting a Note agrees, that the payment of all Obligations owing in respect of the Notes is subordinated in right of payment, to the extent and in the manner provided in this Article 10, to the prior payment in full of all existing and future Senior Indebtedness of the Issuers and that the subordination is for the benefit of and enforceable by the holders of such Senior Indebtedness. The Notes shall in all respects rank *pari passu* in right of payment with all existing and future Senior Subordinated Indebtedness of the Issuers, and will be senior in right of payment to all existing and future Subordinated Indebtedness of the Issuers; and only Indebtedness of the Issuers that is Senior Indebtedness shall rank senior to the Notes in accordance with the provisions set forth herein. All provisions of this Article 10 shall be subject to Section 10.12.

Section 10.02. *Liquidation, Dissolution, Bankruptcy.* Upon any payment or distribution of the assets of either Issuer to creditors upon a total or partial liquidation or a total or partial dissolution of such Issuer or in a reorganization of or similar proceeding relating to such Issuer or its property:

(a) the holders of Senior Indebtedness of such Issuer shall be entitled to receive payment in full in cash of such Senior Indebtedness before Holders shall be entitled to receive any payment; and

(b) until the Senior Indebtedness of such Issuer is paid in full in cash, any payment or distribution to which Holders would be entitled but for the subordination provisions of this Indenture shall be made to holders of such Senior Indebtedness as their interests may appear, except that Holders may receive Permitted Junior Securities.

Section 10.03. *Default on Senior Indebtedness of the Issuers.* No Issuer shall pay principal of, premium, if any, or interest on the Notes (or pay any other Obligations relating to the Notes, including Additional Interest, fees, costs, expenses, indemnities and rescission or damage claims) or make any deposit pursuant to Article 8 or Article 13 hereof and may not purchase, redeem or otherwise retire any Notes (collectively, "**pay the Notes**") (except in the form of Permitted Junior Securities) if either of the following occurs (a "**Payment Default**"):

(a) any Obligation on any Designated Senior Indebtedness of either Issuer is not paid in full in cash when due (after giving effect to any applicable grace period); or

(b) any other default on Designated Senior Indebtedness of either Issuer occurs and the maturity of such Designated Senior Indebtedness is accelerated in accordance with its terms;

unless, in either case, the Payment Default has been cured or waived and any such acceleration has been rescinded or such Designated Senior Indebtedness has been paid in full in cash; *provided, however*, that the Issuers shall be entitled to pay the Notes without regard to the foregoing if the Issuers and the Trustee receive written notice approving such payment from the Representatives of all Designated Senior Indebtedness with respect to which the Payment Default has occurred and is continuing.

During the continuance of any default (other than a Payment Default) (a "**Non-Payment Default**") with respect to any Designated Senior Indebtedness of either Issuer pursuant to which the maturity thereof may be accelerated without further notice (except such notice as may be required to effect such acceleration) or the expiration of any applicable grace periods, the Issuers shall not pay the Notes (except in the form of Permitted Junior Securities) for a period (a "**Payment Blockage Period**") commencing upon the receipt by the Trustee (with a copy to the Issuers) of written notice (a "**Blockage Notice**") of such Non-Payment Default from the Representative of such Designated Senior Indebtedness specifying an election to effect a Payment Blockage Period and ending 179 days thereafter. So long as there shall remain outstanding any Senior Indebtedness under the Senior Credit Facilities, a Blockage Notice may be given only by the administrative agent thereunder unless otherwise agreed to in writing by the requisite lenders named therein. The Payment Blockage Period shall end earlier if such Payment Blockage Period is terminated (i) by written notice to the Trustee and the Issuers from the Person or Persons who gave such Blockage Notice; (ii) because the default giving rise to such Blockage Notice is cured, waived or otherwise no longer continuing; or (iii) because such Designated Senior Indebtedness has been discharged or repaid in full in cash.

Notwithstanding the provisions described in the immediately preceding two sentences (but subject to the provisions contained in the first sentence of this

Section 10.03 and Section 10.02 hereof), unless the holders of such Designated Senior Indebtedness or the Representative of such Designated Senior Indebtedness shall have accelerated the maturity of such Designated Senior Indebtedness or a Payment Default has occurred and is continuing, the Issuers shall be entitled to resume paying the Notes after the end of such Payment Blockage Period. The Notes shall not be subject to more than one Payment Blockage Period in any consecutive 360-day period irrespective of the number of defaults with respect to Designated Senior Indebtedness of the Issuers during such period; *provided* that if any Blockage Notice is delivered to the Trustee by or on behalf of the holders of Designated Senior Indebtedness of the Issuers (other than the holders of Indebtedness under the Senior Credit Facilities), a Representative of holders of Indebtedness under the Senior Credit Facilities may give another Blockage Notice within such period. However, in no event shall the total number of days during which any Payment Blockage Period or Periods on the Notes is in effect exceed 179 days in the aggregate during any consecutive 360-day period, and there must be at least 181 days during any consecutive 360-day period during which no Payment Blockage Period is in effect. Notwithstanding the foregoing, however, no default that existed or was continuing on the date of delivery of any Blockage Notice to the Trustee shall be, or be made, the basis for a subsequent Blockage Notice unless such default shall have been waived for a period of not less than 90 days (it being acknowledged that any subsequent action, or any breach of any financial covenants during the period after the date of delivery of a Blockage Notice, that, in either case, would give rise to a Non-Payment Default pursuant to any provisions under which a Non-Payment Default previously existed or was continuing shall constitute a new Non-Payment Default for this purpose).

Section 10.04. *Acceleration of Payment of Notes.* If payment of the Notes is accelerated because of an Event of Default, the Issuers shall promptly notify the holders of the Designated Senior Indebtedness of the Issuers or the Representative of such Designated Senior Indebtedness of the acceleration; *provided* that any failure to give such notice shall have no effect whatsoever on the provisions of this Article 10. If any Designated Senior Indebtedness of the Issuers is outstanding, the Issuers may not pay the Notes until five Business Days after the Representatives of all the holders of such Designated Senior Indebtedness receive notice of such acceleration and, thereafter, may pay the Notes only if this Indenture otherwise permits payment at that time.

Section 10.05. *When Distribution Must Be Paid Over.* If a distribution is made to Holders that, due to the subordination provisions, should not have been made to them, such Holders are required to hold it in trust for the holders of Senior Indebtedness of the Issuers and pay it over to them as their interests may appear.

Section 10.06. *Subrogation.* After all Senior Indebtedness of an Issuer is paid in full and until the Notes are paid in full, Holders shall be subrogated to the rights of holders of such Senior Indebtedness to receive distributions applicable to

such Senior Indebtedness. A distribution made under this Article 10 to holders of such Senior Indebtedness which otherwise would have been made to Holders is not, as between the Issuers and Holders, a payment by the Issuers on such Senior Indebtedness.

Section 10.07. *Relative Rights.* This Article 10 defines the relative rights of Holders and holders of Senior Indebtedness of the Issuers. Nothing in this Indenture shall:

(a) impair, as between the Issuers and Holders, the obligation of the Issuers, which is absolute and unconditional, to pay principal of and interest on the Notes in accordance with their terms;

(b) prevent the Trustee or any Holder from exercising its available remedies upon a Default, subject to the rights of holders of Senior Indebtedness of the Issuers to receive payments or distributions otherwise payable to Holders and such other rights of such holders of Senior Indebtedness as set forth herein; or

(c) affect the relative rights of Holders and creditors of the Issuers other than their rights in relation to holders of Senior Indebtedness.

Section 10.08. *Subordination May Not Be Impaired by Issuers.* No right of any holder of Senior Indebtedness of the Issuers to enforce the subordination of the Indebtedness evidenced by the Notes shall be impaired by any act or failure to act by the Issuers or by their failure to comply with this Indenture.

Section 10.09. *Rights of Trustee and Paying Agent.* Notwithstanding Section 10.03 hereof, the Trustee or any Paying Agent may continue to make payments on the Notes and shall not be charged with knowledge of the existence of facts that would prohibit the making of any payments unless, not less than two Business Days prior to the date of such payment, a Responsible Officer of the Trustee receives notice satisfactory to him that payments may not be made under this Article 10. The Issuers, the Registrar, the Paying Agent, a Representative or a holder of Senior Indebtedness of the Issuers shall be entitled to give the notice; *provided, however*, that, if an issue of Senior Indebtedness of the Issuers has a Representative, only the Representative shall be entitled to give the notice.

The Trustee in its individual or any other capacity shall be entitled to hold Senior Indebtedness of the Issuers with the same rights it would have if it were not Trustee. The Registrar and the Paying Agent shall be entitled to do the same with like rights. The Trustee shall be entitled to all the rights set forth in this Article 10 with respect to any Senior Indebtedness of the Issuers which may at any time be held by it, to the same extent as any other holder of such Senior Indebtedness; and nothing in Article 7 shall deprive the Trustee of any of its rights as such holder. Nothing in this Article 10 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 7.07 hereof or any other Section of this Indenture.

Section 10.10. *Distribution or Notice to Representative.* Whenever a distribution is to be made or a notice given to holders of Senior Indebtedness of the Issuers, the distribution may be made and the notice given to their Representative (if any).

Section 10.11. *Article 10 Not to Prevent Events of Default or Limit Right to Accelerate.* The failure to make a payment pursuant to the Notes by reason of any provision in this Article 10 shall not be construed as preventing the occurrence of a Default. Nothing in this Article 10 shall have any effect on the right of the Holders or the Trustee to accelerate the maturity of the Notes.

Section 10.12. *Trust Moneys Not Subordinated.* Notwithstanding anything contained herein to the contrary, payments from money or the proceeds of Government Securities held in trust by the Trustee for the payment of principal of and interest on the Notes pursuant to Article 8 or Article 13 hereof shall not be subordinated to the prior payment of any Senior Indebtedness of the Issuers or subject to the restrictions set forth in this Article 10, and none of the Holders shall be obligated to pay over any such amount to the Issuers or any holder of Senior Indebtedness of the Issuers or any other creditor of the Issuers, *provided* that the subordination provisions of this Article 10 were not violated at the time the applicable amounts were deposited in trust pursuant to Article 8 or Article 13 hereof, as the case may be.

Section 10.13. *Trustee Entitled to Rely.* Upon any payment or distribution pursuant to this Article 10, the Trustee and the Holders shall be entitled to rely (a) upon any order or decree of a court of competent jurisdiction in which any proceedings of the nature referred to in Section 10.02 hereof are pending, (b) upon a certificate of the liquidating trustee or agent or other Person making such payment or distribution to the Trustee or to the Holders or (c) upon the Representatives of Senior Indebtedness of the Issuers for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of such Senior Indebtedness and other Indebtedness of the Issuers, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 10. In the event that the Trustee determines, in good faith, that evidence is required with respect to the right of any Person as a holder of Senior Indebtedness of the Issuers to participate in any payment or distribution pursuant to this Article 10, the Trustee shall be entitled to request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of such Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and other facts pertinent to the rights of such Person under this Article 10, and, if such evidence is not furnished, the Trustee shall be entitled to defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment. The provisions of Section 7.01 and Section 7.02 hereof shall be applicable to all actions or omissions of actions by the Trustee pursuant to this Article 10.

Section 10.14. *Trustee to Effectuate Subordination.* A Holder by its acceptance of a Note agrees to be bound by this Article 10 and authorizes and expressly directs the Trustee, on his behalf, to take such action as may be necessary or appropriate to effectuate the subordination between the Holders and the holders of Senior Indebtedness of the Issuers as provided in this Article 10 and appoints the Trustee as attorney-in-fact for any and all such purposes.

Section 10.15. *Trustee Not Fiduciary for Holders of Senior Indebtedness of the Issuers.* The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness of the Issuers and shall not be liable to any such holders if it shall mistakenly pay over or distribute to Holders or the Issuers or any other Person, money or assets to which any holders of Senior Indebtedness of the Issuers shall be entitled by virtue of this Article 10 or otherwise.

Section 10.16. *Reliance by Holders of Senior Indebtedness of the Issuers on Subordination Provisions.* Each Holder by accepting a Note acknowledges and agrees that the foregoing subordination provisions are, and are intended to be, an inducement and a consideration to each holder of any Senior Indebtedness of the Issuers, whether such Senior Indebtedness was created or acquired before or after the issuance of the Notes, to acquire and continue to hold, or to continue to hold, such Senior Indebtedness and such holder of such Senior Indebtedness shall be deemed conclusively to have relied on such subordination provisions in acquiring and continuing to hold, or in continuing to hold, such Senior Indebtedness.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Indebtedness of the Issuers may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders, without incurring responsibility to the Trustee or the Holders and without impairing or releasing the subordination provided in this Article 10 or the obligations hereunder of the Holders to the holders of the Senior Indebtedness of the Issuers, do any one or more of the following: (a) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Indebtedness of the Issuers, or otherwise amend or supplement in any manner Senior Indebtedness of the Issuers, or any instrument evidencing the same or any agreement under which Senior Indebtedness of the Issuers is outstanding; (b) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Indebtedness of the Issuers; (c) release any Person liable in any manner for the payment or collection of Senior Indebtedness of the Issuers; and (d) exercise or refrain from exercising any rights against the Issuers and any other Person.

ARTICLE 11
GUARANTEES

Section 11.01. *Guarantee.* Subject to this Article 11, each of the Guarantors hereby, jointly and severally, unconditionally guarantees to each

Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Issuers hereunder or thereunder, that: (a) the principal of, interest, premium and Additional Interest, if any, on the Notes shall be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Issuers to the Holders or the Trustee hereunder or thereunder shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

The Guarantors hereby agree that their obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuers, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuers, any right to require a proceeding first against the Issuers, protest, notice and all demands whatsoever and covenants that this Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

Each Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees) incurred by the Trustee or any Holder in enforcing any rights under this Section 11.01.

If any Holder or the Trustee is required by any court or otherwise to return to the Issuers, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Issuers or the Guarantors, any amount paid either to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this

Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Guarantee. The Guarantors shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Guarantees.

Each Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Issuers for liquidation, reorganization, should the Issuers become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Issuers' assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes or Guarantees, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Notes shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

In case any provision of any Guarantee shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

The Guarantee issued by any Guarantor shall be a general unsecured senior subordinated obligation of such Guarantor and shall be subordinated in right of payment to all existing and future Senior Indebtedness of such Guarantor, if any.

Each payment to be made by a Guarantor in respect of its Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

Section 11.02. *Limitation on Guarantor Liability.* Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of each Guarantor shall be limited to the maximum amount as will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws and after

giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 11, result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under applicable law. Each Guarantor that makes a payment under its Guarantee shall be entitled upon payment in full of all guaranteed obligations under this Indenture to a contribution from each other Guarantor in an amount equal to such other Guarantor' s *pro rata* portion of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with GAAP.

Section 11.03. *Execution and Delivery.* To evidence its Guarantee set forth in Section 11.01 hereof, each Guarantor hereby agrees that this Indenture shall be executed on behalf of such Guarantor by its President, one of its Vice Presidents or one of its Assistant Vice Presidents.

Each Guarantor hereby agrees that its Guarantee set forth in Section 11.01 hereof shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

If an Officer whose signature is on this Indenture no longer holds that office at the time the Trustee authenticates the Note, the Guarantee shall be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Guarantors.

If required by Section 4.15 hereof, the Company shall cause any Restricted Subsidiary that is not a Guarantor to comply with the provisions of Section 4.15 hereof and this Article 11, to the extent applicable.

Section 11.04. *Subrogation.* Each Guarantor shall be subrogated to all rights of Holders of Notes against the Issuers in respect of any amounts paid by any Guarantor pursuant to the provisions of Section 11.01 hereof; *provided* that, if an Event of Default has occurred and is continuing, no Guarantor shall be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Issuers under this Indenture or the Notes shall have been paid in full.

Section 11.05. *Benefits Acknowledged.* Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the guarantee and waivers made by it pursuant to its Guarantee are knowingly made in contemplation of such benefits.

Section 11.06. *Release of Guarantees.* A Guarantee by a Guarantor shall be automatically and unconditionally released and discharged, and no further

action by such Guarantor, the Issuers or the Trustee is required for the release of such Guarantor' s Guarantee, upon:

(a) (i) any sale, exchange or transfer (by merger or otherwise) of the Capital Stock of such Guarantor (including any sale, exchange or transfer), after which the applicable Guarantor is no longer a Restricted Subsidiary or all or substantially all the assets of such Guarantor which sale, exchange or transfer is made in compliance with the applicable provisions of this Indenture;

(ii) the release or discharge of the guarantee by such Guarantor of the Senior Credit Facilities or the guarantee which resulted in the creation of such Guarantee, except a discharge or release by or as a result of payment under such guarantee;

(iii) the proper designation of any Restricted Subsidiary that is a Guarantor as an Unrestricted Subsidiary; or

(iv) the Issuers exercising their Legal Defeasance option or Covenant Defeasance option in accordance with Article 8 hereof or the Issuers' obligations under this Indenture being discharged in accordance with the terms of this Indenture; and

(b) such Guarantor delivering to the Trustee an Officer' s Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in this Indenture relating to such transaction have been complied with.

ARTICLE 12

SUBORDINATION OF GUARANTEES

Section 12.01. *Agreement to Subordinate.* Each Guarantor agrees, and each Holder by accepting a Note agrees, that the obligations of such Guarantor under its Guarantee are subordinated in right of payment, to the extent and in the manner provided in this Article 12, to the prior payment in full of all existing and future Senior Indebtedness of such Guarantor and that the subordination is for the benefit of and enforceable by the holders of such Senior Indebtedness. A Guarantor' s obligations under its Guarantee shall in all respects rank *pari passu* in right of payment with all existing and future Senior Subordinated Indebtedness of such Guarantor, and will be senior in right of payment to all existing and future Subordinated Indebtedness of such Guarantor; and only Indebtedness of such Guarantor that is Senior Indebtedness shall rank senior to the obligations of such Guarantor under its Guarantee in accordance with the provisions set forth herein. All provisions of this Article 12 shall be subject to Section 12.12.

Section 12.02. *Liquidation, Dissolution, Bankruptcy.* Upon any payment or distribution of the assets of a Guarantor to creditors upon a total or partial

liquidation or a total or partial dissolution of such Guarantor or in a reorganization of or similar proceeding relating to such Guarantor or its property:

(a) the holders of Senior Indebtedness of such Guarantor shall be entitled to receive payment in full in cash of such Senior Indebtedness before Holders shall be entitled to receive any payment; and

(b) until the Senior Indebtedness of such Guarantor is paid in full in cash, any payment or distribution to which Holders would be entitled but for the subordination provisions of this Indenture shall be made to holders of such Senior Indebtedness as their interests may appear, except that Holders may receive Permitted Junior Securities.

Section 12.03. *Default on Senior Indebtedness of a Guarantor.* A Guarantor shall not make any payment pursuant to its Guarantee (or pay any other Obligations relating to its Guarantee, including Additional Interest, fees, costs, expenses, indemnities and rescission or damage claims) and may not purchase, redeem or otherwise retire any Notes (collectively, "**pay its Guarantee**") (except in the form of Permitted Junior Securities) if either of the following occurs (a "**Guarantor Payment Default**"):

(a) any Obligation on any Designated Senior Indebtedness of such Guarantor is not paid in full in cash when due (after giving effect to any applicable grace period); or

(b) any other default on Designated Senior Indebtedness of such Guarantor occurs and the maturity of such Designated Senior Indebtedness is accelerated in accordance with its terms;

unless, in either case, the Guarantor Payment Default has been cured or waived and any such acceleration has been rescinded or such Designated Senior Indebtedness has been paid in full in cash; *provided, however*, that such Guarantor shall be entitled to pay its Guarantee without regard to the foregoing if such Guarantor and the Trustee receive written notice approving such payment from the Representatives of all Designated Senior Indebtedness with respect to which the Guarantor Payment Default has occurred and is continuing.

During the continuance of any default (other than a Guarantor Payment Default) (a "**Non-Guarantor Payment Default**") with respect to any Designated Senior Indebtedness of a Guarantor pursuant to which the maturity thereof may be accelerated without further notice (except such notice as may be required to effect such acceleration) or the expiration of any applicable grace periods, such Guarantor shall not pay its Guarantee (except in the form of Permitted Junior Securities) for a period (a "**Guarantee Payment Blockage Period**") commencing upon the receipt by the Trustee (with a copy to such Guarantor and the Issuers) of written notice (a "**Guarantee Blockage Notice**") of such Non-Guarantor Payment Default from the Representative of such Designated Senior Indebtedness specifying an election to effect a Guarantee Payment Blockage Period and ending

179 days thereafter. So long as there shall remain outstanding any Senior Indebtedness under the Senior Credit Facilities, a Guarantee Blockage Notice may be given only by the administrative agent thereunder unless otherwise agreed to in writing by the requisite lenders named therein. The Guarantee Payment Blockage Period shall end earlier if such Guarantee Payment Blockage Period is terminated (i) by written notice to the Trustee, the relevant Guarantor and the Issuers from the Person or Persons who gave such Guarantee Blockage Notice; (ii) because the default giving rise to such Guarantee Blockage Notice is cured, waived or otherwise no longer continuing; or (iii) because such Designated Senior Indebtedness has been discharged or repaid in full in cash.

Notwithstanding the provisions described in the immediately preceding two sentences (but subject to the provisions contained in the first sentence of this Section 12.03 and Section 12.02 hereof), unless the holders of such Designated Senior Indebtedness or the Representative of such Designated Senior Indebtedness shall have accelerated the maturity of such Designated Senior Indebtedness or a Guarantor Payment Default has occurred and is continuing, the relevant Guarantor shall be entitled to resume paying its Guarantee after the end of such Guarantee Payment Blockage Period. Each Guarantee shall not be subject to more than one Guarantee Payment Blockage Period in any consecutive 360-day period irrespective of the number of defaults with respect to Designated Senior Indebtedness of the relevant Guarantor during such period; *provided* that if any Guarantee Blockage Notice is delivered to the Trustee by or on behalf of the holders of Designated Senior Indebtedness of such Guarantor (other than the holders of Indebtedness under the Senior Credit Facilities), a Representative of holders of Indebtedness under the Senior Credit Facilities may give another Guarantee Blockage Notice within such period. However, in no event shall the total number of days during which any Guarantee Payment Blockage Period or Periods on a Guarantee is in effect exceed 179 days in the aggregate during any consecutive 360-day period, and there must be at least 181 days during any consecutive 360-day period during which no Guarantee Payment Blockage Period is in effect. Notwithstanding the foregoing, however, no default that existed or was continuing on the date of delivery of any Guarantee Blockage Notice to the Trustee shall be, or be made, the basis for a subsequent Guarantee Blockage Notice unless such default shall have been waived for a period of not less than 90 days (it being acknowledged that any subsequent action, or any breach of any financial covenants during the period after the date of delivery of a Guarantee Blockage Notice, that, in either case, would give rise to a Non-Guarantor Payment Default pursuant to any provisions under which a Non-Guarantor Payment Default previously existed or was continuing shall constitute a new Non-Guarantor Payment Default for this purpose).

Section 12.04. *Demand for Payment.* If payment of the Notes is accelerated because of an Event of Default and a demand for payment is made on a Guarantor pursuant to Article 11 hereof, the Issuers or such Guarantor shall promptly notify the holders of the Designated Senior Indebtedness of such Guarantor or the Representative of such Designated Senior Indebtedness of such

demand; *provided* that any failure to give such notice shall have no effect whatsoever on the provisions of this Article 12. If any Designated Senior Indebtedness of a Guarantor is outstanding, such Guarantor may not pay its Guarantee until five Business Days after the Representatives of all the issuers of such Designated Senior Indebtedness receive notice of such acceleration and, thereafter, may pay its Guarantee only if this Indenture otherwise permits payment at that time.

Section 12.05. *When Distribution Must Be Paid Over.* If a distribution is made to Holders that, due to the subordination provisions, should not have been made to them, such Holders are required to hold it in trust for the holders of Senior Indebtedness of the relevant Guarantor and pay it over to them as their interests may appear.

Section 12.06. *Subrogation.* After all Senior Indebtedness of a Guarantor is paid in full and until the Notes are paid in full, Holders shall be subrogated to the rights of holders of such Senior Indebtedness to receive distributions applicable to such Senior Indebtedness. A distribution made under this Article 12 to holders of such Senior Indebtedness which otherwise would have been made to Holders is not, as between the relevant Guarantor and Holders, a payment by such Guarantor on such Senior Indebtedness.

Section 12.07. *Relative Rights.* This Article 12 defines the relative rights of Holders and holders of Senior Indebtedness of a Guarantor. Nothing in this Indenture shall:

(a) impair, as between such Guarantor and Holders, the obligation of such Guarantor, which is absolute and unconditional, to make payments under its Guarantee in accordance with its terms;

(b) prevent the Trustee or any Holder from exercising its available remedies upon a default by such Guarantor under its obligations with respect to its Guarantee, subject to the rights of holders of Senior Indebtedness of such Guarantor to receive payments or distributions otherwise payable to Holders and such other rights of such holders of Senior Indebtedness as set forth herein; or

(c) affect the relative rights of Holders and creditors of such Guarantor other than their rights in relation to holders of Senior Indebtedness.

Section 12.08. *Subordination May Not Be Impaired by a Guarantor.* No right of any holder of Senior Indebtedness of a Guarantor to enforce the subordination of the obligations of such Guarantor under its Guarantee shall be impaired by any act or failure to act by such Guarantor or by its failure to comply with this Indenture.

Section 12.09. *Rights of Trustee and Paying Agent.* Notwithstanding Section 12.03 hereof, the Trustee or any Paying Agent may continue to make payments on the Notes and shall not be charged with knowledge of the existence of facts that would prohibit the making of any payments unless, not less than two Business Days prior to the date of such payment, a Responsible Officer of the Trustee receives notice satisfactory to him that payments may not be made under this Article 12. A Guarantor, the Registrar, the Paying Agent, a Representative or a holder of Senior Indebtedness of such Guarantor shall be entitled to give the notice; *provided, however*, that, if an issue of Senior Indebtedness of such Guarantor has a Representative, only the Representative shall be entitled to give the notice.

The Trustee in its individual or any other capacity shall be entitled to hold Senior Indebtedness of a Guarantor with the same rights it would have if it were not Trustee. The Registrar and the Paying Agent shall be entitled to do the same with like rights. The Trustee shall be entitled to all the rights set forth in this Article 12 with respect to any Senior Indebtedness of a Guarantor which may at any time be held by it, to the same extent as any other holder of such Senior Indebtedness; and nothing in Article 7 shall deprive the Trustee of any of its rights as such holder. Nothing in this Article 12 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 7.07 hereof or any other Section of this Indenture.

Section 12.10. *Distribution or Notice to Representative.* Whenever a distribution is to be made or a notice given to holders of Senior Indebtedness of a Guarantor, the distribution may be made and the notice given to their Representative (if any).

Section 12.11. *Article 12 Not to Prevent Events of Default or Limit Right to Demand Payment.* The failure of a Guarantor to make a payment pursuant its Guarantee by reason of any provision in this Article 12 shall not be construed as preventing the occurrence of a default by such Guarantor under its Guarantee. Nothing in this Article 12 shall have any effect on the right of the Holders or the Trustee to make a demand for payment on a Guarantor pursuant to Article 11 hereof.

Section 12.12. *Trust Moneys Not Subordinated.* Notwithstanding anything contained herein to the contrary, payments from money or the proceeds of Government Securities held in trust by the Trustee for the payment of principal of and interest on the Notes pursuant to Article 8 or Article 13 hereof shall not be subordinated to the prior payment of any Senior Indebtedness of any Guarantor or subject to the restrictions set forth in this Article 12, and none of the Holders shall be obligated to pay over any such amount to such Guarantor or any holder of Senior Indebtedness of such Guarantor or any other creditor of such Guarantor, *provided* that the subordination provisions of this Article 12 were not violated at the time the applicable amounts were deposited in trust pursuant to Article 8 or Article 13 hereof, as the case may be

Section 12.13. *Trustee Entitled to Rely.* Upon any payment or distribution pursuant to this Article 12, the Trustee and the Holders shall be entitled to rely (a) upon any order or decree of a court of competent jurisdiction in which any proceedings of the nature referred to in Section 12.02 hereof are pending, (b) upon a certificate of the liquidating trustee or agent or other Person making such payment or distribution to the Trustee or to the Holders or (c) upon the Representatives of Senior Indebtedness of a Guarantor for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of such Senior Indebtedness and other Indebtedness of such Guarantor, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 12. In the event that the Trustee determines, in good faith, that evidence is required with respect to the right of any Person as a holder of Senior Indebtedness of a Guarantor to participate in any payment or distribution pursuant to this Article 12, the Trustee shall be entitled to request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of such Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and other facts pertinent to the rights of such Person under this Article 12, and, if such evidence is not furnished, the Trustee shall be entitled to defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment. The provisions of Section 7.01 and Section 7.02 hereof shall be applicable to all actions or omissions of actions by the Trustee pursuant to this Article 12.

Section 12.14. *Trustee to Effectuate Subordination.* A Holder by its acceptance of a Note agrees to be bound by this Article 12 and authorizes and expressly directs the Trustee, on his behalf, to take such action as may be necessary or appropriate to effectuate the subordination between the Holders and the holders of Senior Indebtedness of a Guarantor as provided in this Article 12 and appoints the Trustee as attorney-in-fact for any and all such purposes.

Section 12.15. *Trustee Not Fiduciary for Holders of Senior Indebtedness of Guarantors.* The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness of a Guarantor and shall not be liable to any such holders if it shall mistakenly pay over or distribute to Holders or such Guarantor or any other Person, money or assets to which any holders of Senior Indebtedness of such Guarantor shall be entitled by virtue of this Article 12 or otherwise.

Section 12.16. *Reliance by Holders of Senior Indebtedness of a Guarantor on Subordination Provisions.* Each Holder by accepting a Note acknowledges and agrees that the foregoing subordination provisions are, and are intended to be, an inducement and a consideration to each holder of any Senior Indebtedness of a Guarantor, whether such Senior Indebtedness was created or acquired before or after the issuance of the Notes, to acquire and continue to hold, or to continue to hold, such Senior Indebtedness and such holder of such Senior Indebtedness shall be deemed conclusively to have relied on such subordination

provisions in acquiring and continuing to hold, or in continuing to hold, such Senior Indebtedness.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Indebtedness of a Guarantor may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders, without incurring responsibility to the Trustee or the Holders and without impairing or releasing the subordination provided in this Article 12 or the obligations hereunder of the Holders to the holders of the Senior Indebtedness of such Guarantor, do any one or more of the following: (a) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Indebtedness of such Guarantor, or otherwise amend or supplement in any manner Senior Indebtedness of such Guarantor, or any instrument evidencing the same or any agreement under which Senior Indebtedness of such Guarantor is outstanding; (b) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Indebtedness of such Guarantor; (c) release any Person liable in any manner for the payment or collection of Senior Indebtedness of such Guarantor; and (d) exercise or refrain from exercising any rights against such Guarantor and any other Person.

ARTICLE 13

SATISFACTION AND DISCHARGE

Section 13.01. *Satisfaction and Discharge.* This Indenture shall be discharged and shall cease to be of further effect as to all Notes, when either:

(a) all Notes theretofore authenticated and delivered, except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust, have been delivered to the Trustee for cancellation; or

(b) (i) all Notes not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise, shall become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuers and any Issuer or Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders of the Notes, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(ii) no Default (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness) with respect to this Indenture or the Notes shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under the Senior Credit Facilities or any other material agreement or instrument (other than this Indenture) to which any Issuer or Guarantor is a party or by which any Issuer or Guarantor is bound (other than that resulting from any borrowing of funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness, including the Senior Notes, and the granting of Liens in connection therewith);

(iii) the Issuers have paid or caused to be paid all sums payable by them under this Indenture; and

(iv) the Issuers have delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Notes at maturity or the redemption date, as the case may be.

In addition, the Issuers must deliver an Officer' s Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money shall have been deposited with the Trustee pursuant to subclause (i) of clause (b) of this Section 13.01, the provisions of Section 13.02 and Section 8.06 hereof shall survive.

Section 13.02. *Application of Trust Money.* Subject to the provisions of Section 8.06 hereof, all money deposited with the Trustee pursuant to Section 13.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuers acting as their own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium and Additional Interest, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 13.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuers' and any Guarantor' s obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 13.01 hereof; *provided* that if the Issuers have made any

payment of principal of, premium and Additional Interest, if any, or interest on any Notes because of the reinstatement of its obligations, the Issuers shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

ARTICLE 14

MISCELLANEOUS

Section 14.01. *Trust Indenture Act Controls.* If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by Trust Indenture Act Section 318(c), the imposed duties shall control.

Section 14.02 . *Notices.* Any notice or communication by the Issuers, any Guarantor or the Trustee to the others is duly given if in writing and delivered in person or mailed by first-class mail (registered or certified, return receipt requested), fax or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Issuers and/or any Guarantor:

Education Management LLC
210 Sixth Avenue
Pittsburgh, Pennsylvania 15222-2603
Attention: General Counsel

If to the Trustee:

The Bank of New York
101 Barclay Street, Floor 8W
New York, New York 10286
Fax No.: (212) 815-3272
Attention: Corporate Trust Administration

The Issuers, any Guarantor or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five calendar days after being deposited in the mail, postage prepaid, if mailed by first-class mail; when receipt acknowledged, if faxed; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery; *provided* that any notice or communication delivered to the Trustee shall be deemed effective upon actual receipt thereof.

Any notice or communication to a Holder shall be mailed by first-class mail, certified or registered, return receipt requested, or by overnight air courier

guaranteeing next day delivery to its address shown on the register kept by the Registrar. Any notice or communication shall also be so mailed to any Person described in Trust Indenture Act Section 313(c), to the extent required by the Trust Indenture Act. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Issuers mail a notice or communication to Holders, they shall mail a copy to the Trustee and each Agent at the same time.

Section 14.03. *Communication by Holders of Notes with Other Holders of Notes.* Holders may communicate pursuant to Trust Indenture Act Section 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Issuers, the Trustee, the Registrar and anyone else shall have the protection of Trust Indenture Act Section 312(c).

Section 14.04. *Certificate and Opinion as to Conditions Precedent.* Upon any request or application by the Issuers or any of the Guarantors to the Trustee to take any action under this Indenture, the Issuers or such Guarantor, as the case may be, shall furnish to the Trustee:

(a) An Officer' s Certificate in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 14.05 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(b) An Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 14.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 14.05. *Statements Required in Certificate or Opinion.* Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to Section 4.04 hereof or Trust Indenture Act Section 314(a)(4)) shall comply with the provisions of Trust Indenture Act Section 314(e) and shall include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with (and, in the case of an Opinion of Counsel, may be limited to reliance on an Officer' s Certificate as to matters of fact); and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

Section 14.06. *Rules by Trustee and Agents.* The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 14.07. *No Personal Liability of Directors, Officers, Employees and Stockholders.* No director, officer, employee, incorporator or stockholder of any Issuer or Guarantor or any of their parent companies shall have any liability for any obligations of the Issuers or the Guarantors under the Notes, the Guarantees or this Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 14.08. *Governing Law.* THIS INDENTURE, THE NOTES AND ANY GUARANTEE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 14.09. *Waiver of Jury Trial.* EACH OF THE ISSUERS, THE GUARANTORS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 14.10. *Force Majeure.* In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services.

Section 14.11. *No Adverse Interpretation of Other Agreements.* This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Restricted Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 14.12. *Successors.* All agreements of the Issuers in this Indenture and the Notes shall bind their successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 11.06 hereof.

Section 14.13. *Severability.* In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 14.14. *Counterpart Originals.* The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

Section 14.15. *Table of Contents, Headings, Etc.* The Table of Contents, Cross-Reference Table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

Section 14.16. *Qualification of Indenture.* The Issuers and the Guarantors shall qualify this Indenture under the Trust Indenture Act in accordance with the terms and conditions of the Registration Rights Agreement and shall pay all reasonable costs and expenses (including attorneys' fees and expenses for the Issuers, the Guarantors and the Trustee) incurred in connection therewith, including, but not limited to, costs and expenses of qualification of this Indenture and the Notes and printing this Indenture and the Notes. The Trustee shall be entitled to receive from the Issuers and the Guarantors any such Officer' s Certificates, Opinions of Counsel or other documentation as it may reasonably request in connection with any such qualification of this Indenture under the Trust Indenture Act.

[Signatures on following page]

EDUCATION MANAGEMENT LLC

By: /s/ John R. McKeman, Jr.

Name: John R. McKeman, Jr.
Title: Chairman and Chief Executive Officer

EDUCATION MANAGEMENT FINANCE CORP.

By: /s/ John R. McKeman, Jr.

Name: John R. McKeman, Jr.
Title: President and Chief Executive Officer

AID Restaurant, Inc.

By: /s/ Simon Lumley

Name: Simon Lumley
Title: President, Secretary and Treasurer

AIH Restaurant, Inc.

By: /s/ Larry Horn

Name: Larry Horn
Title: President, Secretary and Treasurer

AIIM Restaurant, Inc.

By: /s/ Joseph L. Marzano, Jr.

Name: Joseph L. Marzano, Jr.
Title: President, Secretary and Treasurer

Academic Review, Inc.
Association for Advanced Training in the Behavioral Sciences
Argosy University Family Center, Inc.
Brown Mackie Holding Company
The Connecting Link, Inc.
EDMC Marketing and Advertising, Inc.
EDMC Aviation, Inc.
Higher Education Services, Inc.
MCM University Plaza, Inc.

By: /s/ J. Devitt Kramer

Name: J. Devitt Kramer
Title: Secretary

THE BANK OF NEW YORK, as Trustee

By: /s/ Mary Lagumina

Name: Mary Lagumina
Title: Vice President

[Face of Note]

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Regulation S Temporary Global Note Legend, if applicable pursuant to the provisions of the Indenture]

CUSIP [ ]
ISIN [ ][1]

[[RULE 144A][REGULATION S] GLOBAL NOTE
representing up to
$_____]
10 1/4% Senior Subordinated Notes due 2016

No. _____

[$_____]

EDUCATION MANAGEMENT LLC
EDUCATION MANAGEMENT FINANCE CORP.

promises to pay to CEDE & CO. or registered assigns, the principal sum [set forth on the Schedule of Exchanges of Interests in the Global Note attached hereto] [of _____ United States Dollars] on June 1, 2016.

Interest Payment Dates: June 1 and December 1

Record Dates: May 15 and November 15

[1] Rule 144A Note CUSIP: 28140JAB6
ISIN: USU27895AB43
Regulation S Note CUSIP: U27895AB4

IN WITNESS HEREOF, the Issuers have caused this instrument to be duly executed.

Dated: June 1, 2006

EDUCATION MANAGEMENT LLC

By:

_____

Name:
Title:

EDUCATION MANAGEMENT FINANCE CORP.

By:

_____

Name:
Title:

This is one of the Notes referred to in the within-mentioned Indenture:

THE BANK OF NEW YORK, as Trustee

By:

_____

Authorized Signatory

[Back of Note]

10 1/4% Senior Subordinated Notes due 2016

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. INTEREST. Education Management LLC, a Delaware limited liability company, and Education Management Finance Corp., a Delaware corporation (collectively, the "**Issuers**"), promise to pay interest on the principal amount of this Note at 10 1/4% per annum from June 1, 2006[2] until maturity and shall pay the Additional Interest, if any, payable pursuant to the Registration Rights Agreement referred to below. The Issuers will pay interest and Additional Interest, if any, semi-annually in arrears on June 1 and December 1 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each, an "**Interest Payment Date**"). Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; *provided* that the first Interest Payment Date shall be December 1, 2006. The Issuers will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at the interest rate on the Notes; they shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest and Additional Interest, if any, (without regard to any applicable grace periods) from time to time on demand at the interest rate on the Notes. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

2. METHOD OF PAYMENT. The Issuers will pay interest on the Notes and Additional Interest, if any, to the Persons who are registered Holders of Notes at the close of business on the May 15 or November 15 (whether or not a Business Day), as the case may be, next preceding the Interest Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. Payment of interest and Additional Interest, if any, may be made by check mailed to the Holders at their addresses set forth in the register of Holders, *provided* that payment by wire transfer of immediately available funds will be required with respect to principal of and interest, premium and Additional Interest, if any, on, all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to the Issuers or the Paying Agent. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

2 With respect to the Initial Notes.

3. PAYING AGENT AND REGISTRAR. Initially, The Bank of New York, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Issuers may change any Paying Agent or Registrar without notice to the Holders. The Issuers or any of their respective Subsidiaries may act in any such capacity.

4. INDENTURE. The Issuers issued the Notes under an Indenture, dated as of June 1, 2006 (the "**Indenture**"), among the Issuers, the Guarantors named therein and the Trustee. This Note is one of a duly authorized issue of notes of the Issuers designated as its 10 1/4% Senior Subordinated Notes due 2016. The Issuers shall be entitled to issue Additional Notes pursuant to Section 2.01 and 4.09 of the Indenture. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (the "**Trust Indenture Act**"). The Notes are subject to all such terms, and Holders are referred to the Indenture and such Act for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

5. OPTIONAL REDEMPTION.

(a) Except as described below under clauses 5(b) and 5(c) hereof, the Notes will not be redeemable at the Issuers' option before June 1, 2011.

(b) At any time prior to June 1, 2011, the Issuers may redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' prior notice mailed by first class mail to the registered address of each Holder of Notes, at a redemption price equal to 100% of the principal amount of the Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest and Additional Interest, if any, to the date of redemption (the "**Redemption Date**"), subject to the rights of Holders of Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date.

(c) Until June 1, 2009, the Issuers may, at their option, redeem up to 35% of the aggregate principal amount of Notes issued by them at a redemption price equal to 110.25% of the aggregate principal amount thereof, plus accrued and unpaid interest thereon and Additional Interest, if any, to the applicable Redemption Date, subject to the right of Holders of Notes of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, with the net cash proceeds of one or more Equity Offerings; *provided* that at least 50% of the sum of the aggregate principal amount of Notes originally issued under the Indenture and any Additional Notes that are Notes issued under the Indenture after the Issue Date remains outstanding immediately after the occurrence of each such redemption; *provided further* that each such redemption occurs within 90 days of the date of closing of each such Equity Offering. Notice of any redemption upon any Equity Offering may be given prior to the redemption thereof, and any such redemption or notice may, at the Issuers'

discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Equity Offering.

(d) On and after June 1, 2011, the Issuers may redeem the Notes, in whole or in part, upon not less than 30 nor more than 60 days' prior notice by first-class mail, postage prepaid, with a copy to the Trustee, to each Holder of Notes at the address of such Holder appearing in the security register, at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth below, plus accrued and unpaid interest thereon and Additional Interest, if any, to the applicable Redemption Date, subject to the right of Holders of Notes of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, if redeemed during the twelve month period beginning on June 1 of each of the years indicated below:

Year	Percentage
2011	105.125%
2012	103.417%
2013	101.708%
2014 and thereafter	100.000%

(e) Any redemption pursuant to this paragraph 5 shall be made pursuant to the provisions of Section 3.01 through Section 3.06 of the Indenture.

6. MANDATORY REDEMPTION. The Issuers shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

7. NOTICE OF REDEMPTION. Subject to Section 3.03 of the Indenture, notice of redemption will be mailed by first-class mail at least 30 days but not more than 60 days before the redemption date (except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with Article 8 or Article 13 of the Indenture) to each Holder whose Notes are to be redeemed at its registered address. Notes in denominations larger than $2,000 may be redeemed in part but only in multiples of $1,000 in excess of $2,000, unless all of the Notes held by a Holder are to be redeemed. On and after the redemption date interest ceases to accrue on Notes or portions thereof called for redemption.

8. OFFERS TO REPURCHASE.

(a) Upon the occurrence of a Change of Control, the Issuers shall make an offer (a "**Change of Control Offer**") to each Holder to repurchase all or any part (equal to $2,000 or a multiple of $1,000 in excess thereof) of each Holder' s Notes at a purchase price equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest and Additional Interest thereon, if any, to the date of purchase (the "**Change of Control Payment**"). The Change of Control Offer shall be made in accordance with Section 4.14 of the Indenture.

(b) If the Company or any of its Restricted Subsidiaries consummates an Asset Sale, within 10 Business Days of each date that Excess Proceeds exceed $25.0 million, the Issuers shall commence an offer to all Holders of the Notes and, if required by the terms of any Indebtedness that is *pari passu* with the Notes ("**Pari Passu Indebtedness**"), to the holders of such Pari Passu Indebtedness (an "**Asset Sale Offer**"), to purchase the maximum principal amount of Notes (including any Additional Notes) and such other Pari Passu Indebtedness that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof plus accrued and unpaid interest and Additional Interest thereon, if any, to the date fixed for the closing of such offer, in accordance with the procedures set forth in the Indenture. To the extent that the aggregate amount of Notes (including any Additional Notes) and such Pari Passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Issuers may use any remaining Excess Proceeds for general corporate purposes, subject to other covenants contained in the Indenture. If the aggregate principal amount of Notes or the Pari Passu Indebtedness surrendered by such holders thereof exceeds the amount of Excess Proceeds, the Trustee shall select the Notes and such Pari Passu Indebtedness to be purchased on a *pro rata* basis based on the accreted value or principal amount of the Notes or such Pari Passu Indebtedness tendered. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero. Additionally, the Issuers, at their option, may make an Asset Sale Offer using proceeds form any Asset Sale at any time after consummation of such Asset Sale. Upon consummation of such Asset Sale Offer, any Net Proceeds not required to be used to purchase Notes shall not be deemed excess proceeds. Holders of Notes that are the subject of an offer to purchase will receive an Asset Sale Offer from the Issuers prior to any related purchase date and may elect to have such Notes purchased by completing the form entitled "**Option of Holder to Elect Purchase**" attached to the Notes.

9. DENOMINATIONS, TRANSFER, EXCHANGE. The Notes are in registered form without coupons in denominations of $2,000 and multiples of $1,000 in excess thereof. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Issuers may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Issuers need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Issuers need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed.

10. SUBORDINATION. The Notes and the Guarantees are subordinated to Senior Indebtedness of the Issuers and the Guarantors on the terms and subject to the conditions set forth in the Indenture. To the extent provided in the Indenture, Senior Indebtedness must be paid before the Notes and Guarantees may be paid. The Issuers agree, and each Holder by accepting a Note agrees, to the subordination provisions contained in the Indenture and authorizes

the Trustee to give it effect and appoints the Trustee as attorney-in-fact for such purpose.

11. PERSONS DEEMED OWNERS. The registered Holder of a Note may be treated as its owner for all purposes.

12. AMENDMENT, SUPPLEMENT AND WAIVER. The Indenture, the Guarantees or the Notes may be amended or supplemented as provided in the Indenture.

13. DEFAULTS AND REMEDIES. The Events of Default relating to the Notes are defined in Section 6.01 of the Indenture. If any Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately; *provided, however*, that so long as any Indebtedness permitted to be incurred under the Indenture as part of the Senior Credit Facilities shall be outstanding, no such acceleration shall be effective until the earlier of: (1) acceleration of any such Indebtedness under the Senior Credit Facilities; or (2) five Business Days after the giving of written notice of such acceleration to the Issuers and the administrative agent under the Senior Credit Facilities. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency with respect to the Company, all outstanding Notes will become due and payable immediately without further action or notice. Holders may not enforce the Indenture, the Notes or the Guarantees except as provided in the Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Notes notice of any continuing Default (except a Default relating to the payment of principal, premium, if any, Additional Interest, if any, or interest) if it determines that withholding notice is in their interest. The Holders of a majority in aggregate principal amount of the Notes then outstanding by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default or and its consequences under the Indenture except a continuing Default in payment of the principal of, premium, if any, Additional Interest, if any, or interest on, any of the Notes held by a non-consenting Holder. The Issuers and each Guarantor (to the extent that such Guarantor is so required under the Trust Indenture Act) are required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Issuers are required within thirty days after becoming aware of any Default, to deliver to the Trustee a statement specifying such Default and what action the Issuers propose to take with respect thereto.

14. AUTHENTICATION. This Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until authenticated by the manual signature of the Trustee.

15. ADDITIONAL RIGHTS OF HOLDERS OF RESTRICTED GLOBAL NOTES AND RESTRICTED DEFINITIVE NOTES. In addition to the rights provided to Holders of Notes under the Indenture, Holders of Restricted Global Notes and Restricted Definitive Notes shall have all the rights set forth in the Registration Rights Agreement, dated as of June 1, 2006, among the Issuers, the Guarantors named therein and the other parties named on the signature pages thereof (the "**Registration Rights Agreement**"), including the right to receive Additional Interest (as defined in the Registration Rights Agreement).

16. GOVERNING LAW. THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THE INDENTURE, THE NOTES AND THE GUARANTEES.

17. CUSIP NUMBERS. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuers have caused CUSIP numbers to be printed on the Notes and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

The Issuers will furnish to any Holder upon written request and without charge a copy of the Indenture and/or the Registration Rights Agreement. Requests may be made to the Issuers at the following address:

Education Management LLC
810 Sixth Avenue
Pittsburgh, Pennsylvania 15222-2603
Attention: General Counsel

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to: _____

(Insert assignee' legal name)

_____

(Insert assignee' s soc. sec. or tax I.D. no.)

_____

_____

_____

_____

(Print or type assignee' s name, address and zip code)

and irrevocably appoint _____
to transfer this Note on the books of the Issuers. The agent may substitute another to act for him.

Date: _____

Your Signature: _____
(Sign exactly as your name appears
on the face of this Note)

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuers pursuant to Section 4.10 or Section 4.14 of the Indenture, check the appropriate box below:

☐ Section 4.10 ☐ Section 4.14

If you want to elect to have only part of this Note purchased by the Issuers pursuant to Section 4.10 or Section 4.14 of the Indenture, state the amount you elect to have purchased:

$_____

Date: _____

Your Signature: _____
(Sign exactly as your name appears
on the face of this Note)

Tax Identification No.: _____

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

The initial outstanding principal amount of this Global Note is $_____. The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global or Definitive Note for an interest in this Global Note, have been made:

Date of Exchange	Amount of decrease in Principal Amount	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease or increase	Signature of authorized officer of Trustee or Note Custodian

* This schedule should be included only if the Note is issued in global form.

FORM OF CERTIFICATE OF TRANSFER

Education Management LLC and Education Management Finance Corp.
810 Sixth Avenue
Pittsburgh, Pennsylvania 15222-2603
Attention: General Counsel

The Bank of New York
101 Barclay Street, Floor 8W
New York, New York 10286
Fax No.: (212) 815-3272
Attention: Corporate Trust Administration

Re: 10 1/4% Senior Subordinated Notes due 2016

Reference is hereby made to the Indenture, dated as of June 1, 2006 (the "**Indenture**"), among Education Management LLC, Education Management Finance Corp. (together with Education Management LLC, the "**Issuers**"), the Guarantors named therein and the Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____ (the "**Transferor**") owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of $_____ in such Note[s] or interests (the "**Transfer**"), to _____ (the "**Transferee**"), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. ☐ CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE 144A GLOBAL NOTE OR A DEFINITIVE NOTE PURSUANT TO RULE 144A. The Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "**Securities Act**"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "**qualified institutional buyer**" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States.

2. ☐ CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE REGULATION S GLOBAL NOTE OR A

DEFINITIVE NOTE PURSUANT TO REGULATION S. The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Restricted Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer enumerated in the Indenture and the Securities Act.

3. ☐ CHECK AND COMPLETE IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE DEFINITIVE NOTE PURSUANT TO ANY PROVISION OF THE SECURITIES ACT OTHER THAN RULE 144A OR REGULATION S. The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) ☐ such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act;

or

(b) ☐ such Transfer is being effected to the Issuers or a subsidiary thereof;

or

(c) ☐ such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act.

4. ☐ CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE OR OF AN UNRESTRICTED DEFINITIVE NOTE.

(a) ☐ CHECK IF TRANSFER IS PURSUANT TO RULE 144. (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(b) ☐ CHECK IF TRANSFER IS PURSUANT TO REGULATION S. (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(c) ☐ CHECK IF TRANSFER IS PURSUANT TO OTHER EXEMPTION. (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuers.

[Insert Name of Transferor]

By: _____

Name:

Title:

Dated: _____

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP 28140JAB6), or

(ii) ☐ Regulation S Global Note (CUSIP U27895AB4), or

(b) ☐ a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP 28140JAB6), or

(ii) ☐ Regulation S Global Note (CUSIP U27895AB4), or

(iii) ☐ Unrestricted Global Note (CUSIP); or

(b) ☐ a Restricted Definitive Note; or

(c) ☐ an Unrestricted Definitive Note, in accordance with the terms of the Indenture.

FORM OF CERTIFICATE OF EXCHANGE

Education Management LLC and Education Management Finance Corp.
810 Sixth Avenue
Pittsburgh, Pennsylvania 15222-2603
Attention: General Counsel

The Bank of New York
101 Barclay Street, Floor 8W
New York, New York 10286
Fax No.: (212) 815-3272
Attention: Corporate Trust Administration

Re: 10 1/4% Senior Subordinated Notes due 2016

Reference is hereby made to the Indenture, dated as of June 1, 2006 (the "**Indenture**"), among Education Management LLC, Education Management Finance Corp. (together with Education Management LLC, the "**Issuers**"), the Guarantors named therein and the Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____ (the "**Owner**") owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of $_____ in such Note[s] or interests (the "**Exchange**"). In connection with the Exchange, the Owner hereby certifies that:

1) EXCHANGE OF RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN A RESTRICTED GLOBAL NOTE FOR UNRESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN AN UNRESTRICTED GLOBAL NOTE

a) ☐ CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE. In connection with the Exchange of the Owner' s beneficial interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner' s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the United States Securities Act of 1933, as amended (the "**Securities Act**"), (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest

in an Unrestricted Global Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

b) ☐ CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO UNRESTRICTED DEFINITIVE NOTE. In connection with the Exchange of the Owner' s beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner' s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

c) ☐ CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE. In connection with the Owner' s Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner' s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

d) ☐ CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO UNRESTRICTED DEFINITIVE NOTE. In connection with the Owner' s Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner' s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

2) EXCHANGE OF RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL NOTES FOR

RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL NOTES

a) ☐ CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO RESTRICTED DEFINITIVE NOTE. In connection with the Exchange of the Owner' s beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner' s own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

b) ☐ CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE. In connection with the Exchange of the Owner' s Restricted Definitive Note for a beneficial interest in the [CHECK ONE] ☐ 144A Global Note ☐ Regulation S Global Note, with an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner' s own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuers and are dated _____.

[Insert Name of Transferor]

By: _____
Name:
Title:

Dated: _____

[FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS]

Supplemental Indenture (this "**Supplemental Indenture**"), dated as of _____, among _____ (the "**Guaranteeing Subsidiary**"), a subsidiary of Education Management LLC, a Delaware limited liability company (the "**Company**"), and The Bank of New York, as trustee (the "**Trustee**").

WITNESSETH

WHEREAS, each of the Company, Education Management Finance Corp. (together with the Company, the "**Issuers**") and the Guarantors (as defined in the Indenture referred to below) has heretofore executed and delivered to the Trustee an indenture (the "**Indenture**"), dated as of June 1, 2006, providing for the issuance of an unlimited aggregate principal amount of 10 1/4% Senior Subordinated Notes due 2016 (the "**Notes**");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Issuers' Obligations under the Notes and the Indenture on the terms and conditions set forth herein and under the Indenture (the "**Guarantee**"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

Section 1. Capitalized terms used herein and not otherwise defined herein are used as defined in the Indenture.

Section 2. Each Guaranteeing Subsidiary, by its execution of this Supplemental Indenture, agrees to be a Guarantor under the Indenture and to be bound by the terms of the Indenture applicable to Guarantors, including, but not limited to, Article 11 thereof.

Section 3. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary

Section 4. This Supplemental Indenture shall be governed by and construed in accordance with the laws of the State of New York.

Section 5. This Supplemental Indenture may be signed in various counterparts which together will constitute one and the same instrument.

Section 6. This Supplemental Indenture is an amendment supplemental to the Indenture and the Indenture and this Supplemental Indenture will henceforth be read together.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

[GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

THE BANK OF NEW YORK, as Trustee

By: _____
Name:
Title:

Exhibit 5.1

SIMPSON THACHER & BARTLETT LLP

425 LEXINGTON AVENUE
NEW YORK, N.Y. 10017-3954
(212) 455-2000

FACSIMILE
(212) 455-2502

November 7, 2006

Education Management LLC
Education Management Finance Corp.
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222

Ladies and Gentlemen:

We have acted as counsel to Education Management LLC, a Delaware limited liability company, and Education Management Finance Corp., a Delaware corporation (together, the "Issuers"), and the subsidiaries of the Issuers listed on Schedule I hereto (collectively, the "Guarantors"), in connection with

the Registration Statement on Form S-4 (the "Registration Statement") filed by the Issuers and the Guarantors with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended, relating to (i) the issuance by the Issuers of $375,000,000 aggregate principal amount of 8 3/4% Senior Notes due 2014 (the "Senior Exchange Notes") and the issuance by the Guarantors of guarantees (the "Senior Guarantees") with respect to the Senior Exchange Notes and (ii) the issuance by the Issuers of $385,000,000 aggregate principal amount of 10 1/4% Senior Subordinated Notes due 2016 (the "Senior Subordinated Exchange Notes" and, together with the Senior Exchange Notes, the "Exchange Notes") and the issuance by the Guarantors of guarantees (the "Senior Subordinated Guarantees" and, together with the Senior Guarantees, the "Guarantees") with respect to the Senior Subordinated Exchange Notes. The Senior Exchange Notes and the Senior Guarantees will be issued under an indenture dated as of June 1, 2006, (the "Senior Indenture") among the Issuers, the Guarantors and The Bank of New York, as trustee (the "Trustee"), and the Senior Subordinated Exchange Notes and the Senior Subordinated Guarantees will be issued under an indenture dated as of June 1, 2006 (the "Senior Subordinated Indenture" and, together with the Senior Indenture, the "Indentures") among the Issuers, the Guarantors and the Trustee. The Senior Exchange Notes will be offered by the Issuers in exchange for $375,000,000 aggregate principal amount of its outstanding 8 3/4% Senior Notes due 2014 and the Senior

Subordinated Exchange Notes will be offered by the Issuers in exchange for $385,000,000 aggregate principal amount of its outstanding 10 1/4% Senior Subordinated Notes due 2016.

We have examined the Registration Statement and the Indentures, which have been filed with the Commission as exhibits to the Registration Statement. We also have examined the originals, or duplicates or certified or conformed copies, of such corporate records, agreements, documents and other instruments and have made such other investigations as we have deemed relevant and necessary in connection with the opinions hereinafter set forth. As to questions of fact material to this opinion, we have relied upon certificates or comparable documents of public officials and of officers and representatives of the Issuers and the Guarantors.

In rendering the opinions set forth below, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as duplicates or certified or conformed copies and the authenticity of the originals of such latter documents. We also have assumed that the Indentures are the valid and legally binding obligations of the Trustee.

Based upon the foregoing, and subject to the qualifications, assumptions and limitations stated herein, we are of the opinion that:

1. When the Exchange Notes have been duly executed, authenticated, issued and delivered in accordance with the provisions of the applicable Indenture upon consummation of the respective exchanges described above, the Exchange Notes will constitute valid and legally binding obligations of the Issuers enforceable against the Issuers in accordance with their terms.

2. When (a) the Exchange Notes have been duly executed, authenticated, issued and delivered in accordance with the provisions of the applicable Indenture upon consummation of the respective exchanges and (b) the Guarantees have been duly issued, the Guarantees will constitute valid and legally binding obligations of the Guarantors enforceable against the Guarantors in accordance with their terms.

Our opinions set forth above are subject to (i) the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, (ii) general equitable principles (whether considered in a proceeding in equity or at law) and (iii) an implied covenant of good faith and fair dealing.

Insofar as the opinions expressed herein relate to or are dependent upon matters governed by (i) the laws of the State of Georgia, (ii) the laws of the State of Illinois, (iii) the laws of the state of Minnesota or (iv) the laws of the States of Pennsylvania or Texas, we have relied upon (a) the opinion of Greenberg Traurig, LLP, dated the date hereof, (b) the opinion of Morgan, Lewis & Bockius LLP, dated the date hereof, (c) the opinion of Dorsey & Whitney LLP, dated the date hereof and (d) the opinion of Kirkpatrick & Lockhart Nicholson Graham LLP, dated the date hereof, respectively.

We do not express any opinion herein concerning any law other than the law of the State of New York, the federal law of the United States, the Delaware General Corporation Law, the Delaware Limited Liability Company Act (including the statutory provisions, all applicable provisions of the Delaware Constitution and reported judicial decisions interpreting the foregoing) and, to the extent set forth herein, the laws of the States of Georgia, Illinois, Minnesota, Pennsylvania and Texas.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement and to the use of our name under the caption “Legal Matters” in the Prospectus included in the Registration Statement.

Very truly yours,

/s/ Simpson Thacher & Bartlett LLP

SIMPSON THACHER & BARTLETT LLP

Schedule I

AID Restaurant, Inc.
AIH Restaurant, Inc.
AIIM Restaurant, Inc.
Argosy University Family Center, Inc.
Brown Mackie Holding Company
The Connecting Link, Inc.
EDMC Aviation, Inc.
EDMC Marketing and Advertising, Inc.
Higher Education Services, Inc.
MCM University Plaza, Inc.

Exhibit 5.2

Kirkpatrick & Lockhart Nicholson Graham LLP
Henry W. Oliver Building
535 Smithfield Street
Pittsburgh, PA 15222

November 7, 2006

EDMC Aviation, Inc.
c/o Education Management LLC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222

Ladies and Gentlemen:

We have acted as counsel to EDMC Aviation, Inc., a Pennsylvania corporation (the "Pennsylvania Guarantor"), in connection with (i) the proposed issuance by Education Management LLC, a Delaware limited liability company, and Education Management Finance Corp., a Delaware corporation (collectively, the "Issuers"), of up to $375,000,000 aggregate principal amount of the Issuers' 8 3/4% Senior Notes due 2014 (the "Senior Exchange Notes") and the issuance by the Pennsylvania Guarantor of guarantees (the "Senior Guarantees") with respect to the Senior Exchanges Notes, and (ii) the proposed issuance by the Issuers of up to $385,000,000 aggregate principal amount of the Issuers' 10 1/4% Senior Subordinated Notes due 2016 (the "Senior Subordinated Exchange Notes") and the issuance by the Pennsylvania Guarantor of guarantees (the "Senior Subordinated Guarantees" and, together with the Senior Guarantees, the "Guarantees") with respect to the Senior Subordinated Exchange Notes, in each case registered under the Securities Act of 1933, as amended (the "Securities Act"), in exchange for a like principal amount of the Issuers' outstanding 8 3/4% Senior Notes due 2014 or 10 1/4% Senior Subordinated Notes due 2016, as applicable, and their related guarantees, which have not been so registered (the "Exchange Offers").

The Senior Exchange Notes and the Senior Guarantees will be issued under an indenture dated as of June 1, 2006 (the "Senior Indenture") among the Issuers, the Pennsylvania Guarantor, the other guarantors under the Indenture (together with the Pennsylvania Guarantor, the "Guarantors") and The Bank of New York, as trustee (the "Trustee"). The Senior Subordinated Exchange Notes and the Senior Subordinated Guarantees will be issued under an indenture dated as of June 1, 2006, (the "Senior Subordinated Indenture" and, together with the Senior Indenture, the "Indentures") among the Issuers, the Guarantors and the Trustee.

The terms of the Senior Guarantees are contained in the Senior Indenture, and the Senior Guarantees will be issued pursuant to the Senior Indenture. The terms of the Senior Subordinated Guarantees are contained in the Senior Subordinated Indenture, and the Senior Subordinated Guarantees will be issued pursuant to the Senior Subordinated Indenture. This

opinion is furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

We have examined and relied upon the information set forth in the Registration Statement on Form S-4, as amended (the "Registration Statement"), filed by the Issuers and the Guarantors with the Securities and Exchange Commission (the "Commission") relating to the Exchange Offers and the Guarantees and such other records, agreements, certificates and documents, and have made such other and further investigations, as we have deemed necessary as a basis for the opinions expressed herein. As to questions of fact not independently verified by us, we have relied upon certificates of public officials and officers of the Pennsylvania Guarantor.

We express no opinion as to the laws of any jurisdiction other than those of the Commonwealth of Pennsylvania.

Based upon the foregoing and subject to the additional qualifications set forth below, we are of the opinion that:

1. Each of the Indentures has been duly authorized, executed and delivered by the Pennsylvania Guarantor.

2. Each of the Guarantees by the Pennsylvania Guarantor has been duly authorized and issued by the Pennsylvania Guarantor.

3. Neither the execution and delivery of the Indentures and the Guarantees by the Pennsylvania Guarantor nor the performance of the obligations of the Pennsylvania Guarantor under the terms thereof violates any Pennsylvania state laws.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to this firm under the caption "Legal Matters" in the prospectus included therein. In giving this consent we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission. We understand and agree that Simpson Thacher & Bartlett LLP may rely upon this opinion as if it were an addressee hereof for the purpose of providing the opinion to be delivered by such firm in connection with the Registration Statement.

Very truly yours,

/s/ Kirkpatrick & Lockhart Nicholson Graham LLP

Exhibit 5.3

November 7, 2006

The Connecting Link, Inc.
EDMC Marketing and Advertising, Inc.
Higher Education Services, Inc.
c/o Education Management LLC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222

Ladies and Gentlemen:

We have acted as special counsel to The Connecting Link, Inc., a Georgia corporation ("The Connecting Link"), EDMC Marketing and Advertising, Inc., a Georgia corporation, ("EDMC Marketing and Advertising") and Higher Education Services, Inc., a Georgia corporation ("Higher Education Services" and together with The Connecting Link, EDMC Marketing and Advertising, collectively, the "Georgia Guarantors"), in connection with (i) the proposed issuance by Education Management LLC, a Delaware limited liability company, and Education Management Finance Corp., a Delaware corporation (collectively, the "Issuers"), of up to $375,000,000 aggregate principal amount of the Issuers' 8 3/4% Senior Notes due 2014 (the "Senior Exchange Notes") and the issuance by the Georgia Guarantors of guarantees (the "Senior Guarantees") with respect to the Senior Exchange Notes, and (ii) the proposed issuance by the Issuers of up to $385,000,000 aggregate principal amount of the Issuers' 10 1/4% Senior Subordinated Notes due 2016 (the "Senior Subordinated Exchange Notes") and the issuance by the Georgia Guarantors of guarantees (the "Senior Subordinated Guarantees" and, together with the Senior Guarantees, the "Guarantees") with respect to the Senior Subordinated Exchange Notes, in each case registered under the Securities Act of 1933, as amended (the "Securities Act"), in exchange for a like principal amount of the Issuers' outstanding 8 3/4% Senior Notes due 2014 or 10 1/4% Senior Subordinated Notes due 2016, as applicable, and their related guarantees, which have not been so registered (the "Exchange Offers").

The Senior Exchange Notes and the Senior Guarantees will be issued under an indenture dated as of June 1, 2006 (the "Senior Indenture") among the Issuers, the Georgia Guarantors, the other guarantors under the Indenture (together with the Georgia Guarantors, the "Guarantors") and The Bank of New York, as trustee (the "Trustee"). The Senior Subordinated Exchange Notes and the Senior Subordinated Guarantees will be issued under an indenture dated as of June 1, 2006, (the "Senior Subordinated Indenture" and, together with the Senior Indenture, the "Indentures") among the Issuers, the Guarantors and the Trustee.

The terms of the Senior Guarantees are contained in the Senior Indenture, and the Senior Guarantees will be issued pursuant to the Senior Indenture. The terms of the Senior Subordinated Guarantees are contained in the Senior Subordinated Indenture, and the Senior Subordinated Guarantees will be issued pursuant to the Senior Subordinated Indenture. This Opinion Letter ("Opinion Letter") is furnished at the Issuers' request and may be relied upon by Issuers' securities counsel, Simpson Thacher & Bartlett LLP, as part of such counsel' s delivery of an opinion in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

We have examined and relied upon the information set forth in the Registration Statement on Form S-4, as amended (the "Registration Statement"), filed by the Issuers and the Guarantors with the Securities and Exchange Commission (the "Commission") relating to the Exchange Offers and the Guarantees and such other records, agreements, certificates and documents, and have made such other and further investigations, as we have deemed necessary as a basis for the opinions expressed herein. As to questions of fact not independently verified by us, we have relied upon certificates of public officials and officers of the Georgia Guarantors.

In our examination of the foregoing, we have assumed:

1. The genuineness of all signatures of the officers of the Georgia Guarantors;
2. The authenticity of all documents submitted to us as originals;
3. The conformity to the originals of all documents submitted to, and reviewed by, us as copies;
4. The capacity and competency of each natural person acting on behalf of the Georgia Guarantors;
5. The accuracy of all representations and warranties made by the parties in the Indentures;
6. The conduct of each Georgia Guarantor has complied with any requirement of good faith, fair dealing and conscionability;
7. The accuracy of all other factual matters contained in the Indentures (including all exhibits, schedules and other addenda or attachments thereto);
8. The absence of any mutual mistake of fact misunderstanding, fraud, duress or undue influence in the proceedings of the Georgia Guarantors taken to approve the Indentures; and
9. The absence of any corporate action taken by any of the Georgia Guarantors contrary to the corporate actions taken by such entities on June 1, 2006, relative to the respective Georgia Guarantors' adoption, execution and delivery of the Indentures and the Guarantees.

We express no opinion as to the laws of any jurisdiction other than those of the State of Georgia and the United States of America.

Based upon the foregoing and subject to the additional qualifications set forth below, we are of the opinion that:

1. Each of the Indentures has been duly authorized, executed and delivered by each of the Georgia Guarantors.
2. Each of the Guarantees by each Georgia Guarantor has been duly authorized and issued by such Georgia Guarantor.
3. Neither the execution and delivery of the Indentures and the Guarantees by each of the Georgia Guarantors nor the performance of the obligations of the Georgia Guarantors under the terms thereof violates any Georgia State Laws (as such term is defined below).

Our opinions in Paragraphs 1 and 2 above address no law other than the Georgia Business Corporation Code and applicable laws of agency.

Our opinion in Paragraph 3 applies exclusively to "Georgia State Laws," which, for purposes of this Opinion, means those laws of the State of Georgia which would prohibit performance by the Georgia Guarantors under the Guarantees, but which, in any event, specifically excludes all Georgia laws relating to:

a. Antitrust and unfair competition;
b. Usury laws and such other laws relating to permissible rates, computation or disclosure of interest;
c. Securities matters;
d. Fiduciary obligations;
e Pension and employee benefits;
f. Fraudulent transfers and conveyances;
g. Environmental matters;
h Land use and subdivision matters;
i. The creation, attachment, perfection or priority of a security interest in any assets of the Guarantors;
j. Bulk transfers;
k. Tax law;
l. Racketeering;
m. Criminal statutes of general application;
n. Health and safety;
o. Labor and employment;
p. Concerning national or local emergency; and
q. Laws that do not have general applicability throughout the State of Georgia.

The opinions expressed in this Opinion Letter are in no way binding on any jurisdiction, government, or agency. Rather, the opinions represent our opinion as to how that issue would be resolved were it to be presented to and considered by the highest court of the jurisdiction upon whose law our opinion of that issue is based.

Our opinions speak only as of the date hereof, and we have no obligation, and, with your permission, hereby expressly disclaim any obligation, to address any matter subsequent to the date hereof, or to render any subsequent or updated opinions. Our opinions are limited to the specific matters expressed and stated herein and no further opinion is to be inferred or may be implied beyond the matters expressly stated.

Moreover, we note that as special counsel to the Guarantors, our representation has been limited to a review of the corporate acts of the Guarantors relating to the adoption of the Indentures and the Guarantees. Accordingly, we do not have any knowledge of the Guarantors' affairs or transactions other than as expressly set forth in this Opinion Letter, and you should not infer otherwise from our representation of the Guarantors. Except to the extent set forth above, for the purposes of delivering this Opinion Letter, we have made no independent review of any agreements, documents or instruments which may be executed by or which may be binding upon the Guarantors other than the Indentures and Guarantees and the corporate action of the Guarantors related to the Indentures and Guarantees.

We hereby consent to the filing of this Opinion Letter as an exhibit to the Registration Statement and to the reference to Greenberg Traurig, LLP under the caption "Legal Matters" in the prospectus included therein. In giving this consent we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission. We understand and agree that Simpson Thacher & Bartlett LLP may rely upon this opinion as if it were an addressee hereof for the purpose of providing the opinion to be delivered by such firm in connection with the Registration Statement.

Very truly yours,

/s/ Greenberg Traurig, LLP

Exhibit 5.4

Morgan, Lewis & Bockius LLP
One Oxford Centre
301 Grant Street
Pittsburgh, PA 15219-6401
Tel. 412.560.3300
Fax: 412.560.7001
www.morganlewis.com

Morgan Lewis
COUNSELORS AT LAW

November 7, 2006

MCM University Plaza, Inc.
c/o Education Management LLC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222

Ladies and Gentlemen:

We have acted as counsel to MCM University Plaza, Inc., an Illinois corporation (the "Illinois Guarantor"), in connection with (i) the proposed issuance by Education Management LLC, a Delaware limited liability company, and Education Management Finance Corp., a Delaware corporation (collectively, the "Issuers"), of up to $375,000,000 aggregate principal amount of the Issuers' 8 3/4% Senior Notes due 2014 (the "Senior Exchange Notes") and the issuance by the Illinois Guarantor of guarantees (the "Senior Guarantees") with respect to the Senior Exchange Notes, and (ii) the proposed issuance by the Issuers of up to $385,000,000 aggregate principal amount of the Issuers' 10 1/4% Senior Subordinated Notes due 2016 (the "Senior Subordinated Exchange Notes") and the issuance by the Illinois Guarantor of guarantees (the "Senior Subordinated Guarantees" and, together with the Senior Guarantees, the "Guarantees") with respect to the Senior Subordinated Exchange Notes, in each case registered under the Securities Act of 1933, as amended (the "Securities Act"), in exchange for a like principal amount of the Issuers' outstanding 8 3/4% Senior Notes due 2014 or 10 1/4% Senior Subordinated Notes due 2016, as applicable, and their related guarantees, which have not been so registered (the "Exchange Offers").

The Senior Exchange Notes and the Senior Guarantees will be issued under an indenture dated as of June 1, 2006 (the "Senior Indenture") among the Issuers, the Illinois Guarantor, the other guarantors under the Senior Indenture (together with the Illinois Guarantor, the "Guarantors") and The Bank of New York, as trustee (the "Trustee"). The terms of the Senior Guarantees are contained in the Senior Indenture. The Senior Subordinated Exchange Notes and the Senior Subordinated Guarantees will be issued under an indenture dated as of June 1, 2006, (the "Senior Subordinated Indenture" and, together with the Senior Indenture, the "Indentures") among the Issuers, the Guarantors and the Trustee. The terms of the Senior Subordinated Guarantees are contained in the Senior Subordinated Indenture. This opinion is furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K promulgated under the Securities Act.

In connection with this opinion, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the Indentures, the Registration Statement on Form S-4, as amended (the "Registration Statement"), filed by the Issuers and the Guarantors with the Securities and Exchange Commission (the "Commission") relating to the Exchange Offers and

the Guarantees, resolutions of the Board of Directors of the Illinois Guarantor and such other documents and records as we have deemed necessary. As to questions of fact material to this opinion, we have relied upon certificates or comparable documents of public officials and of officers and representatives of the Illinois Guarantor.

We have assumed the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of the documents submitted to us as originals, the conformity with the originals of all documents submitted to us as certified, facsimile or photostatic copies and the authenticity of the originals of all documents submitted to us as copies.

Based upon the foregoing, we are of the opinion that:

1. Each of the Indentures has been duly authorized, executed and delivered by the Illinois Guarantor.

2. Each of the Guarantees by the Illinois Guarantor has been duly authorized by the Illinois Guarantor and, when issued in accordance with the terms of the applicable Indenture, will be validly issued.

3. Neither the execution and delivery of the Indentures and the Guarantees by the Illinois Guarantor nor the performance of the obligations of the Illinois Guarantor under the terms thereof violates any Illinois state law that, in our experience, is generally applicable to transactions in the nature of those contemplated by the Indentures and the Guarantees.

The opinions expressed above are limited to the laws of the State of Illinois, and we express no opinion with respect to the laws of any other state or jurisdiction. Furthermore, we express no opinion on any matter covered by "blue sky" or securities laws of any state.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to this firm under the caption "Legal Matters" in the prospectus included therein. In giving this consent we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission. We understand and agree that Simpson Thacher & Bartlett LLP may rely upon this opinion as if it were an addressee hereof for the purpose of providing the opinion to be delivered by such firm in connection with the Registration Statement.

Very truly yours,

/s/ Morgan, Lewis & Bockius LLP

Exhibit 5.5

AIIM Restaurant Inc.
Argosy University Family Center, Inc.
c/o Education Management LLC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222

Ladies and Gentlemen:

We have acted as Minnesota local counsel to AIIM Restaurant, Inc., a Minnesota corporation ("AIIM Restaurant"), and Argosy University Family Center, Inc., a Minnesota corporation ("Argosy University" and together with AIIM Restaurant, collectively, the "Minnesota Guarantors").

We have reviewed:

1. The Indenture dated as of June 1, 2006 (the "Senior Indenture") among Education Management LLC, a Delaware limited liability company, and Education Management Finance Corp., a Delaware corporation (collectively, the "Issuers"), the Minnesota Guarantors, the other guarantors under the Indenture (together with the Minnesota Guarantors, the "Guarantors") and The Bank of New York, as trustee (the "Trustee") and the related guarantees of the Guarantors (the "Senior Guarantees") under the Senior Indenture; and

2. The Indenture dated as of June 1, 2006 (the "Senior Subordinated Indenture" and, together with the Senior Indenture, the "Indentures") among the Issuers, the Guarantors and the Trustee and the related guarantees of the Guarantors (the "Senior Subordinated Guarantees" and, together with the Senior Guarantees, the "Guarantees").

This opinion is furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act of 1933, as amended (the "Securities Act").

We have examined the Indentures and such other documents, and have made such other investigations, as we have deemed necessary as a basis for the opinions expressed herein. As to questions of fact not independently verified by us, we have relied upon certificates of public officials and officers of the Minnesota Guarantors.

Based upon the foregoing and subject to the additional qualifications set forth below, we are of the opinion that:

1. Each of the Indentures has been duly authorized, executed and delivered by each of the Minnesota Guarantors.

2. Each of the Guarantees by each Minnesota Guarantor has been duly authorized, executed and delivered by such Minnesota Guarantor.

3. Neither the execution and delivery of the Indentures and the Guarantees by each of the Minnesota Guarantors nor the performance of the obligations of the Minnesota Guarantors under the terms thereof violates any law of the State of Minnesota.

We express no opinion as to the laws of any jurisdiction other than those of the State of Minnesota.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to this firm under the caption “Legal Matters” in the prospectus included therein. In giving this consent we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission. We understand and agree that Simpson Thacher & Bartlett LLP may rely upon this opinion as if it were an addressee hereof for the purpose of providing the opinion to be delivered by such firm in connection with the Registration Statement.

Dated: November 7, 2006

Very truly yours,

/s/ Dorsey & Whitney LLP

Exhibit 5.6

Kirkpatrick & Lockhart Nicholson Graham LLP
Henry W. Oliver Building
535 Smithfield Street
Pittsburgh, PA 15222

November 7, 2006

AID Restaurant, Inc.
AIH Restaurant, Inc.
c/o Education Management LLC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222

Ladies and Gentlemen:

We have acted as counsel to AID Restaurant, Inc., a Texas corporation ("AID Restaurant"), and AIH Restaurant, Inc., a Texas corporation ("AIH Restaurant" and together with AID Restaurant, collectively, the "Texas Guarantors"), in connection with (i) the proposed issuance by Education Management LLC, a Delaware limited liability company, and Education Management Finance Corp., a Delaware corporation (collectively, the "Issuers"), of up to $375,000,000 aggregate principal amount of the Issuers' 8 3/4% Senior Notes due 2014 (the "Senior Exchange Notes") and the issuance by the Texas Guarantors of guarantees (the "Senior Guarantees") with respect to the Senior Exchange Notes, and (ii) the proposed issuance by the Issuers of up to $385,000,000 aggregate principal amount of the Issuers' 10 1/4% Senior Subordinated Notes due 2016 (the "Senior Subordinated Exchange Notes") and the issuance by the Texas Guarantors of guarantees (the "Senior Subordinated Guarantees" and, together with the Senior Guarantees, the "Guarantees") with respect to the Senior Subordinated Exchange Notes, in each case registered under the Securities Act of 1933, as amended (the "Securities Act"), in exchange for a like principal amount of the Issuers' outstanding 8 3/4% Senior Notes due 2014 or 10 1/4% Senior Subordinated Notes due 2016, as applicable, and their related guarantees, which have not been so registered (the "Exchange Offers").

The Senior Exchange Notes and the Senior Guarantees will be issued under an indenture dated as of June 1, 2006 (the "Senior Indenture") among the Issuers, the Texas Guarantors, the other

guarantors under the Indenture (together with the Texas Guarantors, the "Guarantors") and The Bank of New York, as trustee (the "Trustee"). The Senior Subordinated Exchange Notes and the Senior Subordinated Guarantees will be issued under an indenture dated as of June 1, 2006, (the "Senior Subordinated Indenture" and, together with the Senior Indenture, the "Indentures") among the Issuers, the Guarantors and the Trustee.

The terms of the Senior Guarantees are contained in the Senior Indenture, and the Senior Guarantees will be issued pursuant to the Senior Indenture. The terms of the Senior Subordinated Guarantees are contained in the Senior Subordinated Indenture, and the Senior Subordinated Guarantees will be issued pursuant to the Senior Subordinated Indenture. This opinion is furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

We have examined and relied upon the information set forth in the Registration Statement on Form S-4, as amended (the "Registration Statement"), filed by the Issuers and the Guarantors with the Securities and Exchange Commission (the "Commission") relating to the Exchange Offers and the Guarantees and such other records, agreements, certificates and documents, and have made such other and further investigations, as we have deemed necessary as a basis for the opinions expressed herein. As to questions of fact not independently verified by us, we have relied upon certificates of public officials and officers of the Texas Guarantors.

We express no opinion as to the laws of any jurisdiction other than those of the State of Texas.

Based upon the foregoing and subject to the additional qualifications set forth below, we are of the opinion that:

1. Each of the Indentures has been duly authorized, executed and delivered by each of the Texas Guarantors.

2. Each of the Guarantees by each Texas Guarantor has been duly authorized and issued by such Texas Guarantor.

3. Neither the execution and delivery of the Indentures and the Guarantees by each of the Texas Guarantors nor the performance of the obligations of the Texas Guarantors under the terms thereof violates any Texas state laws.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to this firm under the caption "Legal Matters" in the prospectus included therein. In giving this consent we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission. We understand and agree that Simpson Thacher & Bartlett LLP may rely upon

this opinion as if it were an addressee hereof for the purpose of providing the opinion to be delivered by such firm in connection with the Registration Statement.

Very truly yours,

/s/Kirkpatrick & Lockhart Nicholson Graham LLP

Exhibit 10.1

EXECUTION COPY

CREDIT AND GUARANTY AGREEMENT

dated as of June 1, 2006

among

EDUCATION MANAGEMENT LLC,

EDUCATION MANAGEMENT HOLDINGS LLC,

CERTAIN SUBSIDIARIES OF EDUCATION MANAGEMENT HOLDINGS LLC,
as Guarantors,

THE DESIGNATED SUBSIDIARY BORROWERS
REFERRED TO HEREIN,

VARIOUS LENDERS,

CREDIT SUISSE SECURITIES (USA) LLC,
as Syndication Agent,

BNP PARIBAS,
as Administrative Agent and Collateral Agent,

and

MERRILL LYNCH CAPITAL CORPORATION and
BANK OF AMERICA, N.A.,
as Documentation Agents

$1,485,000,000
Senior Secured
Credit Facilities

CREDIT
SUISSE
SECURITIES
(USA) LLC,
GOLDMAN
SACHS
CREDIT
PARTNERS L.P.
and

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.,
as Joint Lead Arrangers and Bookrunners

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CREDIT AND GUARANTY AGREEMENT

This **CREDIT AND GUARANTY AGREEMENT**, dated as of June 1, 2006, is entered into by and among **EDUCATION MANAGEMENT LLC**, a Delaware limited liability company ("**Company**"), **EDUCATION MANAGEMENT HOLDINGS LLC**, a Delaware limited liability company ("**Holdings**"), **CERTAIN SUBSIDIARIES OF HOLDINGS**, as Guarantors, the Designated Subsidiary Borrowers party hereto from time to time (together with Company, "**Borrowers**"), the Lenders party hereto from time to time, **CREDIT SUISSE SECURITIES (USA) LLC** ("**Credit Suisse**"), as Syndication Agent (in such capacity, "**Syndication Agent**"), **BNP PARIBAS** ("**BNP**"), as Administrative Agent (together with its permitted successors in such capacity, "**Administrative Agent**") and as Collateral Agent (together with its permitted successors in such capacity, "**Collateral Agent**"), and **MERRILL LYNCH CAPITAL CORPORATION ("MLCC") and BANK OF AMERICA N.A. ("Bank of America")**, as Documentation Agents (in such capacity, "**Documentation Agents**").

RECITALS:

WHEREAS, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

WHEREAS, Lenders have agreed to extend certain credit facilities to Company (and to the Designated Subsidiary Borrowers in the case of the Revolving Commitments), in an aggregate amount not to exceed $1,485,000,000, consisting of $1,185,000,000 aggregate principal amount of Tranche B Term Loans, and up to $300,000,000 aggregate principal amount of Revolving Commitments;

WHEREAS, Company has agreed to secure all of its Obligations by granting to Collateral Agent, for the benefit of Secured Parties, a First Priority Lien on substantially all of its assets, including a pledge of all of the Equity Interests in each of its Included Domestic Subsidiaries and 66% of all the Equity Interests in each of its Foreign Subsidiaries; and

WHEREAS, Guarantors have agreed to guarantee the obligations of Borrowers hereunder and to secure their respective Obligations by granting to Collateral Agent, for the benefit of Secured Parties, a First Priority Lien on substantially all of their respective assets, including a pledge of all of the Equity Interests in each of their respective Included Domestic Subsidiaries (including Borrower) and 66% of all the Equity Interests in each of their respective Foreign Subsidiaries.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION

1.1. Definitions. The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

"**Adjusted Eurodollar Rate**" means, for any Interest Rate Determination Date with respect to an Interest Period for a Eurodollar Rate Loan, the rate per annum obtained by dividing (and rounding upward to the next whole multiple of 1/16 of 1%) (a) (i) the rate per annum (rounded to the nearest 1/100 of 1%) equal to the rate determined by Administrative Agent to be the offered rate which appears on the page of the Telerate Screen which displays an average British Bankers Association Interest Settlement Rate (such page currently being page number 3740 or 3750, as applicable) for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (ii) in the event the rate referenced in the preceding clause (i) does not appear on such page or service or if such page or service shall cease to be available, the rate per annum (rounded to the nearest 1/100 of 1%) equal to the rate determined by Administrative Agent to be the offered rate on such other page or other service which displays an average British Bankers Association Interest Settlement Rate for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (iii) in the event the rates referenced in the preceding clauses (i) and (ii) are not available, the rate per annum (rounded to the nearest 1/100 of 1%) equal to the offered quotation rate to first class banks in the London interbank market by **[**name of Issuing Bank**]** for deposits (for delivery on the first day of the relevant period) in Dollars of amounts in same day funds comparable to the principal amount of the applicable Loan of Administrative Agent, in its capacity as a Lender, for which the Adjusted Eurodollar Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, by (b) an amount equal to (i) one minus (ii) the Applicable Reserve Requirement.

"**Administrative Agent**" as defined in the preamble hereto.

"**Affected Lender**" as defined in Section 2.18(b).

"**Affected Loans**" as defined in Section 2.18(b).

"**Affiliate**" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 10% or more of the Securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

"**Agent**" means each of Administrative Agent, Syndication Agent, Arrangers, Collateral Agent and Documentation Agents.

"**Aggregate Amounts Due**" as defined in Section 2.17.

"**Aggregate Payments**" as defined in Section 7.2.

"**Agreement**" means this Credit and Guaranty Agreement, dated as of June 1, 2006, as it may be amended, supplemented or otherwise modified from time to time.

"**Applicable Margin**" and "**Applicable Revolving Commitment Fee Percentage**" mean (a) with respect to Tranche B Term Loans that are Eurodollar Rate Loans, (i) from the Closing Date until the date of delivery of the Compliance Certificate and the financial statements for the period ending September 30, 2006, 2.50% per annum and (ii) thereafter, 2.50% per annum, which shall be reduced to 2.25% per annum if (x) the Total Leverage Ratio then in effect is less than 5.50:1 or (y) the credit facilities provided hereunder have ratings of at least B1 from Moody' s and at least B+ from S&P; (b) with respect to Tranche B Term Loans that are Base Rate Loans, an amount equal to (i) the Applicable Margin for Eurodollar Rate Loans as set forth in clause (a)(i) or (a)(ii) above, as applicable, minus (ii) 1.00% per annum; (c) with respect to Revolving Loans that are Eurodollar Rate Loans and the Applicable Revolving Commitment Fee Percentage, (i) from the Closing Date until the date of delivery of the Compliance Certificate and the financial statements for the period ending September 30, 2006, a percentage, per annum, determined by reference to the following table as if the Total Leverage Ratio then in effect were 6.00:1.00 and (ii) thereafter, a percentage, per annum, determined by reference to the Total Leverage Ratio in effect from time to time as set forth below:

Total Leverage Ratio	**Applicable Margin for Revolving Loans**	**Applicable Revolving Commitment Fee Percentage**
≥ 6.00:1.00	2.25%	0.50%
< 6.00:1.00 ≥ 5.00:1.00	2.00%	0.50%
< 5.00:1.00 ≥ 4.00:1.00	1.75%	0.375%
< 4.00:1.00	1.50%	0.375%

and (d) with respect to Swing Line Loans and Revolving Loans that are Base Rate Loans, an amount equal to (i) the Applicable Margin for Eurodollar Rate Loans as set forth in clause (c)(i) or (c)(ii) above, as applicable, minus (ii) 1.00% per annum. No change in the Applicable Margin or the Applicable Revolving Commitment Fee Percentage shall be effective until three Business Days after the date on which Administrative Agent shall have received the applicable financial statements and a Compliance Certificate pursuant to Section 5.2(b) calculating the Total Leverage Ratio. At any time Company has not submitted to Administrative Agent the applicable information as and when required under Section 5.2(b), the Applicable Margin and the Applicable Revolving Commitment Fee Percentage shall be determined as if the Total Leverage Ratio were in excess of 6.00:1.00. Within one Business Day of receipt of the applicable information under Section 5.2(b), Administrative Agent shall give each Lender telefacsimile or telephonic notice (confirmed in writing) of the Applicable Margin and the Applicable Revolving Commitment Fee Percentage in effect from such date.

"**Applicable Reserve Requirement**" means, at any time, for any Eurodollar Rate Loan, the maximum rate, expressed as a decimal, at which reserves (including, without limitation, any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained with respect thereto against "Eurocurrency liabilities" (as such term is defined in Regulation D) under regulations issued from time to time by the Board of Governors or other applicable banking regulator. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (i) any category of liabilities which includes deposits by reference to which the applicable Adjusted Eurodollar Rate or any other interest rate of a Loan is to be determined, or (ii) any category of extensions of credit or other assets which include Eurodollar Rate Loans. A Eurodollar Rate Loan shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credit for proration, exceptions or offsets that may be available from time to time to the applicable Lender. The rate of interest on Eurodollar Rate Loans shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.

"**Arrangers**" means, collectively, Credit Suisse, Goldman Sachs Credit Partners L.P. and Merrill Lynch, Pierce, Fenner & Smith, Inc. in their capacities as joint lead arrangers and bookrunners for the credit facilities provided hereunder.

"**Asset Sale**" means a sale, lease or sub-lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer or other disposition to, or any exchange of property with, any Person (other than a Credit Party), in one transaction or a series of transactions, of all or any part of Holdings' or any of its Subsidiaries' businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the Equity Interests in any of Holdings' Subsidiaries, other than (i) inventory (or other assets) sold or leased in the ordinary course of business (excluding any such sales by operations or divisions discontinued or to be discontinued), (ii) sales of assets in one transaction or a series of related transactions for consideration of less than $1,000,000, and (iii) sales of other assets for aggregate consideration of less than $5,000,000 in the aggregate during any Fiscal Year.

"**Assignment Agreement**" means an Assignment and Assumption Agreement substantially in the form of Exhibit E, with such amendments or modifications as may be approved by Administrative Agent.

"**Assignment Effective Date**" as defined in Section 10.6(b).

"**Attributable Indebtedness**" means, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

"**Bank of America**" as defined in the preamble hereto.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"**Base Rate**" means, for any day, a rate per annum equal to the greater of (i) the Prime Rate in effect on such day and (ii) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1%. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

"**Base Rate Loan**" means a Loan bearing interest at a rate determined by reference to the Base Rate.

"**Beneficiary**" means each Agent, Issuing Bank, Lender and Lender Counterparty.

"**BNP**" as defined in the preamble hereto.

"**Board of Governors**" means the Board of Governors of the Federal Reserve System of the United States, or any successor thereto.

"**Borrowers**" as defined in the preamble hereto.

"**Business Day**" means (i) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close and (ii) with respect to all notices, determinations, fundings and payments in connection with the Adjusted Eurodollar Rate or any Eurodollar Rate Loans, the term "**Business Day**" shall mean any day which is a Business Day described in clause (i) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

"**Capital Expenditures**" means, for any period, the aggregate of all expenditures of Holdings and its Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in "purchase of property, plant and equipment" or similar items reflected in the consolidated statement of cash flows of Holdings and its Subsidiaries; provided that the term "Capital Expenditures" shall not include (i) expenditures made in connection with the replacement, substitution, restoration or repair of assets to the extent financed with (x) insurance proceeds paid on account of the loss of or damage to the assets being replaced, restored or repaired or (y) awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced, (ii) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time, (iii) expenditures that constitute any part of Consolidated Lease Expense, (iv) expenditures that are accounted for as capital expenditures by Holdings or any Subsidiary and that actually are paid for by a Person other than Holdings or any Subsidiary and for which neither Holdings nor any Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such Person or any other Person (whether before, during or after such period), (v) the book value of any asset owned by Holdings or any Subsidiary prior to or during such period to the extent that such book value is included as a capital expenditure during such period as a result of such Person reusing or beginning to reuse such asset during such period

without a corresponding expenditure actually having been made in such period, provided that (A) any expenditure necessary in order to permit such asset to be reused shall be included as a Capital Expenditure during the period in which such expenditure actually is made and (B) such book value shall have been included in Capital Expenditures when such asset was originally acquired, (vi) expenditures that constitute Permitted Acquisitions or (vii) the purchase of plant, property or equipment to the extent financed with the proceeds of Dispositions that are not required to be applied to prepay Term Loans pursuant to Section 2.14.

"**Capitalized Leases**" means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases; provided that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

"**Cash Equivalents**" means, as at any date of determination, (a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government or any member nation of the European Union or (ii) issued by any agency of the United States or any member nation of the European Union, the obligations of which are backed by the full faith and credit of the United States or such member nation of the European Union, in each case maturing within one year after such date; (b) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof or by any foreign government having an investment grade rating from either S&P or Moody' s, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P or at least P-2 from Moody' s; (c) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P or at least P-2 from Moody' s; (d) certificates of deposit or bankers' acceptances maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States of America, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development that (i) is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator) and (ii) has Tier 1 capital (as defined in such regulations) of not less than $100,000,000; and (e) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (a) and (b) above, (ii) has net assets of not less than $500,000,000, and (iii) has the highest rating obtainable from either S&P or Moody' s.

"**Cash Management Obligations**" means obligations owed by Holdings, Company or any of its Subsidiaries to any Lender or any Affiliate of a Lender in respect of any overdraft and related liabilities arising from treasury, depository and cash management services or any automated clearing house transfers of funds.

"**Casualty Event**" means any event that gives rise to the receipt by Holdings, Company or any of its Subsidiaries of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as subsequently amended.

"**CERCLIS**" means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

"**Certificate re Non-Bank Status**" means a certificate substantially in the form of Exhibit F.

"**Change of Control**" means, at any time, (a) (i) prior to the consummation of a Qualifying IPO of Holdings or any direct or indirect parent of Holdings, including without limitation, Education Management (each of Holdings and any such parent, a "**Parent**"), the Sponsors shall cease to beneficially own and control at least 51% on a fully diluted basis of the voting interests in the Equity Interests of each such Parent and (ii) after the consummation of a Qualifying IPO of any Parent, the Sponsors shall cease to beneficially own and control on a fully diluted basis at least 35% of the voting interests in the Equity Interests of such Parent; (b) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) other than the Sponsors (i) shall have acquired beneficial ownership of 35% or more on a fully diluted basis of the voting interest in the Equity Interests of such Parent, and the percentage of the voting interest in the Equity Interests of such Parent acquired by such person or group exceeds, in the aggregate, the percentage held by the Sponsors taken as a whole or (ii) shall have obtained the power (whether or not exercised) to elect a majority of the members of the board of directors (or similar governing body) of such Parent; (c) the majority of the seats (other than vacant seats) on the board of directors (or similar governing body) of any Parent shall cease to be occupied by Persons who either (i) were members of the board of directors of such Parent on the Closing Date (after giving effect to the Transaction) or (ii) were nominated for election by the board of directors of such Parent, a majority of whom were directors on the Closing Date (after giving effect to the Transaction) or whose election or nomination for election was previously approved by a majority of such directors; (d) Holdings shall cease to beneficially own and control 100% on a fully diluted basis of the voting interests in the Equity Interests of Company; or (e) any "change of control" (or any comparable term) in the Senior Notes Indenture or the Senior Subordinated Notes Indenture.

"**Class**" means (a) with respect to Lenders, each of the following classes of Lenders: (i) Lenders having Tranche B Term Loan Exposure, (ii) Lenders having Revolving Exposure (including Swing Line Lender) and (iii) Lenders having New Term Loan Exposure of each applicable Series, and (b) with respect to Loans, each of the following classes of Loans: (i) Tranche B Term Loans, (ii) Revolving Loans (including Swing Line Loans) and (iii) each Series of New Term Loans.

"**Closing Date**" means the date on which the Tranche B Term Loans are made, which occurred on June 1, 2006.

"**Closing Date Certificate**" means a Closing Date Certificate substantially in the form of Exhibit G-1.

"**Closing Date Mortgaged Property**" as defined in Section 3.1(g).

"**Collateral**" means, collectively, all of the real, personal and mixed property (including Equity Interests) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.

"**Collateral Agent**" as defined in the preamble hereto.

"**Collateral Documents**" means the Pledge and Security Agreement, the Mortgages, and all other instruments, documents and agreements delivered by any Credit Party pursuant to this Agreement or any of the other Credit Documents in order to grant to Collateral Agent, for the benefit of Secured Parties, a Lien on any real, personal or mixed property of that Credit Party as security for the Obligations.

"**Commitment**" means any Revolving Commitment or Term Loan Commitment.

"**Company**" as defined in the preamble hereto.

"**Compliance Certificate**" means a Compliance Certificate substantially in the form of Exhibit C.

"**Consolidated EBITDA**" means, for any period, the Consolidated Net Income for such period, plus:

(a) without duplication and to the extent already deducted (and not added back) in arriving at such Consolidated Net Income, the sum of the following amounts for such period:

(i) total interest expense and, to the extent not reflected in such total interest expense, any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations, and costs of surety bonds in connection with financing activities,

(ii) provision for taxes based on income, profits or capital of Holdings and its Subsidiaries, including state, franchise and similar taxes (such as the Pennsylvania capital tax) and foreign withholding taxes paid or accrued during such period,

(iii) depreciation and amortization,

(iv) other non-cash charges, including non-cash asset impairment charges and write-offs (but excluding any non-cash charge to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period),

(v) severance, relocation costs and curtailments or modifications to pension and post-retirement employee benefit plans,

(vi) restructuring charges or reserves (including restructuring costs related to acquisitions after the date hereof and to closure or consolidation of facilities),

(vii) other unusual or non-recurring charges during such period identified in reasonable detail in the applicable Compliance Certificate,

(viii) any losses attributable to minority interests,

(ix) the amount of management, monitoring, consulting and advisory fees and related expenses paid to the Sponsors,

(x) any costs or expenses incurred by Holdings or any of its Subsidiaries pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of Holdings or net cash proceeds of an issuance of Equity Interests of Holdings (other than Disqualified Equity Interests),

(xi) cash fees and expenses incurred in connection with the Transaction,

(xii) any non-cash purchase accounting adjustment and any step-ups with respect to re-valuing assets and liabilities in connection with the Transaction or any Investment permitted under Section 6.2, and

(xiii) any non-cash compensation costs or expenses under Statement of Financial Accounting Standards No 123(R), "Share Based payment", pursuant to any management equity plan or stock option plan or any other employee benefit plan or agreement or any stock or shareholder agreement, less

(b) without duplication and to the extent included in arriving at such Consolidated Net Income, the sum of the following amounts for such period:

(i) unusual or non-recurring gains,

(ii) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period),

(iii) gains on asset sales (other than asset sales in the ordinary course of business),

(iv) any net after-tax income from the early extinguishment of Indebtedness or hedging obligations or other derivative instruments, and

(v) all gains attributable to minority interests.

"**Consolidated Excess Cash Flow**" means, for any period, an amount (if positive) equal to: (a) the sum, without duplication, of the amounts for such period of (i) Consolidated EBITDA, plus (ii) the Consolidated Working Capital Adjustment, minus (b) the sum, without duplication, of the amounts for such period of (i) repayments of Indebtedness for borrowed money (including (A) the principal component of payments in respect of Capitalized

Leases and (B) the amount of any mandatory prepayment of Term Loans pursuant to Section 2.14(a) to the extent required due to a Disposition that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase, but excluding (1) all other prepayments of Term Loans and (2) all repayments of Revolving Loans or Swing Line Loans except to the extent the Revolving Commitments are permanently reduced in connection with such repayments), (ii) Capital Expenditures (net of any proceeds of any related financings with respect to such expenditures), other than Capital Expenditures financed with Cumulative Excess Cash Flow that is Not Otherwise Applied pursuant to Section 6.15(a)(y), (iii) Consolidated Interest Expense, (iv) provisions for current taxes based on income of Holdings and its Subsidiaries and payable in cash with respect to such period and (v) the amount of Investments and acquisitions made during such period pursuant to Section 6.2 (other than Section 6.2(a)) to the extent that such Investments and acquisitions were financed with internally generated cash flow of Holdings and its Subsidiaries, (vi) cash payments by Holdings and its Subsidiaries during such period in respect of long-term liabilities of Holdings and its Subsidiaries other than Indebtedness, and (vii) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by Holdings and its Subsidiaries during such period that are required to be made in connection with any prepayment of Indebtedness.

"**Consolidated Interest Expense**" means, for any period, total interest expense (including that portion attributable to Capitalized Leases in accordance with GAAP and capitalized interest), net of cash interest income, of Holdings and its Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of Holdings and its Subsidiaries (but excluding the effects of any discounting of Indebtedness resulting from the application of purchase accounting in connection with the Transaction or any Permitted Acquisition), including all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under Swap Agreements, but excluding, however, (i) any amount not payable in cash and (ii) any amounts referred to in Section 2.11(d) payable on or before the Closing Date.

"**Consolidated Lease Expense**" means, for any period, all rental expenses of Holdings and its Subsidiaries during such period under operating leases for real or personal property, excluding real estate taxes, insurance costs and common area maintenance charges and net of sublease income, other than (a) obligations under vehicle leases entered into in the ordinary course of business, (b) all such rental expenses associated with assets acquired pursuant to a Permitted Acquisition to the extent such rental expenses relate to operating leases in effect at the time of (and immediately prior to) such acquisition and related to periods prior to such acquisition and (c) all obligations under Capitalized Leases, all as determined on a consolidated basis in accordance with GAAP.

"**Consolidated Net Income**" means, for any period, (a) the net income (or loss) of Holdings and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, minus (b) (i) the income (or loss) of any entity (other than a Subsidiary of Holdings) in which any other Person (other than Holdings or any of its Subsidiaries) has a joint interest to the extent that the declaration or payment of dividends or similar distributions by such entity of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, governmental regulation or Education Law applicable to such entity, (ii) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of Holdings or is

merged into or consolidated with Holdings or any of its Subsidiaries or that Person' s assets are acquired by Holdings or any of its Subsidiaries, (iii) the income of any Subsidiary of Holdings to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, governmental regulation or Education Law applicable to that Subsidiary, and (iv) (to the extent not included in clauses (i) through (iii) above) any net extraordinary gains or net extraordinary losses.

"**Consolidated Total Debt**" means, as of any date of determination, (a) the aggregate principal amount of Indebtedness of Holdings and its Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of Indebtedness resulting from the application of purchase accounting in connection with the Transaction or any Permitted Acquisition), consisting of Indebtedness for borrowed money, obligations in respect of Capitalized Leases and debt obligations evidenced by promissory notes or similar instruments, minus (b) the aggregate amount of cash and Cash Equivalents (in each case, free and clear of all Liens, other than nonconsensual Liens permitted by Section 6.1 and Liens permitted by Section 6.1(s) and clauses (i) and (ii) of Section 6.1(t)) that are included in the consolidated balance sheet of Holdings and its Subsidiaries as of such date.

"**Consolidated Working Capital**" means, at any date, the excess of (a) the sum of all amounts (other than cash and Cash Equivalents) that would, in conformity with GAAP, be set forth opposite the caption "total current assets" (or any like caption) on a consolidated balance sheet of Holdings and its Subsidiaries at such date over (b) the sum of all amounts that would, in conformity with GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a consolidated balance sheet of Holdings and its Subsidiaries on such date, including deferred revenue but excluding, without duplication, (i) the current portion of any Funded Debt, (ii) all Indebtedness consisting of Loans and Letter of Credit Usage to the extent otherwise included therein, (iii) the current portion of interest and (iv) the current portion of current and deferred income taxes.

"**Consolidated Working Capital Adjustment**" means, for any period on a consolidated basis, the amount (which may be a negative number) by which Consolidated Working Capital as of the beginning of such period exceeds (or is less than) Consolidated Working Capital as of the end of such period.

"**Contractual Obligation**" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"**Contributing Guarantors**" as defined in Section 7.2.

"**Control**" as set forth in the definition of "Affiliate."

"**Conversion/Continuation Date**" means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

"**Conversion/Continuation Notice**" means a Conversion/Continuation Notice substantially in the form of Exhibit A-2.

"**Counterpart Agreement**" means a Counterpart Agreement substantially in the form of Exhibit J delivered by a Credit Party pursuant to Section 5.12.

"**Credit Date**" means the date of a Credit Extension.

"**Credit Document**" means any of this Agreement, the Notes, if any, the Collateral Documents, any documents or certificates executed by Borrower in favor of Issuing Bank relating to Letters of Credit, and all other documents, instruments or agreements executed and delivered by a Credit Party for the benefit of any Agent, Issuing Bank or any Lender in connection herewith.

"**Credit Extension**" means the making of a Loan or the issuing of a Letter of Credit.

"**Credit Party**" means each Person (other than any Agent, Issuing Bank or any Lender or any other representative thereof) from time to time party to a Credit Document.

"**Credit Suisse**" as defined in the preamble hereto.

"**Cumulative Excess Cash Flow**" as defined in Section 6.6(i).

"**Debtor Relief Laws**" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"**Default**" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time specified therein, or both, would be an Event of Default.

"**Default Excess**" means, with respect to any Defaulting Lender, the excess, if any, of such Defaulting Lender' s Pro Rata Share of the aggregate outstanding principal amount of Loans of all Lenders (calculated as if all Defaulting Lenders (including such Defaulting Lender) had funded all of their respective Defaulted Loans) over the aggregate outstanding principal amount of all Loans of such Defaulting Lender.

"**Default Period**" means, with respect to any Defaulting Lender, the period commencing on the date of the applicable Funding Default and ending on the earliest of the following dates: (i) the date on which all Commitments are cancelled or terminated and/or the Obligations are declared or become immediately due and payable, (ii) the date on which (a) the Default Excess with respect to such Defaulting Lender shall have been reduced to zero (whether by the funding by such Defaulting Lender of any Defaulted Loans of such Defaulting Lender or by the non-pro rata application of any voluntary or mandatory prepayments of the Loans in accordance with the terms of Section 2.13 or Section 2.14 or by a combination thereof) and (b)

such Defaulting Lender shall have delivered to Company and Administrative Agent a written reaffirmation of its intention to honor its obligations hereunder with respect to its Commitments, and (iii) the date on which Company, Administrative Agent and Requisite Lenders waive all Funding Defaults of such Defaulting Lender in writing.

"**Defaulted Loan**" as defined in Section 2.22.

"**Defaulting Lender**" as defined in Section 2.22.

"**Deposit Account**" means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

"**Designated Non-Cash Consideration**" means the fair market value of non-cash consideration received by Company or a Subsidiary in connection with a Disposition pursuant to Section 6.5(k) that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer, setting forth the basis of such valuation (which amount will be reduced by the fair market value of the portion of the non-cash consideration converted to cash within 180 days following the consummation of the applicable Disposition).

"**Designated Subsidiary Borrower**" means any Qualified Subsidiary as to which an Election to Participate shall have been delivered to Administrative Agent in accordance with Section 2.25; provided that the status of any of the foregoing as a Designated Subsidiary Borrower shall terminate if and when an Election to Terminate is delivered to Administrative Agent in accordance with Section 2.25.

"**Disposition**" or "**Dispose**" means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale of Equity Interests) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith; provided that "Disposition" and "Dispose" shall not be deemed to include any issuance by Holdings of any of its Equity Interests to another Person.

"**Disqualified Equity Interests**" means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 180 days after the Maturity Date of the Term Loans.

"**Documentation Agents**" as defined in the preamble hereto.

"**Dollars**" and the sign "**$**" mean the lawful money of the United States of America.

"**Domestic Subsidiary**" means any Subsidiary organized under the laws of the United States of America, any State thereof or the District of Columbia.

"**Education Laws**" as defined in Section 5.8.

"**Education Management**" means Education Management Corporation, a Pennsylvania corporation.

"**Election to Participate**" means an Election to Participate substantially in the form of Exhibit M hereto.

"**Election to Terminate**" means an Election to Terminate substantially in the form of Exhibit N hereto.

"**Eligible Assignee**" means (i) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), and (ii) any commercial bank, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends credit or buys loans; provided, no Affiliate of (x) Holdings or (y) any Sponsor shall be an Eligible Assignee.

"**Environmental Claim**" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"**Environmental Laws**" means any and all Federal, state, local, and foreign statutes, Laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution, the protection of the environment, natural resources, or, to the extent relating to exposure to Hazardous Materials, human health or to the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"**Environmental Permit**" means any permit, approval, identification number, license or other authorization required under any Environmental Law.

"**Equity Contributions**" means, collectively, (a) the contribution by the Equity Investors on or prior to the Closing Date of an aggregate amount of cash of not less than 27.5% of the total capitalization of Holdings and its Subsidiaries on a consolidated basis (excluding for the avoidance of doubt any Letters of Credit issued on the Closing Date) to EM Acquisition Corporation, Holdings or one or more direct or indirect holding company parents of Holdings,

and (b) the further contribution to Company of any portion of such cash contribution proceeds not directly received by Company or used by Holdings to pay Transaction Expenses.

"**Equity Interests**" means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

"**Equity Investors**" means the Sponsors and the Management Stockholders.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"**ERISA Affiliate**" means any trade or business (whether or not incorporated) that is under common control with any Credit Party within the meaning of Section 414 of the Internal Revenue Code or Section 4001 of ERISA.

"**ERISA Event**" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Credit Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Credit Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Credit Party or any ERISA Affiliate.

"**Eurodollar Rate Loan**" means a Loan bearing interest at a rate determined by reference to the Adjusted Eurodollar Rate.

"**Event of Default**" means each of the conditions or events set forth in Section 8.1.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"**Excluded Subsidiary**" means (a) any Subsidiary that directly owns or operates a school and as such is restricted by applicable Law or applicable accreditation requirements or other Education Laws from guaranteeing the Obligations, (b) any Domestic Subsidiary that is a Subsidiary of a Foreign Subsidiary and (c) any inactive Subsidiary having less than $100,000 of assets.

"**Existing Indebtedness**" means Indebtedness and other obligations outstanding under that certain Second Amended and Restated Credit Agreement dated as of August 18, 2003 between Education Management and the lenders and agents party thereto, as amended prior to the Closing Date.

"**Fair Share Contribution Amount**" as defined in Section 7.2.

"**Fair Share**" as defined in Section 7.2.

"**Federal Funds Effective Rate**" means for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to a whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, (i) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to Administrative Agent, in its capacity as a Lender, on such day on such transactions as determined by Administrative Agent.

"**First Priority**" means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject, other than any Lien permitted pursuant to Section 6.1.

"**Fiscal Quarter**" means a fiscal quarter of any Fiscal Year.

"**Fiscal Year**" means the fiscal year of Holdings and its Subsidiaries ending on June 30 of each calendar year, subject to Section 6.11.

"**Forecasts**" as defined in Section 4.5(c).

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary.

"**Funded Debt**" means all Indebtedness of Holdings and its Subsidiaries on a consolidated basis for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

"**Funding Default**" as defined in Section 2.22.

"**Funding Guarantors**" as defined in Section 7.2.

"**Funding Notice**" means a notice substantially in the form of Exhibit A-1.

"**GAAP**" means, subject to the limitations on the application thereof set forth in Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

"**Governmental Acts**" means any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority.

"**Governmental Authority**" means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"**Governmental Authorization**" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"**Grantor**" as defined in the Pledge and Security Agreement.

"**Guarantee**" means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or monetary other obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or monetary other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); provided that the term "Guarantee" shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"**Guaranteed Obligations**" as defined in Section 7.1.

"**Guarantor Subsidiary**" means each Guarantor other than Holdings.

"**Guarantors**" means each of Holdings, Company (in the case of Obligations of the Designated Subsidiary Borrowers) and each other Domestic Subsidiary of Holdings (other than Excluded Subsidiaries and the relevant Designated Subsidiary Borrower in the case of its Obligations).

"**Guaranty**" means the guaranty of each Guarantor set forth in Section 7.

"**Hazardous Materials**" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"**Hazardous Materials Activity**" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"**Highest Lawful Rate**" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

"**Historical Financial Statements**" means as of the Closing Date, (i) the audited financial statements of Holdings and its Subsidiaries, for the immediately preceding three Fiscal Years, consisting of a consolidated balance sheet and the related consolidated statements of income, stockholders' equity and cash flows for such Fiscal Years, and (ii) the unaudited financial statements of Holdings and its Subsidiaries as at the most recently ended Fiscal Quarter, consisting of a consolidated balance sheet and the related consolidated statements of income, stockholders' equity and cash flows for the three-, six- or nine-month period, as applicable, ending on such date, and, in the case of clauses (i) and (ii), certified by the chief financial officer or treasurer of Company that they fairly present, in all material respects, the financial condition of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

"**Holdings**" as defined in the preamble hereto.

"**Holdings Restricted Payments Election**" as defined in Section 6.6(c).

"**Included Domestic Subsidiary**" means a Domestic Subsidiary that is not an Excluded Subsidiary.

"**Increased Amount Date**" as defined in Section 2.24.

"**Increased-Cost Lenders**" as defined in Section 2.23.

"**Indebtedness**" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(c) net obligations of such Person under any Swap Agreement;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable in the ordinary course of business and (ii) any earn-out obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness;

(g) all obligations of such Person in respect of Disqualified Equity Interests; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall (A) include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, except to the extent such Person' s liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Debt and (B) in the case of Holdings and its Subsidiaries, exclude all Indebtedness of a Credit Party having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary of business consistent with past practice. The amount of any net obligation under any Swap Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

"**Indemnified Liabilities**" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims (including

Environmental Claims), actions, judgments, suits, costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (i) this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby (including the Lenders' agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Credit Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)); or (ii) any Environmental Claim or any Hazardous Materials Activity relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of Holdings or any of its Subsidiaries.

"**Indemnitee**" as defined in Section 10.3.

"**Installment**" as defined in Section 2.12.

"**Intercompany Note**" means a global promissory note substantially in the form of Exhibit K evidencing Indebtedness owed among the Credit Parties.

"**Interest Coverage Ratio**" means, with respect to Holdings and its Subsidiaries on a consolidated basis, as of the end of any fiscal quarter of Holdings for the Test Period ending on such date, the ratio of (a) Consolidated EBITDA to (b) Consolidated Interest Expense.

"**Interest Payment Date**" means with respect to (i) any Base Rate Loan, each March 31, June 30, September 30 and December 31 of each year, commencing on the first such date to occur after the Closing Date and the final maturity date of such Loan; and (ii) any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan; provided, in the case of each Interest Period of longer than three months "Interest Payment Date" shall also include each date that is three months, or an integral multiple thereof, after the commencement of such Interest Period.

"**Interest Period**" means, in connection with a Eurodollar Rate Loan, an interest period of one-, two-, three- or six-months (or nine- or twelve-months if available to all Lenders), as selected by a Borrower in the applicable Funding Notice or Conversion/ Continuation Notice, (i) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be; and (ii) thereafter, commencing on the day on which the immediately preceding Interest Period expires; provided, (a) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on

the immediately preceding Business Day; (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clauses (c) and (d), of this definition, end on the last Business Day of a calendar month; (c) no Interest Period with respect to any portion of any Class of Term Loans shall extend beyond such Class' s Term Loan Maturity Date; and (d) no Interest Period with respect to any portion of the Revolving Loans shall extend beyond the Revolving Commitment Termination Date.

"**Interest Rate Agreement**" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is for the purpose of hedging the interest rate exposure associated with Holdings' and its Subsidiaries' operations and not for speculative purposes.

"**Interest Rate Determination Date**" means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

"**Internal Revenue Code**" means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

"**Investment**" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person (excluding, in the case of Holdings and its Subsidiaries, loans, advances, or Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made to a Credit Party in the ordinary course of business consistent with past practice) or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"**Issuance Notice**" means an Issuance Notice substantially in the form of Exhibit A-3.

"**Issuing Bank**" means BNP as Issuing Bank hereunder, together with its permitted successors and assigns in such capacity.

"**Joinder Agreement**" means an agreement substantially in the form of Exhibit L.

"**Junior Financing**" as defined in Section 6.12.

"**Junior Financing Documentation**" means any documentation governing any Junior Financing.

"**Laws**" means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"**Lender**" means each financial institution listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto pursuant to an Assignment Agreement or a Joinder Agreement.

"**Lender Counterparty**" means each Lender or any Affiliate of a Lender counterparty to a Swap Agreement (including any Person who is a Lender (and any Affiliate thereof) as of the Closing Date but subsequently, whether before or after entering into a Swap Agreement, ceases to be a Lender).

"**Letter of Credit**" means any letter of credit issued hereunder. A Letter of Credit may be a commercial letter of credit or a standby letter of credit.

"**Letter of Credit Sublimit**" means the lesser of (i) $175,000,000 and (ii) the aggregate unused amount of the Revolving Commitments then in effect.

"**Letter of Credit Usage**" means, as at any date of determination, the sum of (i) the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all Letters of Credit then outstanding, and (ii) the aggregate amount of all drawings under Letters of Credit honored by Issuing Bank and not theretofore reimbursed by or on behalf of Borrower.

"**Lien**" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing).

"**Loan**" means a Tranche B Term Loan, a Revolving Loan, a Swing Line Loan and a New Term Loan.

"**Management Stockholders**" means the members of management of Company or its Subsidiaries who are investors in Holdings or any direct or indirect parent thereof.

"**Margin Stock**" as defined in Regulation U of the Board of Governors as in effect from time to time.

"**Material Adverse Change**" means any event, circumstance, development, change or effect that, individually or in the aggregate with all other events, circumstances, developments, changes and effects, (i) is or is reasonably likely to be materially adverse to the

business, properties, results of operations, assets, or condition (financial or otherwise) of Education Management and its Subsidiaries, taken as a whole or (ii) would prevent Education Management from consummating the Merger or would prevent Education Management from performing its material obligations under the Merger Agreement; provided, however, that in no event would any of the following, alone or in combination, be deemed to constitute, nor shall any of the following be taken into account in determining whether there has been, or will be, a "Material Adverse Change": any event, circumstance, development, condition, change, or effect resulting from or relating to, directly or indirectly, (A) changes in GAAP (or any interpretation thereof by a Governmental Entity or quasi-Governmental Entity, including the Financial Accounting Standards Board) after the date of the Merger Agreement, (B) general economic, political, or financial market conditions, (C) terrorism or war (except, in the case of (A), (B) or (C), where such event, circumstance, development, change, or effect has had a disproportionate effect on Education Management and its Subsidiaries, taken as a whole, as compared to other persons in the industry in which Education Management and its Subsidiaries conduct their business), (D) any shareholder litigation brought or threatened against Education Management or any member of Education Management' s board of directors in respect of the Merger Agreement or the transactions contemplated thereby, or (E) compliance with the terms of, or the taking of any action required by, the Merger Agreement (other than Section 6.09 thereof).

"**Material Adverse Effect**" means (a) a material adverse effect on the business, operations, assets, liabilities (actual or contingent) or financial condition of Holdings and its Subsidiaries, taken as a whole, (b) a material adverse effect on the ability of any Borrower or the Credit Parties (taken as a whole) to perform their respective payment obligations under any Credit Document to which any Borrower or any of the Credit Parties is a party or (c) a material adverse effect on the rights and remedies of the Lenders under any Credit Document.

"**Material Real Estate Asset**" means any fee interest owned by any Credit Party in any real property having a fair market value in excess of $2,500,000 as of the date of the acquisition thereof.

"**Merger**" means the merger of EM Corporation Acquisition with and into Education Management pursuant to the Merger Agreement.

"**Merger Agreement**" means the Agreement and Plan of Merger dated as of March 3, 2006 between Education Management and EM Acquisition Corporation.

"**MLCC**" as defined in the preamble hereto.

"**Moody' s**" means Moody' s Investor Services, Inc.

"**Mortgage**" means, collectively, the deeds of trust, trust deeds, hypothecs and mortgages made by the Credit Parties in favor or for the benefit of Administrative Agent on behalf of the Lenders substantially in the form of Exhibit I (with such changes as may be customary to account for local Law matters), and any other mortgages executed and delivered pursuant to Section 5.13.

"**Multiemployer Plan**" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate makes or is

obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"**NAIC**" means The National Association of Insurance Commissioners, and any successor thereto.

"**Net Asset Sale Proceeds**" means, with respect to any Asset Sale, an amount equal to: (a) cash payments (including any cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received by Holdings or any of its Subsidiaries from such Asset Sale, minus (b) any bona fide direct costs incurred in connection with such Asset Sale, including (i) income or gains taxes payable by the seller (or a direct or indirect parent of such seller) as a result of any gain recognized in connection with such Asset Sale, (ii) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale and (iii) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller' s indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by Holdings or any of its Subsidiaries in connection with such Asset Sale.

"**Net Cash Proceeds**" means, (a) with respect to any Asset Sale, the Net Asset Sale Proceeds, (b) with respect to any Casualty Event, the Net Insurance/Condemnation Proceeds, and (c) with respect to any issuance of Equity Interests or any incurrence of Indebtedness, the cash proceeds from such issuance or incurrence, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses.

"**Net Insurance/Condemnation Proceeds**" means an amount equal to: (a) any cash payments or proceeds received by Holdings or any of its Subsidiaries (i) under any casualty insurance policy in respect of a covered loss thereunder or (ii) as a result of the taking of any assets of Holdings or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (b) (i) any actual and reasonable costs incurred by Holdings or any of its Subsidiaries in connection with the adjustment or settlement of any claims of Holdings or such Subsidiary in respect thereof, and (ii) any bona fide direct costs incurred in connection with any sale of such assets as referred to in clause (a)(ii) of this definition, including income taxes payable as a result of any gain recognized in connection therewith.

"**New Notes**" means the Senior Notes and Senior Subordinated Notes.

"**New Notes Documentation**" means the New Notes, and all documents executed and delivered with respect to the New Notes, including the Senior Notes Indenture and the Senior Subordinated Notes Indenture.

"**New Revolving Loan Commitments**" as defined in Section 2.24.

"**New Revolving Loan Lender**" as defined in Section 2.24.

"**New Revolving Loans**" as defined in Section 2.24.

"**New Term Loan Commitments**" as defined in Section 2.24.

"**New Term Loan Exposure**" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the New Term Loans of such Lender.

"**New Term Loan Lender**" as defined in Section 2.24.

"**New Term Loan Maturity Date**" means the date that New Term Loans of a Series shall become due and payable in full hereunder, as specified in the applicable Joinder Agreement, including by acceleration or otherwise.

"**New Term Loans**" as defined in Section 2.24.

"**Nonpublic Information**" means information which has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD.

"**Non-US Lender**" as defined in Section 2.20(c).

"**Note**" means a Tranche B Term Loan Note, a Revolving Loan Note or a Swing Line Note.

"**Notice**" means a Funding Notice, an Issuance Notice, or a Conversion/ Continuation Notice.

"**Not Otherwise Applied**" means, with reference to any amount of Net Cash Proceeds of any transaction or event or of Consolidated Excess Cash Flow, that such amount (a) was not required to be applied to prepay the Loans pursuant to Section 2.14, and (b) was not previously applied in determining the permissibility of a transaction under the Credit Documents where such permissibility was (or may have been) contingent on receipt of such amount or utilization of such amount for a specified purpose (including without limitation, (i) Investments pursuant to Section 6.2, (ii) Restricted Payments to Holdings pursuant to Section 6.6 (or loans or advances to Holdings in lieu thereof pursuant to Section 6.2(m)), (iii) prepayments, repurchases or redemptions of any Junior Financing pursuant to Section 6.12) and (iv) Capital Expenditures pursuant to Section 6.15). Company shall promptly notify Administrative Agent of any application of such amount as contemplated by (b) above.

"**NPL**" means the National Priorities List under CERCLA.

"**Obligations**" means all (a) advances to, and debts, liabilities, obligations, covenants and duties of, any Credit Party and its Subsidiaries arising under any Credit Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Credit Party or Subsidiary of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding, (b) obligations of any Credit Party and its Subsidiaries

arising under any Swap Agreement with a Lender Counterparty and (c) Cash Management Obligations. Without limiting the generality of the foregoing, the Obligations of the Credit Parties under the Credit Documents (and of their Subsidiaries to the extent they have obligations under the Credit Documents) include (i) the obligation (including guarantee obligations) to pay principal, interest, Letter of Credit commissions, reimbursement obligations, charges, expenses, fees, indemnities and other amounts payable by any Credit Party or its Subsidiaries under any Credit Document and (ii) the obligation of any Credit Party or any of its Subsidiaries to reimburse any amount in respect of any of the foregoing that any Lender, in its sole discretion, may elect to pay or advance on behalf of such Credit Party or such Subsidiary.

"**Obligee Guarantor**" as defined in Section 7.7.

"**Organization Documents**" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"**PBGC**" means the Pension Benefit Guaranty Corporation or any successor thereto.

"**Pension Plan**" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Credit Party or any ERISA Affiliate or to which any Credit Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five (5) plan years.

"**Perfection Certificate**" means a certificate in form satisfactory to Collateral Agent that provides information relating to UCC filings of each Credit Party.

"**Permitted Acquisition**" means any acquisition by Company or any of its wholly owned Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, 90% or more of the Equity Interests in or a business line or unit or a division of, any Person; provided,

(i) immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(ii) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable laws and in conformity with all applicable Governmental Authorizations;

(iii) in the case of the acquisition of Equity Interests, 90% or more of the Equity Interests (except for any such Securities in the nature of directors' qualifying shares required pursuant to applicable law not to exceed 5% of the outstanding Equity Interests) acquired or otherwise issued by such Person or any newly formed Subsidiary of Company in connection with such acquisition shall be owned by Company or a Guarantor Subsidiary thereof (any such Person or newly formed Subsidiary that is not Wholly Owned by Company after such acquisition is referred to as an "**Acquired Non-Wholly-Owned Subsidiary**"), and Company shall have taken, or caused to be taken, as of the date such Person becomes a Subsidiary of Company, each of the actions set forth in Sections 5.12 and/or 5.13, as applicable;

(iv) Holdings and its Subsidiaries shall be in compliance with the financial covenants set forth in Section 6.10 on a pro forma basis after giving effect to such acquisition as of the last day of the Fiscal Quarter most recently ended, (as determined in accordance with Section 6.10(c));

(v) Company shall have delivered to Administrative Agent (A) on or prior to the date such proposed acquisition is consummated, (1) a Compliance Certificate evidencing compliance with Section 6.10 as required under clause (iv) above and (2) with respect to any acquisition with consideration exceeding $15,000,000, all other relevant financial information with respect to such acquired assets to the extent available to the Credit Parties, including, without limitation, the aggregate consideration for such acquisition and any other information required to demonstrate compliance with Section 6.10 and (B) promptly upon request by Administrative Agent, a copy of the purchase agreement related to the proposed Permitted Acquisition (and any related documents reasonably requested by Administrative Agent); and

(vi) any Person or assets or division as acquired in accordance herewith shall be in same business or lines of business in which Company and/or its Subsidiaries are engaged as of the Closing Date.

"**Permitted Equity Issuance**" means any sale or issuance of any Qualified Equity Interests of Holdings to the extent permitted hereunder.

"**Permitted Holdings Debt**" as defined in Section 6.3(p).

"**Permitted Refinancing**" means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person; provided that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended except by an amount equal to unpaid accrued interest and premium thereon plus other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 6.3(e), such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed or extended, (c) other than with respect to a Permitted Refinancing in respect of

Indebtedness permitted pursuant to Section 6.3(e), at the time thereof, no Event of Default shall have occurred and be continuing, and (d) if such Indebtedness being modified, refinanced, refunded, renewed or extended is Indebtedness permitted pursuant to Section 6.3(b), 6.3(r) or 6.12(a), (i) to the extent such Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended, (ii) the terms and conditions (including, if applicable, as to collateral but excluding as to subordination, interest rate and redemption premium) of any such modified, refinanced, refunded, renewed or extended Indebtedness, taken as a whole, are not materially less favorable to the Credit Parties or the Lenders than the terms and conditions of the Indebtedness being modified, refinanced, refunded, renewed or extended; provided that a certificate of a Responsible Officer delivered to Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that Company has determined in good faith that such terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless Administrative Agent notifies Company within such five Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees) and (iii) such modification, refinancing, refunding, renewal or extension is incurred by the Person who is the obligor of the Indebtedness being modified, refinanced, refunded, renewed or extended.

"**Person**" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"**Plan**" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by any Credit Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

"**Pledge and Security Agreement**" means the Pledge and Security Agreement to be executed by Company and each Guarantor substantially in the form of Exhibit H, as it may be amended, supplemented or otherwise modified from time to time.

"**Prime Rate**" means the rate of interest quoted in *The Wall Street Journal*, Money Rates Section as the Prime Rate (currently defined as the base rate on corporate loans posted by at least 75% of the nation' s thirty (30) largest banks), as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Agent or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"**Principal Office**" means, for each of Administrative Agent, Swing Line Lender and Issuing Bank, such Person' s "Principal Office" as set forth on Appendix B, or such other

office or office of a third party or sub-agent, as appropriate, as such Person may from time to time designate in writing to Company, Administrative Agent and each Lender.

"**Pro Forma Balance Sheet**" as defined in Section 4.5(a)(ii).

"**Pro Forma Financial Statements**" as defined in Section 4.5(a)(ii).

"**Projections**" as defined in Section 5.1(c).

"**Pro Rata Share**" means (a) with respect to all payments, computations and other matters relating to the Tranche B Term Loan of any Lender, the percentage obtained by dividing (i) the Tranche B Term Loan Exposure of that Lender by (ii) the aggregate Tranche B Term Loan Exposure of all Lenders; (b) with respect to all payments, computations and other matters relating to the Revolving Commitment or Revolving Loans of any Lender or any Letters of Credit issued or participations purchased therein by any Lender or any participations in any Swing Line Loans purchased by any Lender, the percentage obtained by dividing (i) the Revolving Exposure of that Lender by (ii) the aggregate Revolving Exposure of all Lenders; and (c) with respect to all payments, computations, and other matters relating to New Term Loan Commitments or New Term Loans of a particular Series, the percentage obtained by dividing (i) the New Term Loan Exposure of that Lender with respect to that Series by (ii) the aggregate New Term Loan Exposure of all Lenders with respect to that Series. For all other purposes with respect to each Lender, "Pro Rata Share" means the percentage obtained by dividing (A) an amount equal to the sum of the Tranche B Term Loan Exposure, the Revolving Exposure and the New Term Loan Exposure of that Lender, by (B) an amount equal to the sum of the aggregate Tranche B Term Loan Exposure, the aggregate Revolving Exposure and the aggregate New Term Loan Exposure of all Lenders.

"**Qualified Equity Interests**" means any Equity Interests that are not Disqualified Equity Interests.

"**Qualified Non-Wholly-Owned Subsidiary**" means (a) any Acquired Non-Wholly-Owned Subsidiary (as defined in clause (iii) of the definition of "Permitted Acquisitions"), provided that (i) such Subsidiary is acquired after the Closing Date in accordance with Section 6.2(i) and (ii) Company and its Wholly Owned Subsidiaries own no less than the percentage of the outstanding Equity Interests of such Subsidiary owned by them on the date such Subsidiary is acquired pursuant to Section 6.2(i) and (b) any Subsidiary that is formed by Company or any of its Subsidiaries after the Closing Date, provided that (i) Company and its Wholly Owned Subsidiaries own at least 90% of the outstanding Equity Interests of such Subsidiary (except for any such Securities in the nature of directors' qualifying shares required pursuant to applicable law not to exceed 5% of the outstanding Equity Interests of such Subsidiary) and (ii) such Subsidiary is not formed in connection with, or used in, the acquisition (whether by purchase, merger or otherwise) of all or substantially all of the assets of, 90% or more of the Equity Interests in or a business line or unit or a division of, any Person.

"**Qualified Subsidiary**" means any Subsidiary of Company (other than any Excluded Subsidiary) that satisfies the following criteria: (a) the jurisdiction of organization or

incorporation of such Subsidiary is the United States of America (or any State thereof or the District of Columbia) and (b) such Subsidiary is a wholly owned Subsidiary of Company.

"**Qualifying IPO**" means the issuance by Holdings or any direct or indirect parent of Holdings of its common Equity Interests in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act (whether alone or in connection with a secondary public offering).

"**Refunded Swing Line Loans**" as defined in Section 2.3(b)(iv).

"**Register**" as defined in Section 2.7(b).

"**Regulation D**" means Regulation D of the Board of Governors, as in effect from time to time.

"**Regulation FD**" means Regulation FD as promulgated by the US Securities and Exchange Commission under the Securities Act and Exchange Act as in effect from time to time.

"**Reimbursement Date**" as defined in Section 2.4(d).

"**Related Fund**" means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"**Release**" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

"**Replacement Lender**" as defined in Section 2.23.

"**Reportable Event**" means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived.

"**Required Prepayment Date**" as defined in Section 2.15(c).

"**Requisite Lenders**" means one or more Lenders having or holding Tranche B Term Loan Exposure, New Term Loan Exposure and/or Revolving Exposure and representing more than 50% of the sum of (i) the aggregate Tranche B Term Loan Exposure of all Lenders, (ii) the aggregate Revolving Exposure of all Lenders and (iii) the aggregate New Term Loan Exposure of all Lenders; provided that the Tranche B Term Loan Exposure, New Term Loan Exposure and Revolving Exposure of, and the portion of the aggregate Tranche B Term Loan Exposure, aggregate New Term Loan Exposure and aggregate Revolving Exposure held or

deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Requisite Lenders.

"**Responsible Officer**" means the chief executive officer, president, vice president, chief financial officer, treasurer or assistant treasurer or other similar officer of a Credit Party. Any document delivered hereunder that is signed by a Responsible Officer of a Credit Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Credit Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Credit Party.

"**Restricted Payment**" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest in Holdings, Company or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to Holdings or Company' s stockholders, partners or members (or the equivalent Persons thereof).

"**Revolving Commitment**" means the commitment of a Lender to make or otherwise fund any Revolving Loan and to acquire participations in Letters of Credit and Swing Line Loans hereunder and "**Revolving Commitments**" means such commitments of all Lenders in the aggregate. The amount of each Lender' s Revolving Commitment, if any, is set forth on Appendix A-2 or in the applicable Assignment Agreement or Joinder Agreement, as applicable, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Revolving Commitments as of the Closing Date is $300,000,000.

"**Revolving Commitment Period**" means the period from the Closing Date to but excluding the Revolving Commitment Termination Date.

"**Revolving Commitment Termination Date**" means the earliest to occur of (i) October 3, 2006, if the Term Loans are not made on or before that date; (ii) the sixth anniversary of the Closing Date, (iii) the date the Revolving Commitments are permanently reduced to zero pursuant to Section 2.13(b), and (iv) the date of the termination of the Revolving Commitments pursuant to Section 8.1.

"**Revolving Exposure**" means, with respect to any Lender as of any date of determination, (i) prior to the termination of the Revolving Commitments, that Lender' s Revolving Commitment; and (ii) after the termination of the Revolving Commitments, the sum of (a) the aggregate outstanding principal amount of the Revolving Loans of that Lender, (b) in the case of Issuing Bank, the aggregate Letter of Credit Usage in respect of all Letters of Credit issued by that Lender (net of any participations by Lenders in such Letters of Credit), (c) the aggregate amount of all participations by that Lender in any outstanding Letters of Credit or any unreimbursed drawing under any Letter of Credit, (d) in the case of Swing Line Lender, the aggregate outstanding principal amount of all Swing Line Loans (net of any participations therein by other Lenders), and (e) the aggregate amount of all participations therein by that Lender in any outstanding Swing Line Loans.

"**Revolving Loan**" means a Loan made by a Lender to Borrower pursuant to Section 2.2(a) and/or Section 2.24.

"**Revolving Loan Note**" means a promissory note in the form of Exhibit B-2, as it may be amended, supplemented or otherwise modified from time to time.

"**Rollover Amount**" as defined in Section 6.15(b).

"**S&P**" means Standard & Poor' s Ratings Services, a division of The McGraw Hill Companies, Inc., and any successor thereto.

"**SEC**" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"**Secured Parties**" has the meaning assigned to that term in the Pledge and Security Agreement.

"**Securities**" means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"**Securities Act**" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"**Senior Notes**" means $375,000,000 in aggregate principal amount of Company' s 8.75% senior unsecured notes due 2014.

"**Senior Notes Indenture**" means the Indenture for the Senior Notes, dated as of June 1, 2006.

"**Senior Subordinated Notes**" means $385,000,000 in aggregate principal amount of Company' s 10.25% senior subordinated notes due 2016.

"**Senior Subordinated Notes Indenture**" means the Indenture for the Senior Subordinated Notes, dated as of June 1, 2006.

"**Series**" as defined in Section 2.24.

"**Settlement Service**" as defined in Section 10.6(d).

"**Solvency Certificate**" means a Solvency Certificate of the chief financial officer or treasurer of Holdings substantially in the form of Exhibit G-2.

"**Solvent**" and "**Solvency**" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person' s ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person' s property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"**Sponsors**" means Goldman Sachs Capital Partners, Providence Equity Partners Inc., Leeds Equity Partners, and their respective Affiliates, but not including, however, any portfolio companies of any of the foregoing.

"**Sponsor Management Agreement**" means the Management Agreement between certain of the management companies associated with the Sponsors and Company.

"**Sponsor Termination Fees**" means the one-time payment under the Sponsor Management Agreement of a termination fee to one or more of the Sponsors and their Affiliates in the event of either a Change of Control or the completion of a Qualifying IPO.

"**Subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding. Unless otherwise expressly provided, all references herein to a "Subsidiary" shall mean a Subsidiary of Holdings.

"**Successor Company**" as defined in Section 6.4(d).

"**Swap Agreement**" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing),

whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "**Master Agreement**"), including any such obligations or liabilities under any Master Agreement.

"**Swap Termination Value**" means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include a Lender or any Affiliate of a Lender).

"**Swing Line Lender**" means BNP in its capacity as Swing Line Lender hereunder, together with its permitted successors and assigns in such capacity.

"**Swing Line Loan**" means a Loan made by Swing Line Lender to Borrower pursuant to Section 2.3.

"**Swing Line Note**" means a promissory note in the form of Exhibit B-3, as it may be amended, supplemented or otherwise modified from time to time.

"**Swing Line Sublimit**" means the lesser of (i) $20,000,000, and (ii) the aggregate unused amount of Revolving Commitments then in effect.

"**Syndication Agent**" as defined in the preamble hereto.

"**Tax**" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding imposed by any Governmental Authority; provided, "Tax on the overall net income" of a Person shall mean a tax imposed by the jurisdiction in which that Person is organized or in which that Person' s applicable principal office (and/or, in the case of a Lender, its lending office) is located or in which that Person (and/or, in the case of a Lender, its lending office) is deemed to be doing business on all or part of the net income, profits or gains (whether worldwide, or only insofar as such income, profits or gains are considered to arise in or to relate to a particular jurisdiction, or otherwise) of that Person (and/or, in the case of a Lender, its applicable lending office).

"**Term Loan**" means a Tranche B Term Loan and a New Term Loan.

"**Term Loan Commitment**" means the Tranche B Term Loan Commitment or the New Term Loan Commitment of a Lender, and "**Term Loan Commitments**" means such commitments of all Lenders.

"**Term Loan Maturity Date**" means the Tranche B Term Loan Maturity Date and the New Term Loan Maturity Date of any Series of New Term Loans.

"**Terminated Lender**" as defined in Section 2.23.

"**Test Period**" means, for any determination under this Agreement, the four consecutive fiscal quarters of Company then last ended.

"**Threshold Amount**" means $50,000,000.

"**Title Company**" as defined in Section 3.1(g).

"**Title Policy**" as defined in Section 3.1(g).

"**Total Assets**" means the total assets of Company and its Subsidiaries on a consolidated basis, as shown on the most recent balance sheet of Company or such other Person as may be expressly stated.

"**Total Leverage Ratio**" means, with respect to any Test Period, the ratio of (a) Consolidated Total Debt as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

"**Total Utilization of Revolving Commitments**" means, as at any date of determination, the sum of (i) the aggregate principal amount of all outstanding Revolving Loans (other than Revolving Loans made for the purpose of repaying any Refunded Swing Line Loans or reimbursing Issuing Bank for any amount drawn under any Letter of Credit, but not yet so applied), (ii) the aggregate principal amount of all outstanding Swing Line Loans, and (iii) the Letter of Credit Usage.

"**Tranche B Term Loan**" means a Tranche B Term Loan made by a Lender to Borrower pursuant to Section 2.1(a).

"**Tranche B Term Loan Commitment**" means the commitment of a Lender to make or otherwise fund a Tranche B Term Loan and "**Tranche B Term Loan Commitments**" means such commitments of all Lenders in the aggregate. The amount of each Lender' s Tranche B Term Loan Commitment, if any, is set forth on Appendix A-1 or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Tranche B Term Loan Commitments as of the Closing Date is $1,185,000,000.

"**Tranche B Term Loan Exposure**" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Tranche B Term Loans of such Lender; provided, at any time prior to the making of the Tranche B Term Loans, the Tranche B Term Loan Exposure of any Lender shall be equal to such Lender' s Tranche B Term Loan Commitment.

"**Tranche B Term Loan Maturity Date**" means the earlier of (i) the seventh anniversary of the Closing Date, and (ii) the date that all Tranche B Term Loans shall become due and payable in full hereunder, whether by acceleration or otherwise.

"**Tranche B Term Loan Note**" means a promissory note in the form of Exhibit B-1, as it may be amended, supplemented or otherwise modified from time to time.

"**Transaction**" means, collectively, (a) the Equity Contributions, (b) the Merger, (c) the issuance of the New Notes, (d) the funding of the Term Loans on the Closing Date, (e) the consummation of any other transactions in connection with the foregoing, and (f) the payment of the fees and expenses incurred in connection with any of the foregoing.

"**Transaction Documents**" means the Merger Agreement and all other material documents, instruments and certificates contemplated by the Merger Agreement.

"**Transaction Expenses**" means any fees or expenses incurred or paid by Holdings, Company or any of its Subsidiaries in connection with the Transaction, this Agreement and the other Credit Documents and the transactions contemplated hereby and thereby.

"**Type of Loan**" means (i) with respect to either Term Loans or Revolving Loans, a Base Rate Loan or a Eurodollar Rate Loan, and (ii) with respect to Swing Line Loans, a Base Rate Loan.

"**UCC**" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

"**Waivable Mandatory Prepayment**" as defined in Section 2.15(c).

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (ii) the then outstanding principal amount of such Indebtedness.

"**Wholly Owned**" means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director' s qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

1.2. Accounting Terms. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Holdings to Lenders pursuant to Section 5.1(a) and 5.1(b) shall be prepared in accordance with GAAP as in effect at the time of such preparation, except as otherwise specifically prescribed herein. If at

any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Credit Document, and either Company or the Required Lenders shall so request, the Lenders, Administrative Agent and Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein. Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the Historical Financial Statements.

1.3. Interpretation, etc. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

SECTION 2. LOANS AND LETTERS OF CREDIT

2.1. Term Loans.

(a) Loan Commitments. Subject to the terms and conditions hereof, each Lender severally agrees to make, on the Closing Date, a Tranche B Term Loan to Company in an amount equal to such Lender' s Tranche B Term Loan Commitment.

Company may make only one borrowing under the Tranche B Term Loan Commitment which shall be on the Closing Date. Any amount borrowed under this Section 2.1(a) and subsequently repaid or prepaid may not be reborrowed. Subject to Sections 2.13(a) and 2.14, all amounts owed hereunder with respect to the Tranche B Term Loans shall be paid in full no later than the Tranche B Term Loan Maturity Date. Each Lender' s Tranche B Term Loan Commitment shall terminate immediately and without further action on the Closing Date after giving effect to the funding of such Lender' s Tranche B Term Loan Commitment on such date.

(b) Borrowing Mechanics for Term Loans.

(i) Company shall deliver to Administrative Agent a fully executed Funding Notice no later than 12:00 p.m. (New York City time) at least three Business Days prior to the Closing Date in the case of Term Loans that are Eurodollar Rate Loans, and at least one Business Day prior to the Closing Date in the case of Term Loans that are Base Rate Loans. Promptly upon receipt by Administrative Agent of such Funding Notice, Administrative Agent shall notify each Lender of the proposed borrowing.

(ii) Each Lender shall make its Tranche B Term Loan available to Administrative Agent not later than 12:00 p.m. (New York City time) on the Closing Date, by wire transfer of same day funds in Dollars, at the Principal Office designated by Administrative Agent. Upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of the Tranche B Term Loans available to Borrower on the Closing Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Loans received by Administrative Agent from Lenders to be credited to the account of Company at the Principal Office designated by Administrative Agent or to such other account as may be designated in writing to Administrative Agent by Company.

2.2. Revolving Loans.

(a) Revolving Commitments. During the Revolving Commitment Period, subject to the terms and conditions hereof, each Lender severally agrees to make Revolving Loans to Borrowers in an aggregate amount up to but not exceeding such Lender' s Revolving Commitment; provided, that after giving effect to the making of any Revolving Loans in no event shall the Total Utilization of Revolving Commitments exceed the Revolving Commitments then in effect. Amounts borrowed pursuant to this Section 2.2(a) may be repaid and reborrowed during the Revolving Commitment Period. Each Lender' s Revolving Commitment shall expire on the Revolving Commitment Termination Date and all Revolving Loans and all other amounts owed hereunder with respect to the Revolving Loans and the Revolving Commitments shall be paid in full no later than such date.

(b) Borrowing Mechanics for Revolving Loans.

(i) Except pursuant to Section 2.4(d), Revolving Loans that are Base Rate Loans shall be made in an aggregate minimum amount of $1,000,000 and integral multiples of $500,000 in excess of that amount, and Revolving Loans that are Eurodollar Rate Loans shall be in an aggregate minimum amount of $1,000,000 and integral multiples of $500,000 in excess of that amount.

(ii) Whenever a Borrower desires that Lenders make Revolving Loans, such Borrower shall give notice to Administrative Agent, which may be given by telephone, no later than 12:00 p.m. (New York City time) at least three Business Days in advance of the proposed Credit Date in the case of a Eurodollar Rate Loan, and at least one Business Day in advance of the proposed Credit Date in the case of a Revolving Loan that is a Base Rate Loan. Except as otherwise provided herein, a notice for a Revolving Loan that is a Eurodollar Rate Loan shall be irrevocable on and after the related Interest Rate Determination Date, and the relevant Borrower shall be bound to make a borrowing in accordance therewith. Each telephonic notice by a Borrower pursuant to this Section 2.2(b) must be confirmed promptly by delivery to Administrative Agent of a fully executed Funding Notice. Neither Administrative Agent nor any Lender shall incur any liability to any Borrower in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by a Responsible Officer or other person authorized to borrow on behalf of such Borrower or for otherwise acting in good faith under this Section 2.2(b), and upon funding of Loans

by Lenders in accordance with this Agreement pursuant to any such telephonic notice a Borrower shall have effected Loans hereunder.

(iii) Notice of receipt of each Funding Notice in respect of Revolving Loans, together with the amount of each Lender' s Pro Rata Share thereof, if any, together with the applicable interest rate, shall be provided by Administrative Agent to each applicable Lender by telefacsimile with reasonable promptness.

(iv) Each Lender shall make the amount of its Revolving Loan available to Administrative Agent not later than 12:00 p.m. (New York City time) on the applicable Credit Date by wire transfer of same day funds in Dollars, at the Principal Office designated by Administrative Agent. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of such Revolving Loans available to the relevant Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Revolving Loans received by Administrative Agent from Lenders to be credited to the account of such Borrower at the Principal Office designated by Administrative Agent or such other account as may be designated in writing to Administrative Agent by such Borrower.

2.3. Swing Line Loans.

(a) Swing Line Loans Commitments. During the Revolving Commitment Period, subject to the terms and conditions hereof, Swing Line Lender hereby agrees to make Swing Line Loans to Borrowers in the aggregate amount up to but not exceeding the Swing Line Sublimit; provided, that after giving effect to the making of any Swing Line Loan, in no event shall the Total Utilization of Revolving Commitments exceed the Revolving Commitments then in effect. Amounts borrowed pursuant to this Section 2.3 may be repaid and reborrowed during the Revolving Commitment Period. Swing Line Lender' s Revolving Commitment shall expire on the Revolving Commitment Termination Date and all Swing Line Loans and all other amounts owed hereunder with respect to the Swing Line Loans and the Revolving Commitments shall be paid in full no later than such date.

(b) Borrowing Mechanics for Swing Line Loans.

(i) Swing Line Loans shall be made in an aggregate minimum amount of $100,000 and integral multiples of $100,000 in excess of that amount.

(ii) Whenever a Borrower desires that Swing Line Lender make a Swing Line Loan, such Borrower shall give notice to Administrative Agent, which may be given by telephone, no later than 1:00 p.m. (New York City time) on the proposed Credit Date. Each telephonic notice by a Borrower pursuant to this Section 2.3(b) must be confirmed promptly by delivery to Administrative Agent of a fully executed Funding Notice. Neither Administrative Agent nor any Lender shall incur any liability to any Borrower in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by a Responsible Officer or other person authorized to borrow on behalf of such Borrower or for otherwise acting in good faith under this

Section 2.3(b), and upon funding of Loans by Lenders in accordance with this Agreement pursuant to any such telephonic notice a Borrower shall have effected Loans hereunder.

(iii) Swing Line Lender shall make the amount of its Swing Line Loan available to Administrative Agent not later than 2:00 p.m. (New York City time) on the applicable Credit Date by wire transfer of same day funds in Dollars, at Administrative Agent' s Principal Office. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of such Swing Line Loans available to the relevant Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Swing Line Loans received by Administrative Agent from Swing Line Lender to be credited to the account of such Borrower at Administrative Agent' s Principal Office, or to such other account as may be designated in writing to Administrative Agent by such Borrower.

(iv) With respect to any Swing Line Loans which have not been voluntarily prepaid by the relevant Borrower pursuant to Section 2.13, Swing Line Lender may at any time in its sole and absolute discretion, deliver to Administrative Agent (with a copy to Company), no later than 11:00 a.m. (New York City time) at least one Business Day in advance of the proposed Credit Date, a notice (which shall be deemed to be a Funding Notice given by the relevant Borrower) requesting that each Lender holding a Revolving Commitment make Revolving Loans that are Base Rate Loans to such Borrower on such Credit Date in an amount equal to the amount of such Swing Line Loans (the "**Refunded Swing Line Loans**") outstanding on the date such notice is given which Swing Line Lender requests Lenders to prepay. Anything contained in this Agreement to the contrary notwithstanding, (1) the proceeds of such Revolving Loans made by the Lenders other than Swing Line Lender shall be immediately delivered by Administrative Agent to Swing Line Lender (and not to Borrowers) and applied to repay a corresponding portion of the Refunded Swing Line Loans and (2) on the day such Revolving Loans are made, Swing Line Lender' s Pro Rata Share of the Refunded Swing Line Loans shall be deemed to be paid with the proceeds of a Revolving Loan made by Swing Line Lender to the relevant Borrower, and such portion of the Swing Line Loans deemed to be so paid shall no longer be outstanding as Swing Line Loans and shall no longer be due under the Swing Line Note of Swing Line Lender but shall instead constitute part of Swing Line Lender' s outstanding Revolving Loans to such Borrower and shall be due under the Revolving Loan Note issued by such Borrower to Swing Line Lender. Each Borrower hereby authorizes Administrative Agent and Swing Line Lender to charge such Borrower' s accounts with Administrative Agent and Swing Line Lender (up to the amount available in each such account) in order to immediately pay Swing Line Lender the amount of the Refunded Swing Line Loans to the extent the proceeds of such Revolving Loans made by Lenders, including the Revolving Loans deemed to be made by Swing Line Lender, are not sufficient to repay in full the Refunded Swing Line Loans. If any portion of any such amount paid (or deemed to be paid) to Swing Line Lender should be recovered by or on behalf of Borrower from Swing Line Lender in bankruptcy, by assignment for the benefit of creditors or otherwise, the loss of the amount so recovered shall be ratably shared among all Lenders in the manner contemplated by Section 2.17.

(v) If for any reason Revolving Loans are not made pursuant to Section 2.3(b)(iv) in an amount sufficient to repay any amounts owed to Swing Line Lender in respect of any outstanding Swing Line Loans on or before the third Business Day after demand for payment thereof by Swing Line Lender, each Lender holding a Revolving Commitment shall be deemed to, and hereby agrees to, have purchased a participation in such outstanding Swing Line Loans, and in an amount equal to its Pro Rata Share of the applicable unpaid amount together with accrued interest thereon. Upon one Business Day' s notice from Swing Line Lender, each Lender holding a Revolving Commitment shall deliver to Swing Line Lender an amount equal to its respective participation in the applicable unpaid amount in same day funds at the Principal Office of Swing Line Lender. In order to evidence such participation each Lender holding a Revolving Commitment agrees to enter into a participation agreement at the request of Swing Line Lender in form and substance reasonably satisfactory to Swing Line Lender. In the event any Lender holding a Revolving Commitment fails to make available to Swing Line Lender the amount of such Lender' s participation as provided in this paragraph, Swing Line Lender shall be entitled to recover such amount on demand from such Lender together with interest thereon for three Business Days at the rate customarily used by Swing Line Lender for the correction of errors among banks and thereafter at the Base Rate, as applicable.

(vi) Notwithstanding anything contained herein to the contrary, (1) each Lender' s obligation to make Revolving Loans for the purpose of repaying any Refunded Swing Line Loans pursuant to the second preceding paragraph and each Lender' s obligation to purchase a participation in any unpaid Swing Line Loans pursuant to the immediately preceding paragraph shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation (A) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against Swing Line Lender, any Credit Party or any other Person for any reason whatsoever; (B) the occurrence or continuation of a Default or Event of Default; (C) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of any Credit Party; (D) any breach of this Agreement or any other Credit Document by any party thereto; or (E) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; provided that such obligations of each Lender are subject to the condition that Swing Line Lender believed in good faith that all conditions under Section 3.2 to the making of the applicable Refunded Swing Line Loans or other unpaid Swing Line Loans, were satisfied at the time such Refunded Swing Line Loans or unpaid Swing Line Loans were made, or the satisfaction of any such condition not satisfied had been waived by the Requisite Lenders prior to or at the time such Refunded Swing Line Loans or other unpaid Swing Line Loans were made; and (2) Swing Line Lender shall not be obligated to make any Swing Line Loans if it has elected not to do so after the occurrence and during the continuation of a Default or Event of Default.

2.4. Issuance of Letters of Credit and Purchase of Participations Therein.

(a) Letters of Credit. During the Revolving Commitment Period, subject to the terms and conditions hereof, Issuing Bank agrees to issue Letters of Credit for the account of a Borrower and its Subsidiaries in the aggregate amount for all Borrowers and their Subsidiaries

up to but not exceeding the Letter of Credit Sublimit; provided, (i) each Letter of Credit shall be denominated in Dollars; (ii) the stated amount of each Letter of Credit shall not be less than $25,000 or such lesser amount as is acceptable to Issuing Bank; (iii) after giving effect to such issuance, in no event shall the Total Utilization of Revolving Commitments exceed the Revolving Commitments then in effect; (iv) after giving effect to such issuance, in no event shall the Letter of Credit Usage exceed the Letter of Credit Sublimit then in effect; and (v) in no event shall any Letter of Credit have an expiration date later than the earlier of (1) the Revolving Commitment Termination Date and (2) unless otherwise agreed by the Issuing Bank, the date which is one year from the date of issuance of such Letter of Credit. Subject to the foregoing, Issuing Bank may agree that a standby Letter of Credit will automatically be extended for one or more successive periods not to exceed one year each, unless Issuing Bank elects not to extend for any such additional period; provided, Issuing Bank shall not extend any such Letter of Credit if it has received written notice that an Event of Default has occurred and is continuing at the time Issuing Bank must elect to allow such extension.

(b) Notice of Issuance. Whenever a Borrower desires the issuance of a Letter of Credit, it shall deliver to Administrative Agent an Issuance Notice no later than 12:00 p.m. (New York City time) at least two Business Days, or in each case such shorter period as may be agreed to by Issuing Bank in any particular instance, in advance of the proposed date of issuance. Upon satisfaction or waiver of the conditions set forth in Section 3.2, Issuing Bank shall issue the requested Letter of Credit only in accordance with Issuing Bank' s standard operating procedures. Upon the issuance of any Letter of Credit or amendment or modification to a Letter of Credit, Issuing Bank shall promptly notify each Lender with a Revolving Commitment of such issuance, which notice shall be accompanied by a copy of such Letter of Credit or amendment or modification to a Letter of Credit and the amount of such Lender' s respective participation in such Letter of Credit pursuant to Section 2.4(e).

(c) Responsibility of Issuing Bank With Respect to Requests for Drawings and Payments. In determining whether to honor any drawing under any Letter of Credit by the beneficiary thereof, Issuing Bank shall be responsible only to examine the documents delivered under such Letter of Credit with reasonable care so as to ascertain whether they appear on their face to be in accordance with the terms and conditions of such Letter of Credit. As between Borrowers and Issuing Bank, Borrowers assume all risks of the acts and omissions of, or misuse of the Letters of Credit issued by Issuing Bank, by the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, Issuing Bank shall not be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) failure of the beneficiary of any such Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the

misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of Issuing Bank, including any Governmental Acts; none of the above shall affect or impair, or prevent the vesting of, any of Issuing Bank' s rights or powers hereunder. Without limiting the foregoing and in furtherance thereof, any action taken or omitted by Issuing Bank under or in connection with the Letters of Credit or any documents and certificates delivered thereunder, if taken or omitted in good faith, shall not give rise to any liability on the part of Issuing Bank to Borrowers. Notwithstanding anything to the contrary contained in this Section 2.4(c), Borrowers shall retain any and all rights they may have against Issuing Bank for any liability arising solely out of the gross negligence or willful misconduct of Issuing Bank.

(d) Reimbursement by Borrowers of Amounts Drawn or Paid Under Letters of Credit. In the event Issuing Bank has determined to honor a drawing under a Letter of Credit, it shall immediately notify the relevant Borrower and Administrative Agent, and such Borrower shall reimburse Issuing Bank on or before the Business Day immediately following the date on which such drawing is honored (the "**Reimbursement Date**") in an amount in Dollars and in same day funds equal to the amount of such honored drawing; provided, anything contained herein to the contrary notwithstanding, (i) unless such Borrower shall have notified Administrative Agent and Issuing Bank prior to 10:00 a.m. (New York City time) on the date such drawing is honored that such Borrower intends to reimburse Issuing Bank for the amount of such honored drawing with funds other than the proceeds of Revolving Loans, such Borrower shall be deemed to have given a timely Funding Notice to Administrative Agent requesting Lenders with Revolving Commitments to make Revolving Loans that are Base Rate Loans on the Reimbursement Date in an amount in Dollars equal to the amount of such honored drawing, and (ii) subject to satisfaction or waiver of the conditions specified in Section 3.2, Lenders with Revolving Commitments shall, on the Reimbursement Date, make Revolving Loans that are Base Rate Loans in the amount of such honored drawing, the proceeds of which shall be applied directly by Administrative Agent to reimburse Issuing Bank for the amount of such honored drawing; and provided further, if for any reason proceeds of Revolving Loans are not received by Issuing Bank on the Reimbursement Date in an amount equal to the amount of such honored drawing, such Borrower shall reimburse Issuing Bank, on demand, in an amount in same day funds equal to the excess of the amount of such honored drawing over the aggregate amount of such Revolving Loans, if any, which are so received. Nothing in this Section 2.4(d) shall be deemed to relieve any Lender with a Revolving Commitment from its obligation to make Revolving Loans on the terms and conditions set forth herein, and Borrowers shall retain any and all rights they may have against any such Lender resulting from the failure of such Lender to make such Revolving Loans under this Section 2.4(d).

(e) Lenders' Purchase of Participations in Letters of Credit. Immediately upon the issuance of each Letter of Credit, each Lender having a Revolving Commitment shall be deemed to have purchased, and hereby agrees to irrevocably purchase, from Issuing Bank a participation in such Letter of Credit and any drawings honored thereunder in an amount equal to such Lender' s Pro Rata Share (with respect to the Revolving Commitments) of the maximum amount which is or at any time may become available to be drawn thereunder. In the event that Borrowers shall fail for any reason to reimburse Issuing Bank as provided in Section 2.4(d), Issuing Bank shall promptly notify each Lender with a Revolving Commitment of the unreimbursed amount of such honored drawing and of such Lender' s respective participation

therein based on such Lender' s Pro Rata Share of the Revolving Commitments. Each Lender with a Revolving Commitment shall make available to Issuing Bank an amount equal to its respective participation, in Dollars and in same day funds, at the office of Issuing Bank specified in such notice, not later than 12:00 p.m. (New York City time) on the first business day (under the laws of the jurisdiction in which such office of Issuing Bank is located) after the date notified by Issuing Bank. In the event that any Lender with a Revolving Commitment fails to make available to Issuing Bank on such business day the amount of such Lender' s participation in such Letter of Credit as provided in this Section 2.4(e), Issuing Bank shall be entitled to recover such amount on demand from such Lender together with interest thereon for three Business Days at the rate customarily used by Issuing Bank for the correction of errors among banks and thereafter at the Base Rate. Nothing in this Section 2.4(e) shall be deemed to prejudice the right of any Lender with a Revolving Commitment to recover from Issuing Bank any amounts made available by such Lender to Issuing Bank pursuant to this Section in the event that it is determined that the payment with respect to a Letter of Credit in respect of which payment was made by such Lender constituted gross negligence or willful misconduct on the part of Issuing Bank. In the event Issuing Bank shall have been reimbursed by other Lenders pursuant to this Section 2.4(e) for all or any portion of any drawing honored by Issuing Bank under a Letter of Credit, such Issuing Bank shall distribute to each Lender which has paid all amounts payable by it under this Section 2.4(e) with respect to such honored drawing such Lender' s Pro Rata Share of all payments subsequently received by Issuing Bank from Borrowers in reimbursement of such honored drawing when such payments are received. Any such distribution shall be made to a Lender at its primary address set forth below its name on Appendix B or at such other address as such Lender may request.

(f) Obligations Absolute. The obligation of a Borrower to reimburse Issuing Bank for drawings honored under the Letters of Credit issued by it and to repay any Revolving Loans made by Lenders pursuant to Section 2.4(d) and the obligations of Lenders under Section 2.4(e) shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms hereof under all circumstances including any of the following circumstances: (i) any lack of validity or enforceability of any Letter of Credit; (ii) the existence of any claim, set-off, defense or other right which such Borrower or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), Issuing Bank, Lender or any other Person or, in the case of a Lender, against such Borrower, whether in connection herewith, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between such Borrower or one of its Subsidiaries and the beneficiary for which any Letter of Credit was procured); (iii) any draft or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; (iv) payment by Issuing Bank under any Letter of Credit against presentation of a draft or other document which does not substantially comply with the terms of such Letter of Credit; (v) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of Holdings or any of its Subsidiaries; (vi) any breach hereof or any other Credit Document by any party thereto; (vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; or (viii) the fact that an Event of Default or a Default shall have occurred and be continuing; provided, in each case, that payment by Issuing Bank under the applicable Letter of Credit shall not have constituted gross negligence or willful misconduct of Issuing Bank under the circumstances in question.

(g) Indemnification. Without duplication of any obligation of Borrowers under Section 10.2 or 10.3, in addition to amounts payable as provided herein, each Borrower hereby agrees to protect, indemnify, pay and save harmless Issuing Bank from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable fees, expenses and disbursements of counsel and allocated costs of internal counsel) which Issuing Bank may incur or be subject to as a consequence, direct or indirect, of (i) the issuance of any Letter of Credit to such Borrower by Issuing Bank, other than as a result of (1) the gross negligence or willful misconduct of Issuing Bank or (2) the wrongful dishonor by Issuing Bank of a proper demand for payment made under any Letter of Credit issued by it, or (ii) the failure of Issuing Bank to honor a drawing under any such Letter of Credit as a result of any Governmental Act.

2.5. Pro Rata Shares; Availability of Funds.

(a) Pro Rata Shares. All Loans shall be made, and all participations purchased, by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender' s obligation to make a Loan requested hereunder or purchase a participation required hereby nor shall any Term Loan Commitment or any Revolving Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender' s obligation to make a Loan requested hereunder or purchase a participation required hereby.

(b) Availability of Funds. Unless Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender' s Loan requested on such Credit Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such Credit Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to the relevant Borrower a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the customary rate set by Administrative Agent for the correction of errors among banks for three Business Days and thereafter at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent' s demand therefor, Administrative Agent shall promptly notify the relevant Borrower and such Borrower shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the rate payable hereunder for Base Rate Loans for such Class of Loans. Nothing in this Section 2.5(b) shall be deemed to relieve any Lender from its obligation to fulfill its Term Loan Commitments and Revolving Commitments hereunder or to prejudice any rights that a Borrower may have against any Lender as a result of any default by such Lender hereunder.

2.6. Use of Proceeds. The proceeds of the Term Loans made on the Closing Date shall be applied by Company to finance in part the Merger, to pay fees and expenses incurred in connection with the Transaction and to refinance the Existing Indebtedness. The proceeds of the Revolving Loans, Swing Line Loans and Letters of Credit made after the Closing Date shall be

applied by Borrowers for working capital and other general corporate purposes (including Permitted Acquisitions) of Holdings and its Subsidiaries. No portion of the proceeds of any Credit Extension shall be used in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors or any other regulation thereof or to violate the Exchange Act.

2.7. Evidence of Debt; Register; Lenders' Books and Records; Notes.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of each Borrower to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on each Borrower, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Revolving Commitments or any Borrower's Obligations in respect of any applicable Loans; and provided further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) Register. Administrative Agent (or its agent or sub-agent appointed by it) on behalf of the Borrowers shall maintain at the Principal Office a register for the recordation of the names and addresses of Lenders and the Revolving Commitments and Loans of each Lender from time to time (the "**Register**"). The Register shall be available for inspection by any Borrower or any Lender (with respect to any entry relating to such Lender's Loans) at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record, or shall cause to be recorded, in the Register the Revolving Commitments and the Loans in accordance with the provisions of Section 10.6, and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation shall be conclusive and binding on each Borrower and each Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Revolving Commitments or any Borrower's Obligations in respect of any Loan. Each Borrower hereby designates BNP to serve as such Borrower's agent solely for purposes of maintaining the Register as provided in this Section 2.7, and each Borrower hereby agrees that, to the extent BNP serves in such capacity, BNP and its officers, directors, employees, agents, sub-agents and affiliates shall constitute "**Indemnitees.**"

(c) Notes. If so requested by any Lender by written notice to Company (with a copy to Administrative Agent) at least two Business Days prior to the Closing Date, or at any time thereafter, each relevant Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Tranche B Term Loan, New Term Loan, Revolving Loan or Swing Line Loan, as the case may be.

2.8. Interest on Loans.

(a) Except as otherwise set forth herein, each Class of Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

(i) in the case of Tranche B Term Loans and Revolving Loans:

(A) if a Base Rate Loan, at the Base Rate plus the Applicable Margin; or

(B) if a Eurodollar Rate Loan, at the Adjusted Eurodollar Rate plus the Applicable Margin; and

(ii) in the case of Swing Line Loans, at the Base Rate plus the Applicable Margin.

(b) The basis for determining the rate of interest with respect to any Loan (except a Swing Line Loan which can be made and maintained as Base Rate Loans only), and the Interest Period with respect to any Eurodollar Rate Loan, shall be selected by the relevant Borrower and notified to Administrative Agent and Lenders pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be. If on any day a Loan is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has not been delivered to Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such Loan shall be a Base Rate Loan.

(c) In connection with Eurodollar Rate Loans there shall be no more than ten (10) Interest Periods outstanding at any time. In the event a Borrower fails to specify between a Base Rate Loan or a Eurodollar Rate Loan in the applicable Funding Notice or Conversion/ Continuation Notice, such Loan (if outstanding as a Eurodollar Rate Loan) will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Loan (or if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan). In the event a Borrower fails to specify an Interest Period for any Eurodollar Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, such Borrower shall be deemed to have selected an Interest Period of one month. As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Eurodollar Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to each Borrower and each Lender.

(d) Interest payable pursuant to Section 2.8(a) shall be computed (i) in the case of Base Rate Loans on the basis of a 365-day or 366-day year, as the case may be, and (ii) in the case of Eurodollar Rate Loans, on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or,

with respect to a Term Loan, the last Interest Payment Date with respect to such Term Loan or, with respect to a Base Rate Loan being converted from a Eurodollar Rate Loan, the date of conversion of such Eurodollar Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a Eurodollar Rate Loan, the date of conversion of such Base Rate Loan to such Eurodollar Rate Loan, as the case may be, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one day' s interest shall be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Loan (i) shall accrue on a daily basis and shall be payable in arrears on each Interest Payment Date with respect to interest accrued on and to each such payment date; (ii) shall accrue on a daily basis and shall be payable in arrears upon any prepayment of that Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) shall accrue on a daily basis and shall be payable in arrears at maturity of the Loans, including final maturity of the Loans; provided, however, with respect to any voluntary prepayment of a Base Rate Loan, accrued interest shall instead be payable on the applicable Interest Payment Date.

(f) Each Borrower agrees to pay to Issuing Bank, with respect to drawings honored under any Letter of Credit, interest on the amount paid by Issuing Bank in respect of each such honored drawing from the date such drawing is honored to but excluding the date such amount is reimbursed by or on behalf of such Borrower at a rate equal to (i) for the period from the date such drawing is honored to but excluding the applicable Reimbursement Date, the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans, and (ii) thereafter, a rate which is 2% per annum in excess of the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans.

(g) Interest payable pursuant to Section 2.8(f) shall be computed on the basis of a 365/366-day year for the actual number of days elapsed in the period during which it accrues, and shall be payable on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full. Promptly upon receipt by Issuing Bank of any payment of interest pursuant to Section 2.8(f), Issuing Bank shall distribute to each Lender, out of the interest received by Issuing Bank in respect of the period from the date such drawing is honored to but excluding the date on which Issuing Bank is reimbursed for the amount of such drawing (including any such reimbursement out of the proceeds of any Revolving Loans), the amount that such Lender would have been entitled to receive in respect of the letter of credit fee that would have been payable in respect of such Letter of Credit for such period if no drawing had been honored under such Letter of Credit. In the event Issuing Bank shall have been reimbursed by Lenders for all or any portion of such honored drawing, Issuing Bank shall distribute to each Lender which has paid all amounts payable by it under Section 2.4(e) with respect to such honored drawing such Lender' s Pro Rata Share of any interest received by Issuing Bank in respect of that portion of such honored drawing so reimbursed by Lenders for the period from the date on which Issuing Bank was so reimbursed by Lenders to but excluding the date on which such portion of such honored drawing is reimbursed by Borrowers.

2.9. Conversion/Continuation.

(a) Subject to Section 2.18 and so long as no Default or Event of Default shall have occurred and then be continuing, Borrowers shall have the option:

(i) to convert at any time all or any part of any Term Loan or Revolving Loan equal to $1,000,000 and integral multiples of $500,000 in excess of that amount from one Type of Loan to another Type of Loan; provided, a Eurodollar Rate Loan may only be converted on the expiration of the Interest Period applicable to such Eurodollar Rate Loan unless Borrowers shall pay all amounts due under Section 2.18 in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any Eurodollar Rate Loan, to continue all or any portion of such Loan equal to $1,000,000 and integral multiples of $500,000 in excess of that amount as a Eurodollar Rate Loan.

(b) The relevant Borrower shall deliver a Conversion/Continuation Notice to Administrative Agent no later than 10:00 a.m. (New York City time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a Eurodollar Rate Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any Eurodollar Rate Loans (or telephonic notice in lieu thereof) shall be irrevocable on and after the related Interest Rate Determination Date, and the related Borrower shall be bound to effect a conversion or continuation in accordance therewith.

2.10. Default Interest. If any principal of or interest on any Loan or any fee or other amount payable by Borrowers hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment (and including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable on demand (x) in the case of overdue principal of any Loan, at a rate that is 2% per annum in excess of the interest rate otherwise payable hereunder with respect to such Loan and (y) in the case of any such fees and other amounts, at a rate which is 2% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans that are Revolving Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.10 is not a permitted alternative to timely payment and shall not constitute a waiver of any Default or Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

2.11. Fees.

(a) Borrowers agree to pay to Lenders having Revolving Exposure:

(i) commitment fees equal to (A) the average of the daily difference between (1) the Revolving Commitments and (2) the aggregate principal amount of (x) all outstanding Revolving Loans plus (y) the Letter of Credit Usage, times (B) the Applicable Revolving Commitment Fee Percentage; and

(ii) letter of credit fees equal to (A) the Applicable Margin for Revolving Loans that are Eurodollar Rate Loans, times (B) the average aggregate daily maximum amount available to be drawn under all such Letters of Credit (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination).

All fees referred to in this Section 2.11(a) shall be paid to Administrative Agent at its Principal Office and upon receipt, Administrative Agent shall promptly distribute to each Lender its Pro Rata Share thereof.

(b) Borrowers agree to pay directly to Issuing Bank, for its own account, the following fees:

(i) a fronting fee equal to 0.125% per annum, times the average aggregate daily maximum amount available to be drawn under all Letters of Credit (determined as of the close of business on any date of determination); and

(ii) such documentary and processing charges for any issuance, amendment, transfer or payment of a Letter of Credit as are in accordance with Issuing Bank' s standard schedule for such charges and as in effect at the time of such issuance, amendment, transfer or payment, as the case may be.

(c) All fees referred to in Section 2.11(a) and 2.11(b)(i) shall be calculated on the basis of a 360-day year and the actual number of days elapsed and shall be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year during the Revolving Commitment Period, commencing on the first such date to occur after the Closing Date, and on the Revolving Commitment Termination Date.

(d) In addition to any of the foregoing fees, Borrowers agree to pay to Agents such other fees in the amounts and at the times separately agreed upon.

2.12. Scheduled Amortization of Term Loans. The principal amounts of the Tranche B Term Loans shall be repaid in consecutive quarterly installments (each, an "**Installment**") on each March 31, June 30, September 30 and December 31 of each year (each, an "**Installment Date**"), commencing September 30, 2006, in an aggregate amount of 0.25% of the aggregate principal amount of Term Loans outstanding on the Closing Date, with the remaining balance due on the maturity date for such Term Loans; provided, in the event any New Term Loans are made, such New Term Loans shall be repaid on each Installment Date occurring on or after the applicable Increased Amount Date in an amount equal to (i) the aggregate principal amount of New Term Loans of the applicable Series of New Term Loans, times (ii) the ratio (expressed as a percentage) of (A) the amount of all other Term Loans being repaid on such Installment Date and (B) the total aggregate principal amount of all other Term Loans outstanding on such Increased Amount Date.

Notwithstanding the foregoing, (x) such Installments shall be reduced in connection with any voluntary or mandatory prepayments of the Tranche B Term Loans in accordance with Sections 2.13, 2.14 and 2.15, as applicable; and (y) the Tranche B Term Loans, together with all

other amounts owed hereunder with respect thereto, shall, in any event, be paid in full no later than the Tranche B Term Loan Maturity Date.

2.13. Voluntary Prepayments/Commitment Reductions.

(a) Voluntary Prepayments.

(i) Any time and from time to time:

(A) with respect to Base Rate Loans, Borrowers may prepay any such Loans on any Business Day in whole or in part, in an aggregate minimum amount of $1,000,000 and integral multiples of $500,000 in excess of that amount;

(B) with respect to Eurodollar Rate Loans, Borrowers may prepay any such Loans on any Business Day in whole or in part in an aggregate minimum amount of $1,000,000 and integral multiples of $500,000 in excess of that amount; and

(C) with respect to Swing Line Loans, Borrowers may prepay any such Loans on any Business Day in whole or in part in an aggregate minimum amount of $100,000, and in integral multiples of $100,000 in excess of that amount.

(ii) All such prepayments shall be made:

(A) upon not less than one Business Day' s prior written or telephonic notice in the case of Base Rate Loans;

(B) upon not less than three Business Days' prior written or telephonic notice in the case of Eurodollar Rate Loans; and

(C) upon written or telephonic notice on the date of prepayment, in the case of Swing Line Loans;

in each case given to Administrative Agent or Swing Line Lender, as the case may be, by 12:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed in writing to Administrative Agent (and Administrative Agent will promptly transmit such telephonic or original notice for Term Loans or Revolving Loans, as the case may be, by telefacsimile or telephone to each Lender) or Swing Line Lender, as the case may be. Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall

become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Section 2.15(a).

(b) Voluntary Commitment Reductions.

(i) Company may, upon not less than three Business Days' prior written or telephonic notice confirmed in writing to Administrative Agent (which original written or telephonic notice Administrative Agent will promptly transmit by telefacsimile or telephone to each applicable Lender), at any time and from time to time terminate in whole or permanently reduce in part, without premium or penalty, the Revolving Commitments in an amount up to the amount by which the Revolving Commitments exceed the Total Utilization of Revolving Commitments at the time of such proposed termination or reduction; provided, any such partial reduction of the Revolving Commitments shall be in an aggregate minimum amount of $1,000,000 and integral multiples of $500,000 in excess of that amount.

(ii) Company' s notice to Administrative Agent shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Revolving Commitments shall be effective on the date specified in Company' s notice and shall reduce the Revolving Commitment of each Lender proportionately to its Pro Rata Share thereof.

2.14. Mandatory Prepayments/Commitment Reductions.

(a) Asset Sales. No later than three Business Days following the date of receipt by Holdings or any of its Subsidiaries of any Net Asset Sale Proceeds, Borrowers shall prepay the Term Loans in an aggregate amount equal to such Net Asset Sale Proceeds; provided that so long as no Default or Event of Default shall have occurred and be continuing, Borrowers shall have the option, directly or through one or more of its Subsidiaries, to invest Net Asset Sale Proceeds (x) within 365 days following receipt of such Net Asset Sale Proceeds or (y) if a Credit Party enters into a legally binding commitment to reinvest such Net Asset Sale Proceeds within 365 days following receipt thereof (and such commitment remains in effect), within 180 days of the date of such legally binding commitment, in assets useful to the business of Holdings and its Subsidiaries (such Net Asset Sale Proceeds so reinvested or committed to be reinvested, "**Asset Sale Reinvestment Deferred Amount**").

(b) Insurance/Condemnation Proceeds. No later than three Business Days following the date of receipt by Holdings or any of its Subsidiaries, or Administrative Agent as loss payee, of any Net Insurance/Condemnation Proceeds, Borrowers shall prepay the Term Loans in an aggregate amount equal to such Net Insurance/Condemnation Proceeds; provided that so long as no Default or Event of Default shall have occurred and be continuing, Borrowers shall have the option, directly or through one or more of its Subsidiaries to invest such Net Insurance/Condemnation Proceeds (x) within 365 days following receipt of such Net Insurance/Condemnation Proceeds or (y) if a Credit Party enters into a legally binding commitment to reinvest such Net Insurance/Condemnation Proceeds within 365 days following receipt thereof (and such commitment remains in effect), within 180 days of the date of such legally binding commitment, in assets useful to the business of Holdings and its Subsidiaries,

which investment may include the repair, restoration or replacement of the applicable assets thereof (such Net Insurance/Condemnation Proceeds so reinvested or committed to be reinvested, "**Insurance/Condemnation Reinvestment Deferred Amount**").

(c) Issuance of Debt. No later than three Business Days following the date of receipt by Holdings or any of its Subsidiaries of any Net Cash Proceeds from the incurrence of any Indebtedness of Holdings or any of its Subsidiaries (other than with respect to any Indebtedness permitted to be incurred pursuant to Section 6.3), Borrowers shall prepay the Term Loans in an aggregate amount equal to 100% of such Net Cash Proceeds.

(d) Consolidated Excess Cash Flow. In the event that (x) there shall be Consolidated Excess Cash Flow for any Fiscal Year (commencing with the Fiscal Year ending June 30, 2007) and (y) the Total Leverage Ratio as of the last day of such Fiscal Year (determined for any such period by reference to the Compliance Certificate delivered pursuant to Section 5.2(b) calculating the Total Leverage Ratio as of the last day of such Fiscal Year) shall be greater than 5:00:1, Borrowers shall, no later than ninety days after the end of such Fiscal Year, prepay the Term Loans in an aggregate amount equal to (i) 50% of such Consolidated Excess Cash Flow minus (ii) voluntary repayments of the Loans (excluding repayments of Revolving Loans or Swing Line Loans except to the extent the Revolving Commitments are permanently reduced in connection with such repayments).

(e) Revolving Loans and Swing Loans. Borrowers shall from time to time prepay *first*, the Swing Line Loans, and *second*, the Revolving Loans to the extent necessary so that the Total Utilization of Revolving Commitments shall not at any time exceed the Revolving Commitments then in effect.

(f) Prepayment Certificate. Concurrently with any prepayment of the Loans pursuant to Sections 2.14(a) through 2.14(d), Company shall deliver to Administrative Agent a certificate of a Responsible Officer demonstrating the calculation of the amount of the applicable net proceeds or Consolidated Excess Cash Flow, as the case may be. In the event that Company shall subsequently determine that the actual amount received exceeded (an "excess") or was less than (a "deficit") the amount set forth in such certificate, (x) in the case of an excess, Company shall promptly make an additional prepayment of the Term Loans and (y) in the case of a deficit which resulted in an overpayment of the Term Loans, the amount of such overpayment shall be credited against the next Installment or Installments payable under Section 2.12, and in each case Company shall deliver to Administrative Agent a certificate of its Responsible Officer demonstrating the derivation of such excess or deficit, as the case may be.

2.15. Application of Prepayments/Reductions.

(a) Application of Voluntary Prepayments by Type of Loans. Any prepayment of any Loan pursuant to Section 2.13(a) shall be applied as specified by Borrowers in the applicable notice of prepayment; provided, in the event Borrowers fail to specify the Loans to which any such prepayment shall be applied, such prepayment shall be applied as follows:

first, to repay outstanding Swing Line Loans to the full extent thereof;

second, to repay outstanding Revolving Loans to the full extent thereof; and

third, to prepay the Term Loans on a pro rata basis (in accordance with the respective outstanding principal amounts thereof) and further applied on a pro rata basis to the remaining Installments of principal.

(b) Application of Mandatory Prepayments. Any amount required to be paid pursuant to Sections 2.14(a) through 2.14(e), shall be applied to prepay the scheduled Installments of principal of Term Loans as directed by Company.

(c) Waivable Mandatory Prepayment. Anything contained herein to the contrary notwithstanding, in the event Company is required to make any mandatory prepayment (a "**Waivable Mandatory Prepayment**") of the Tranche B Term Loans, not less than three Business Days prior to the date (the "**Required Prepayment Date**") on which Company is required to make such Waivable Mandatory Prepayment, Company shall notify Administrative Agent of the amount of such prepayment, and Administrative Agent will promptly thereafter notify each Lender holding an outstanding Tranche B Term Loan of the amount of such Lender' s Pro Rata Share of such Waivable Mandatory Prepayment and such Lender' s option to refuse such amount. Each such Lender may exercise such option by giving written notice to Company and Administrative Agent of its election to do so on or before the first Business Day prior to the Required Prepayment Date (it being understood that any Lender which does not notify Company and Administrative Agent of its election to exercise such option on or before the first Business Day prior to the Required Prepayment Date shall be deemed to have elected, as of such date, not to exercise such option). On the Required Prepayment Date, Company shall pay to Administrative Agent an amount equal to that portion of the Waivable Mandatory Prepayment payable to those Lenders that have elected not to exercise such option, which shall be applied to prepay the Tranche B Term Loans of such Lenders (which prepayment shall be applied to the scheduled Installments of principal of the Tranche B Term Loans in accordance with Section 2.15(b)). Company shall be entitled to retain an amount equal to that portion of the Waivable Mandatory Prepayment otherwise payable to those Lenders that have elected to exercise such option, to be used for general business purposes.

(d) Application of Prepayments of Loans to Base Rate Loans and Eurodollar Rate Loans. Considering each Class of Loans being prepaid separately, any prepayment thereof shall be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Rate Loans, in each case in a manner which minimizes the amount of any payments required to be made by Borrowers pursuant to Section 2.18(c).

2.16. General Provisions Regarding Payments.

(a) All payments by Borrowers of principal, interest, fees and other Obligations shall be made in Dollars in same day funds, without defense, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent not later than 1:00 p.m. (New York City time) on the date due at the Principal Office designated by Administrative Agent for the account of Lenders; for purposes of computing interest and fees, funds received by

Administrative Agent after that time on such due date shall be deemed to have been paid by Borrowers on the next succeeding Business Day.

(b) All payments in respect of the principal amount of any Loan (other than voluntary prepayments of Revolving Loans) shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payments in respect of any Loan on a date when interest is due and payable with respect to such Loan) shall be applied to the payment of interest then due and payable before application to principal.

(c) Administrative Agent (or its agent or sub-agent appointed by it) shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender' s applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due thereto, including, without limitation, all fees payable with respect thereto, to the extent received by Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Conversion/ Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any Eurodollar Rate Loans, Administrative Agent shall give effect thereto in apportioning payments received thereafter.

(e) Subject to the provisos set forth in the definition of "Interest Period" as they may apply to Revolving Loans, whenever any payment to be made hereunder with respect to any Loan shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and, with respect to Revolving Loans only, such extension of time shall be included in the computation of the payment of interest hereunder or of the Revolving Commitment fees hereunder.

(f) Administrative Agent shall deem any payment by or on behalf of Borrowers hereunder that is not made in same day funds prior to 1:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Administrative Agent shall give prompt telephonic notice to the relevant Borrower and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 8.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.10 from the date such amount was due and payable until the date such amount is paid in full.

(g) If an Event of Default shall have occurred and not otherwise been waived, and the maturity of the Obligations shall have been accelerated pursuant to Section 8.1, all payments or proceeds received by Agents hereunder in respect of any of the Obligations, shall be applied in accordance with the application arrangements described in Section 7.2 of the Pledge and Security Agreement.

2.17. Ratable Sharing. Lenders hereby agree among themselves that if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker' s lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, amounts payable in respect of Letters of Credit, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the "**Aggregate Amounts Due**" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of a Borrower or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Each Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker' s lien, set-off or counterclaim with respect to any and all monies owing by such Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

2.18. Making or Maintaining Eurodollar Rate Loans.

(a) Inability to Determine Applicable Interest Rate. In the event that Administrative Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto), on any Interest Rate Determination Date with respect to any Eurodollar Rate Loans, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of Adjusted Eurodollar Rate, Administrative Agent shall on such date give notice (by telefacsimile or by telephone confirmed in writing) to Company and each Lender of such determination, whereupon so long as such circumstance is continuing (i) no Loans may be made as, or converted to, Eurodollar Rate Loans until such time as Administrative Agent notifies Company and Lenders that the circumstances giving rise to such notice no longer exist, and (ii) any Funding Notice or Conversion/Continuation Notice given by a Borrower with respect to the Loans in respect of which such determination was made shall be deemed to be rescinded by such Borrower.

(b) Illegality or Impracticability of Eurodollar Rate Loans. In the event that on any date any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after consultation with Company and Administrative Agent) that the making, maintaining or continuation of its Eurodollar Rate Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law,

treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, as a result of contingencies occurring after the date hereof which materially and adversely affect the London interbank market or the position of such Lender in that market, then, and in any such event, such Lender shall be an "**Affected Lender**" and it shall on that day give notice (by telefacsimile or by telephone confirmed in writing) to Company and Administrative Agent of such determination (which notice Administrative Agent shall promptly transmit to each other Lender). Thereafter (A) the obligation of the Affected Lender to make Loans as, or to convert Loans to, Eurodollar Rate Loans shall be suspended until such notice shall be withdrawn by the Affected Lender, (B) to the extent such determination by the Affected Lender relates to a Eurodollar Rate Loan then being requested by a Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, the Affected Lender shall make such Loan as (or continue such Loan as or convert such Loan to, as the case may be) a Base Rate Loan, (C) the Affected Lender' s obligation to maintain its outstanding Eurodollar Rate Loans (the "**Affected Loans**") shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (D) the Affected Loans shall automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a Eurodollar Rate Loan then being requested by a Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, such Borrower shall have the option, subject to the provisions of Section 2.18(c), to rescind such Funding Notice or Conversion/Continuation Notice as to all Lenders by giving notice (by telefacsimile or by telephone confirmed in writing) to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Administrative Agent shall promptly transmit to each other Lender). Except as provided in the immediately preceding sentence, nothing in this Section 2.18(b) shall affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, Eurodollar Rate Loans in accordance with the terms hereof.

(c) Compensation for Breakage or Non-Commencement of Interest Periods. Borrowers shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid by such Lender to Lenders of funds borrowed by it to make or carry its Eurodollar Rate Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender may sustain: (i) if for any reason (other than a default by such Lender) a borrowing of any Eurodollar Rate Loan does not occur on a date specified therefor in a Funding Notice or a telephonic request for borrowing, or a conversion to or continuation of any Eurodollar Rate Loan does not occur on a date specified therefor in a Conversion/ Continuation Notice or a telephonic request for conversion or continuation; (ii) if any prepayment or other principal payment of, or any conversion of, any of its Eurodollar Rate Loans occurs on a date prior to the last day of an Interest Period applicable to that Loan; or (iii) if any prepayment of any of its Eurodollar Rate Loans is not made on any date specified in a notice of prepayment given by any Borrower.

(d) Booking of Eurodollar Rate Loans. Any Lender may make, carry or transfer Eurodollar Rate Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

(e) Assumptions Concerning Funding of Eurodollar Rate Loans. Calculation of all amounts payable to a Lender under this Section 2.18 and under Section 2.19 shall be made as though such Lender had actually funded each of its relevant Eurodollar Rate Loans through the purchase of a Eurodollar deposit bearing interest at the rate obtained pursuant to clause (a) of the definition of Adjusted Eurodollar Rate in an amount equal to the amount of such Eurodollar Rate Loan and having a maturity comparable to the relevant Interest Period and through the transfer of such Eurodollar deposit from an offshore office of such Lender to a domestic office of such Lender in the United States of America; provided, however, each Lender may fund each of its Eurodollar Rate Loans in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 2.18 and under Section 2.19.

2.19. Increased Costs; Capital Adequacy.

(a) Compensation For Increased Costs and Taxes. Subject to the provisions of Section 2.20 (which shall be controlling with respect to the matters covered thereby), in the event that any Lender (which term shall include Issuing Bank for purposes of this Section 2.19(a)) shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a court or governmental authority, in each case that becomes effective after the date hereof, or compliance by such Lender with any guideline, request or directive issued or made after the date hereof by any central bank or other governmental or quasi-governmental authority (whether or not having the force of law): (i) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to Eurodollar Rate Loans that are reflected in the definition of Adjusted Eurodollar Rate); or (ii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable lending office) or its obligations hereunder or the London interbank market; and the result of either of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining Loans hereunder or to reduce any amount received or receivable by such Lender (or its applicable lending office) with respect thereto; then, in any such case, Borrowers shall promptly pay to such Lender, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender for any such increased cost or reduction in amounts received or receivable hereunder. Such Lender shall deliver to Company (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed

to such Lender under this Section 2.19(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Lender (which term shall include Issuing Bank for purposes of this Section 2.19(b)) shall have determined that the adoption, effectiveness, phase-in or applicability after the Closing Date of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its applicable lending office) with any guideline, request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of, or with reference to, such Lender' s Loans or Revolving Commitments or Letters of Credit, or participations therein or other obligations hereunder with respect to the Loans or the Letters of Credit to a level below that which such Lender or such controlling corporation could have achieved but for such adoption, effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling corporation with regard to capital adequacy), then from time to time, within five Business Days after receipt by Company from such Lender of the statement referred to in the next sentence, Borrowers shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling corporation on an after-tax basis for such reduction. Such Lender shall deliver to Company (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.19(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

2.20. Taxes; Withholding, etc.

(a) Payments to Be Free and Clear. All sums payable by any Credit Party hereunder and under the other Credit Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax (other than a Tax on the overall net income of any Lender or franchise taxes imposed in lieu of tax on the overall net income) imposed, levied, collected, withheld or assessed by or within the United States of America or any political subdivision in or of the United States of America or any other jurisdiction from or to which a payment is made by or on behalf of any Credit Party or by any federation or organization of which the United States of America or any such jurisdiction is a member at the time of payment.

(b) Withholding of Taxes. If any Credit Party or any other Person is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by any Credit Party to Administrative Agent or any Lender (which term shall include Issuing Bank for purposes of this Section 2.20(b)) under any of the Credit Documents: (i) Company shall notify Administrative Agent of any such requirement or any change in any such requirement as soon as Company becomes aware of it; (ii) Borrowers shall pay any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Credit Party) for their own account or (if that liability is imposed on Administrative Agent or such Lender, as the case may be) on behalf of and in the name of

Administrative Agent or such Lender; (iii) the sum payable by such Credit Party in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (iv) within thirty days after paying any sum from which it is required by law to make any deduction or withholding, and within thirty days after the due date of payment of any Tax which it is required by clause (ii) above to pay, Borrowers shall deliver to Administrative Agent evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority; provided, no such additional amount shall be required to be paid to any Lender under clause (iii) above except to the extent that any change after the date hereof (in the case of each Lender listed on the signature pages hereof on the Closing Date) or after the effective date of the Assignment Agreement pursuant to which such Lender became a Lender (in the case of each other Lender) in any such requirement for a deduction, withholding or payment as is mentioned therein shall result in an increase in the rate of such deduction, withholding or payment from that in effect at the date hereof or at the date of such Assignment Agreement, as the case may be, in respect of payments to such Lender, provided, however, that Borrowers shall not be required to increase any such amounts payable to any Lender pursuant to clause (iii) of this Section 2.20(b), that are (A) attributable to such Lender' s failure to comply with the requirements of paragraph (c) of this Section 2.20 or (B) United States withholding taxes imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement, except to the extent that such Lender' s assignor (if any) was entitled, at the time of assignment, to receive additional amounts from Borrowers with respect to such amounts pursuant to clause (iii) of this Section 2.20(b).

(c) Evidence of Exemption From U.S. Withholding Tax. Each Lender that is not a United States Person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a "**Non-US Lender**") shall deliver to Administrative Agent for transmission to Company, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Company or Administrative Agent (each in the reasonable exercise of its discretion), (i) two original copies of Internal Revenue Service Form W-8BEN or W-8ECI (or any successor forms), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Company to establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Credit Documents, or (ii) if such Lender is not a "bank" or other Person described in Section 881(c)(3) of the Internal Revenue Code and cannot deliver either Internal Revenue Service Form W-8ECI pursuant to clause (i) above, a Certificate re Non-Bank Status together with two original copies of Internal Revenue Service Form W-8BEN (or any successor form), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Company to establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Lender of interest payable under any of the Credit Documents. Each Lender required to deliver any forms, certificates or other evidence with respect to United

States federal income tax withholding matters pursuant to this Section 2.20(c) hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly deliver to Administrative Agent for transmission to Company two new original copies of Internal Revenue Service Form W-8BEN or W-8ECI , or a Certificate re Non-Bank Status and two original copies of Internal Revenue Service Form W-8BEN (or any successor form), as the case may be, properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Company to confirm or establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to payments to such Lender under the Credit Documents, or notify Administrative Agent and Company of its inability to deliver any such forms, certificates or other evidence. Borrowers shall not be required to pay any additional amount to any Non-US Lender under Section 2.20(b)(iii) if such Lender shall have failed (A) to deliver the forms, certificates or other evidence referred to in this Section 2.20(c), or (B) to notify Administrative Agent and Company of its inability to deliver any such forms, certificates or other evidence, as the case may be; provided, if such Lender shall have satisfied the requirements of the first sentence of this Section 2.20(c) on the Closing Date or on the date of the Assignment Agreement pursuant to which it became a Lender, as applicable, nothing in this last sentence of Section 2.20(c) shall relieve any Borrower of its obligation to pay any additional amounts pursuant this Section 2.20 in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender is not subject to withholding as described herein.

(d) Treatment of Certain Refunds. If Administrative Agent or Lender determines, in its reasonable discretion, that it has received a refund of any Tax as to which it has been indemnified by Company or other applicable Credit Party or with respect to which Company or such other applicable Credit Party has paid additional amounts pursuant to this Section 2.20, it shall pay to Company or such other applicable Credit Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Company or such other applicable Credit Party under this Section 2.20 with respect to any Tax giving rise to such refund), net of all out-of-pocket expenses of Administrative Agent, or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund).

2.21. Obligation to Mitigate. Each Lender (which term shall include Issuing Bank for purposes of this Section 2.21) agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans or Letters of Credit, as the case may be, becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under Section 2.18, 2.19 or 2.20, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (a) make, issue, fund or maintain its Credit Extensions, including any Affected Loans, through another office of such Lender, or (b) take such other measures as such Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender

would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to Section 2.18, 2.19 or 2.20 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Revolving Commitments, Loans or Letters of Credit through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Revolving Commitments, Loans or Letters of Credit or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this Section 2.21 unless Borrowers agree to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Borrowers pursuant to this Section 2.21 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Company (with a copy to Administrative Agent) shall be conclusive absent manifest error.

2.22. Defaulting Lenders. Anything contained herein to the contrary notwithstanding, in the event that any Lender, other than at the direction or request of any regulatory agency or authority, defaults (a "**Defaulting Lender**") in its obligation to fund (a "**Funding Default**") any Revolving Loan or its portion of any unreimbursed payment under Section 2.3(b)(iv) or 2.4(e) (in each case, a "**Defaulted Loan**"), then (a) during any Default Period with respect to such Defaulting Lender, such Defaulting Lender shall be deemed not to be a "Lender" for purposes of voting on any matters (including the granting of any consents or waivers) with respect to any of the Credit Documents; (b) to the extent permitted by applicable law, until such time as the Default Excess with respect to such Defaulting Lender shall have been reduced to zero, (i) any voluntary prepayment of the Revolving Loans shall, if Borrowers so direct at the time of making such voluntary prepayment, be applied to the Revolving Loans of other Lenders as if such Defaulting Lender had no Revolving Loans outstanding and the Revolving Exposure of such Defaulting Lender were zero, and (ii) any mandatory prepayment of the Revolving Loans shall, if Borrowers so direct at the time of making such mandatory prepayment, be applied to the Revolving Loans of other Lenders (but not to the Revolving Loans of such Defaulting Lender) as if such Defaulting Lender had funded all Defaulted Loans of such Defaulting Lender, it being understood and agreed that Borrowers shall be entitled to retain any portion of any mandatory prepayment of the Revolving Loans that is not paid to such Defaulting Lender solely as a result of the operation of the provisions of this clause (b); (c) such Defaulting Lender' s Revolving Commitment and outstanding Revolving Loans and such Defaulting Lender' s Pro Rata Share of the Letter of Credit Usage shall be excluded for purposes of calculating the Revolving Commitment fee payable to Lenders in respect of any day during any Default Period with respect to such Defaulting Lender, and such Defaulting Lender shall not be entitled to receive any Revolving Commitment fee pursuant to Section 2.11 with respect to such Defaulting Lender' s Revolving Commitment in respect of any Default Period with respect to such Defaulting Lender; and (d) the Total Utilization of Revolving Commitments as at any date of determination shall be calculated as if such Defaulting Lender had funded all Defaulted Loans of such Defaulting Lender. No Revolving Commitment of any Lender shall be increased or otherwise affected, and, except as otherwise expressly provided in this Section 2.22, performance by Borrowers of their obligations hereunder and the other Credit Documents shall not be excused or otherwise modified as a result of any Funding Default or the operation of this Section 2.22. The rights and remedies against a Defaulting Lender under this Section 2.22 are in addition to other rights and remedies which Borrowers may have against such Defaulting Lender with respect to any

Funding Default and which Administrative Agent or any Lender may have against such Defaulting Lender with respect to any Funding Default.

2.23. Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an "**Increased-Cost Lender**") shall give notice to Company that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Section 2.18, 2.19 or 2.20, (ii) the circumstances which have caused such Lender to be an Affected Lender or which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five Business Days after Company' s request for such withdrawal; or (b) (i) any Lender shall become a Defaulting Lender, (ii) the Default Period for such Defaulting Lender shall remain in effect, and (iii) such Defaulting Lender shall fail to cure the default as a result of which it has become a Defaulting Lender within five Business Days after Company' s request that it cure such default; or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.5(b), the consent of Requisite Lenders shall have been obtained but the consent of one or more of such other Lenders (each a "**Non-Consenting Lender**") whose consent is required shall not have been obtained; then, with respect to each such Increased-Cost Lender, Defaulting Lender or Non-Consenting Lender (the "**Terminated Lender**"), Company may, by giving written notice to Administrative Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Loans and its Revolving Commitments, if any, in full to one or more Eligible Assignees (each a "**Replacement Lender**") in accordance with the provisions of Section 10.6 and Borrowers shall pay the fees, if any, payable thereunder in connection with any such assignment from an Increased Cost Lender or a Non-Consenting Lender and the Defaulting Lender shall pay the fees, if any, payable thereunder in connection with any such assignment from such Defaulting Lender; provided, (A) on the date of such assignment, the Replacement Lender shall pay to Terminated Lender an amount equal to the sum of (1) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the Terminated Lender, (2) an amount equal to all unreimbursed drawings that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time and (3) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender pursuant to Section 2.11; (B) on the date of such assignment, Borrowers shall pay any amounts payable to such Terminated Lender pursuant to Section 2.18(c), 2.19 or 2.20; or otherwise as if it were a prepayment and (C) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender; provided, Company may not make such election with respect to any Terminated Lender that is also an Issuing Bank unless, prior to the effectiveness of such election, Borrowers shall have caused each outstanding Letter of Credit issued thereby to be cancelled. Upon the prepayment of all amounts owing to any Terminated Lender and the termination of such Terminated Lender' s Revolving Commitments, if any, such Terminated Lender shall no longer constitute a "Lender" for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender.

2.24. Incremental Facilities.

(a) Company may by written notice to Administrative Agent elect to request (i) prior to the Revolving Commitment Termination Date, an increase to the existing Revolving Commitments (any such increase, the "**New Revolving Loan Commitments**") and/or (ii) the establishment of one or more new term loan commitments (the "**New Term Loan Commitments**"), by an amount not in excess of $400,000,000 in the aggregate for all such New Revolving Loan Commitments and New Term Loan Commitments and not less than $50,000,000 individually (or such lesser amount which shall be approved by Administrative Agent or such lesser amount that shall constitute the difference between $400,000,000 and all such New Revolving Loan Commitments and New Term Loan Commitments obtained prior to such date), and integral multiples of $10,000,000 in excess of that amount. Each such notice shall specify (A) the date (each, an "**Increased Amount Date**") on which Company proposes that the New Revolving Loan Commitments or New Term Loan Commitments, as applicable, shall be effective, which shall be a date not less than 10 Business Days after the date on which such notice is delivered to Administrative Agent and (B) the identity of each Lender or other Person that is an Eligible Assignee (each, a "**New Revolving Loan Lender**" or "**New Term Loan Lender",** as applicable) to whom Company proposes any portion of such New Revolving Loan Commitments or New Term Loan Commitments, as applicable, be allocated and the amounts of such allocations; provided that any Lender approached to provide all or a portion of the New Revolving Loan Commitments or New Term Loan Commitments may elect or decline, in its sole discretion, to provide a New Revolving Loan Commitment or a New Term Loan Commitment. Such New Revolving Loan Commitments or New Term Loan Commitments shall become effective, as of such Increased Amount Date; provided that (1) no Default or Event of Default shall exist on such Increased Amount Date before or after giving effect to such New Revolving Loan Commitments or New Term Loan Commitments, as applicable; (2) both before and after giving effect to the making of any Series of New Term Loans, each of the conditions set forth in Section 3.2 shall be satisfied; (3) Borrower and its Subsidiaries shall be in pro forma compliance with each of the covenants set forth in Section 6.10 as of the last day of the most recently ended Fiscal Quarter after giving effect to such New Revolving Loan Commitments or New Term Loan Commitments, as applicable; (4) the New Revolving Loan Commitments or New Term Loan Commitments, as applicable, shall be effected pursuant to one or more Joinder Agreements executed and delivered by Borrowers, the New Revolving Loan Lender or New Term Loan Lender, as applicable, and Administrative Agent, and each of which shall be recorded in the Register and each New Revolving Loan Lender and New Term Loan Lender shall be subject to the requirements set forth in Section 2.20(c); (5) Borrowers shall make any payments required pursuant to Section 2.18(c) in connection with the New Revolving Loan Commitments or New Term Loan Commitments, as applicable; and (6) Borrowers shall deliver or cause to be delivered any legal opinions or other documents reasonably requested by Administrative Agent in connection with any such transaction. Any New Term Loans made on an Increased Amount Date shall be designated a separate series (a "**Series**") of New Term Loans for all purposes of this Agreement.

(b) On any Increased Amount Date on which New Revolving Loan Commitments are effected, subject to the satisfaction of the foregoing terms and conditions, (i) each of the Revolving Lenders shall assign to each of the New Revolving Loan Lenders, and each of the New Revolving Loan Lenders shall purchase from each of the Revolving Loan

Lenders, at the principal amount thereof (together with accrued interest), such interests in the Revolving Loans outstanding on such Increased Amount Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Loans will be held by existing Revolving Loan Lenders and New Revolving Loan Lenders ratably in accordance with their Revolving Loan Commitments after giving effect to the addition of such New Revolving Loan Commitments to the Revolving Loan Commitments, (ii) each New Revolving Loan Commitment shall be deemed for all purposes a Revolving Loan Commitment and each Loan made thereunder (a "**New Revolving Loan**") shall be deemed, for all purposes, a Revolving Loan and (c) each New Revolving Loan Lender shall become a Lender with respect to the New Revolving Loan Commitment and all matters relating thereto.

(c) On any Increased Amount Date on which any New Term Loan Commitments of any Series are effective, subject to the satisfaction of the foregoing terms and conditions, (i) each New Term Loan Lender of any Series shall make a Loan to Company (a "**New Term Loan**") in an amount equal to its New Term Loan Commitment of such Series, and (ii) each New Term Loan Lender of any Series shall become a Lender hereunder with respect to the New Term Loan Commitment of such Series and the New Term Loans of such Series made pursuant thereto.

(d) Administrative Agent shall notify Lenders promptly upon receipt of Company' s notice of each Increased Amount Date and in respect thereof (y) the New Revolving Loan Commitments and the New Revolving Loan Lenders or the Series of New Term Loan Commitments and the New Term Loan Lenders of such Series, as applicable, and (z) in the case of each notice to any Revolving Loan Lender, the respective interests in such Revolving Loan Lender' s Revolving Loans, in each case subject to the assignments contemplated by this Section.

(e) The terms and provisions of the New Term Loans and New Term Loan Commitments of any Series shall be, except as otherwise set forth herein or in the Joinder Agreement, identical to the Tranche B Term Loans. The terms and provisions of the New Revolving Loans shall be identical to the Revolving Loans. In any event (i) the applicable New Term Loan Maturity Date of each Series shall be no shorter than the final maturity of the Tranche B Term Loans, and (ii) the rate of interest applicable to the New Term Loans of each Series shall be determined by Company and the applicable new Lenders and shall be set forth in each applicable Joinder Agreement. Each Joinder Agreement may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the opinion of the Administrative Agent to effect the provision of this Section 2.24.

2.25. Designated Subsidiary Borrowers.

(a) Company may from time to time designate any Qualified Subsidiary as an additional Designated Subsidiary Borrower for purposes of this Agreement by delivering to Administrative Agent an Election to Participate duly executed on behalf of such Subsidiary and Company in such number of copies as Administrative Agent may request. Administrative Agent shall promptly notify Lenders of its receipt of any such Election to Participate.

(b) Company may at any time terminate the status of any Subsidiary as a Designated Subsidiary Borrower for purposes of this Agreement by delivering to Administrative Agent an Election to Terminate duly executed on behalf of such Subsidiary and Company in such number of copies as Administrative Agent may request. The delivery of such an Election to Terminate shall not affect any obligation of such Subsidiary theretofore incurred under this Agreement or any other Credit Document or any rights of Lenders and Agents against such Subsidiary or against Company in its capacity as guarantor of the obligations of such Subsidiary. Administrative Agent shall promptly notify Lenders of its receipt of any such Election to Terminate.

2.26. Joint and Several Liability.

(a) Joint and Several Liability. All Obligations of Borrowers under this Agreement and the other Credit Documents shall be joint and several Obligations of each Borrower. Anything contained in this Agreement and the other Credit Documents to the contrary notwithstanding, the Obligations of each Borrower hereunder shall be limited to a maximum aggregate amount equal to the largest amount that would not render its Obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under §548 of the Bankruptcy Code, 11 U.S.C. §548, or any applicable provisions of comparable state law (collectively, the "**Fraudulent Transfer Laws**"), in each case after giving effect to all other liabilities of such Borrower, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws (specifically excluding, however, any liabilities of such Borrower in respect of intercompany Indebtedness to any other Credit Party or Affiliates of any other Credit Party to the extent that such Indebtedness would be discharged in an amount equal to the amount paid by such Credit Party hereunder) and after giving effect as assets to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation or contribution of such Borrower pursuant to (i) applicable law or (ii) any agreement providing for an equitable allocation among such Borrower and other Affiliates of any Credit Party of Obligations arising under Guaranties by such parties.

(b) Subrogation. Until the Obligations shall have been paid in full in Cash, each Borrower shall withhold exercise of any right of subrogation, contribution or any other right to enforce any remedy which it now has or may hereafter have against any other Borrower or any other guarantor of the Obligations. Each Borrower further agrees that, to the extent the waiver of its rights of subrogation, contribution and remedies as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any such rights such Borrower may have against any other Borrower, any collateral or security or any such other guarantor, shall be junior and subordinate to any rights Collateral Agent may have against any such other Borrower, any such collateral or security, and any such other guarantor. Borrowers under this Agreement and the other Credit Documents together desire to allocate among themselves, in a fair and equitable manner, their Obligations arising under this Agreement and the other Credit Documents. Accordingly, in the event any payment or distribution is made on any date by any Borrower under this Agreement and the other Credit Documents (a "**Funding Borrower**") that exceeds its Obligation Fair Share (as defined below) as of such date, that Funding Borrower shall be entitled to a contribution from each of the other Borrowers in the amount of such other Borrowers' Obligation Fair Share Shortfall (as defined below) as of such date, with the result that all such contributions will cause each Borrowers' Obligation Aggregate Payments (as

defined below) to equal its Obligation Fair Share as of such date. "**Obligation Fair Share**" means, with respect to a Borrower as of any date of determination, an amount equal to (i) the ratio of (x) the Obligation Fair Share Contribution Amount (as defined below) with respect to such Borrower to (y) the aggregate of the Obligation Share Contribution Amounts with respect to all Borrowers, multiplied by (ii) the aggregate amount paid or distributed on or before such date by all Funding Borrowers under this Agreement and the other Credit Documents in respect of the Obligations guarantied. "Obligation Fair Share Shortfall" means, with respect to a Borrower as of any date of determination, the excess, if any, of the Obligation Fair Share of such Borrower over the Obligation Aggregate Payments of such Borrower. "**Obligation Fair Share Contribution Amount**" means, with respect to a Borrower as of any date of determination, the maximum aggregate amount of the Obligations of such Borrower under this Agreement and the other Credit Documents that would not render its Obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided that, solely for purposes of calculating the "**Obligation Fair Share Contribution Amount**" with respect to any Borrower for purposes of this Section 2.26, any assets or liabilities of such Credit Party arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or Obligations of contribution hereunder shall not be considered as assets or liabilities of such Borrower. "**Obligation Aggregate Payments**" means, with respect to a Borrower as of any date of determination, an amount equal to (A) the aggregate amount of all payments and distributions made on or before such date by such Borrower in respect of this Agreement and the other Credit Documents (including in respect of this Section 2.26 minus (B) the aggregate amount of all payments received on or before such date by such Borrower from the other Borrowers as contributions under this Section 2.26. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Borrower. The allocation among Borrowers of their Obligations as set forth in this Section 2.26 shall not be construed in any way to limit the liability of any Borrower hereunder or under any Credit Document.

SECTION 3. CONDITIONS PRECEDENT

3.1. Closing Date. The obligation of each Lender to make a Credit Extension on the Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before the Closing Date:

(a) No Material Adverse Change. Since June 30, 2005, there has not been any Material Adverse Change.

(b) Credit Documents. Administrative Agent shall have received copies of each Credit Document executed and delivered by each applicable Credit Party for each Lender.

(c) Organization Documents; Incumbency. Administrative Agent shall have received (i) copies of each Organization Document executed and delivered by each Credit Party, as applicable, and, to the extent applicable, certified as of a recent date by the appropriate governmental official, each dated the Closing Date or a recent date prior thereto; (ii) signature and incumbency certificates of the officers of such Person executing the Credit Documents to

which it is a party; (iii) resolutions of the Board of Directors or similar governing body of each Credit Party approving and authorizing the execution, delivery and performance of this Agreement and the other Credit Documents and the Transaction Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; and (iv) a good standing certificate from the applicable Governmental Authority of each Credit Party' s jurisdiction of incorporation, organization or formation dated a recent date prior to the Closing Date.

(d) Consummation of the Transaction. Prior to or simultaneously with the initial Credit Extension, (i) the Equity Contributions shall have been funded in full in cash and (ii) the Merger shall be consummated in accordance with the terms of the Merger Agreement (without giving effect to any amendments or waivers thereto that are materially adverse to Lenders without the consent of Administrative Agent) and in compliance with applicable material Laws and regulatory approvals. Administrative Agent and Syndication Agent shall each have received a fully executed or conformed copy of each Transaction Document.

(e) Existing Indebtedness. On the Closing Date, Holdings and its Subsidiaries shall have (i) repaid in full all Existing Indebtedness, (ii) terminated any commitments to lend or make other extensions of credit thereunder, (iii) delivered to Administrative Agent and Syndication Agent all documents or instruments necessary to release all Liens securing Existing Indebtedness or other obligations of Holdings and its Subsidiaries thereunder being repaid on the Closing Date, and (iv) made arrangements satisfactory to Administrative Agent and Syndication Agent with respect to the cancellation of any letters of credit outstanding thereunder or the issuance of Letters of Credit to support the obligations of Holdings and its Subsidiaries with respect thereto.

(f) Payment of Fees and Expenses. Company shall have paid all accrued reasonable fees and expenses of Administrative Agent, Arrangers and Lenders for which invoices have been presented (including the fees and expenses of counsel for Administrative Agent and the local counsel for Lenders and those fees payable on the Closing Date referred to in Section 2.11(d)).

(g) Real Estate Assets. In order to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority security interest in Material Real Estate Assets, each of which is listed in Schedule 3.1(g) (each, a "**Closing Date Mortgaged Property**"), Collateral Agent shall have received from Borrowers and each applicable Guarantor:

(i) fully executed and notarized Mortgages, in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering each Closing Date Mortgaged Property;

(ii) an opinion of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) in each state in which a Closing Date Mortgaged Property is located with respect to the enforceability of the form(s) of Mortgages to be recorded in such state

and such other matters as Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent;

(iii) (A) ALTA mortgagee title insurance policies or unconditional commitments therefor issued by one or more title companies (each, a "**Title Company**") reasonably satisfactory to Collateral Agent with respect to each Closing Date Mortgaged Property (each, a "**Title Policy**"), in amounts not less than the fair market value of each Closing Date Mortgaged Property, together with a title report issued by a title company with respect thereto, dated not more than thirty days prior to the Closing Date and copies of all recorded documents listed as exceptions to title or otherwise referred to therein, each in form and substance reasonably satisfactory to Collateral Agent and (B) evidence satisfactory to Collateral Agent that such Credit Party has paid to the title company or to the appropriate governmental authorities all expenses and premiums of the title company and all other sums required in connection with the issuance of each Title Policy and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording the Mortgages for each Closing Date Mortgaged Property in the appropriate real estate records; and

(iv) flood certifications with respect to all Closing Date Mortgaged Properties and evidence of flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors, in form and substance reasonably satisfactory to Collateral Agent.

(h) Personal Property Collateral. In order to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid, perfected First Priority security interest in the personal property Collateral, the Credit Parties shall have delivered to Collateral Agent:

(i) evidence reasonably satisfactory to Collateral Agent of the compliance by each Credit Party of their obligations under the Pledge and Security Agreement and the other Collateral Documents (including, without limitation, their obligations to execute and deliver UCC financing statements and originals of securities and instruments as provided therein);

(ii) A completed Perfection Certificate dated the Closing Date and executed by a Responsible Officer of each Credit Party; and

(iii) opinions of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) with respect to the creation and perfection of the security interests in favor of Collateral Agent in such Collateral and such other matters governed by the laws of each jurisdiction in which any Credit Party or any personal property Collateral is located as Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent.

(i) Financial Statements; Projections. Administrative Agent shall have received from Holdings (i) the Historical Financial Statements, (ii) the Pro Forma Financial Statements, and (iii) the Forecasts.

(j) Opinions of Counsel to Credit Parties. Lenders and their respective counsel shall have received originally executed copies of the favorable written opinions of (i) Simpson Thacher & Bartlett LLP, special counsel for Credit Parties, (ii) Dow Lohnes PLLC, special regulatory counsel for Credit Parties, and (iii) J. Devitt Kramer, in-house counsel for Company, each in the form of Exhibit D and as to such other matters as Administrative Agent or Syndication Agent may reasonably request, dated as of the Closing Date and otherwise in form and substance reasonably satisfactory to Administrative Agent and Syndication Agent (and each Credit Party hereby instructs each such counsel to deliver such opinions to Agents and Lenders).

(k) Solvency Certificate. On the Closing, Date Administrative Agent and Syndication Agent shall have received a Solvency Certificate from Company dated the Closing Date and addressed to Administrative Agent, Syndication Agent and Lenders, and in form, scope and substance satisfactory to Administrative Agent and Syndication Agent, and demonstrating that after giving effect to the consummation of the Transaction, the Credit Parties, on a consolidated basis, are and will be Solvent.

(l) Closing Date Certificate. Holdings and Company shall have delivered to Administrative Agent and Syndication Agent an originally executed Closing Date Certificate, together with all attachments thereto.

3.2. Conditions to Each Credit Extension.

(a) Conditions Precedent. The obligation of each Lender to make any Loan, or Issuing Bank to issue any Letter of Credit, on any Credit Date, including the Closing Date, are subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions precedent:

(i) Administrative Agent shall have received a fully executed and delivered Funding Notice or Issuance Notice, as the case may be;

(ii) after making the Credit Extensions requested on such Credit Date, the Total Utilization of Revolving Commitments shall not exceed the Revolving Commitments then in effect;

(iii) as of such Credit Date, the representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; provided that the only representations involving Holdings and its Subsidiaries and their businesses, the making of which shall be a condition to a Credit Extension on the Closing Date, shall be (A) the representations and warranties made by Education Management in the Merger Agreement as are material to the interests of Lenders, but only to the extent that Affiliates of the Sponsors have the right to terminate their obligations under the Merger Agreement as a result of a breach of such representations and warranties in the Merger Agreement and (B) the representations and warranties set forth in Sections 4.2, 4.4, 4.13 and 4.17 of this Agreement;

(iv) as of such Credit Date (and subject to clause (iii) above in the case of a Credit Extension on the Closing Date), no event shall have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute an Event of Default or a Default; and

(v) on or before the date of issuance of any Letter of Credit, Administrative Agent shall have received all other information required by the applicable Issuance Notice, and such other documents or information as Issuing Bank may reasonably require in connection with the issuance of such Letter of Credit.

(b) Notices. Any Notice shall be executed by a Responsible Officer in a writing delivered to Administrative Agent. In lieu of delivering a Notice, a Borrower may give Administrative Agent telephonic notice by the required time of any proposed borrowing, conversion/continuation or issuance of a Letter of Credit, as the case may be; provided each such notice shall be promptly confirmed in writing by delivery of the applicable Notice to Administrative Agent on or before the applicable date of borrowing, continuation/ conversion or issuance. Neither Administrative Agent nor any Lender shall incur any liability to a Borrower in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by a duly authorized officer or other person authorized on behalf of such Borrower or for otherwise acting in good faith.

SECTION 4. REPRESENTATIONS AND WARRANTIES

Holdings and Company represent and warrant to Agents and Lenders that:

4.1. Existence, Qualification and Power; Compliance with Laws. Each Credit Party and each of its Subsidiaries (a) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization as identified in Schedule 4.1, (b) has all requisite power and authority to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Credit Documents to which it is a party, (c) is duly qualified and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all Laws, orders, writs, injunctions and orders and (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted; except in each case referred to in clause (c), (d) or (e), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

4.2. Authorization; No Contravention. The execution, delivery and performance by each Credit Party of each Credit Document to which such Person is a party, and the consummation of the Transaction, are within such Credit Party' s corporate or other powers, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person' s Organization Documents, (b) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 6.1), or require any payment to be made under (i) any Contractual

Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject or (c) violate any material Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clause (b)(i), to the extent that such conflict, breach, contravention or payment could not reasonably be expected to have a Material Adverse Effect.

4.3. Governmental Authorization; Other Consents. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Credit Party of this Agreement or any other Credit Document, or for the consummation of the Transaction, (b) the grant by any Credit Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Credit Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) filings necessary to perfect the Liens on the Collateral granted by the Credit Parties in favor of the Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make could not reasonably be expected to have a Material Adverse Effect.

4.4. Binding Effect. This Agreement and each other Credit Document has been duly executed and delivered by each Credit Party that is party thereto. This Agreement and each other Credit Document constitutes, a legal, valid and binding obligation of such Credit Party, enforceable against each Credit Party that is party thereto in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity.

4.5. Financial Statements; No Material Adverse Effect. (a) (i) The Historical Financial Statements fairly present in all material respects the financial condition of Education Management and its Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein. During the period from June 30, 2005 to and including the Closing Date (but prior to giving effect to the Transaction), there has been (i) no sale, transfer or other disposition by Education Management or any of its Subsidiaries of any material part of the business or property of Education Management or any of its Subsidiaries, taken as a whole and (ii) no purchase or other acquisition by Education Management or any of its Subsidiaries of any business or property (including any Equity Interests of any other Person) material in relation to the consolidated financial condition of Education Management and its Subsidiaries, in each case, which is not reflected in the foregoing financial statements or in the notes thereto or has not otherwise been disclosed in writing to the Lenders prior to the Closing Date.

(ii) The unaudited pro forma consolidated balance sheet of Company and its Subsidiaries as at March 31, 2006 (including the notes thereto) (the "**Pro Forma**

Balance Sheet") and the unaudited pro forma consolidated statement of operations of Holdings and its Subsidiaries for the most recent fiscal year, the 9-month period ending on March 31, 2006 and the 12-month period ending on March 31, 2006 (together with the Pro Forma Balance Sheet, the "**Pro Forma Financial Statements**"), copies of which have heretofore been furnished to each Lender prior to the Closing Date, have been prepared giving effect (as if such events had occurred on such date or at the beginning of such periods, as the case may be) to the Transaction, each material acquisition by Education Management or any of its Subsidiaries consummated after March 31, 2006 and prior to the Closing Date and all other transactions that would be required to be given pro forma effect by Regulation S-X promulgated under the Exchange Act (including other adjustments as otherwise agreed between Company and Arrangers). The Pro Forma Financial Statements have been prepared in good faith, based on assumptions believed by Company to be reasonable as of the date of delivery thereof, and present fairly in all material respects on a pro forma basis and in accordance with GAAP the estimated financial position of Holdings and its Subsidiaries as at March 31, 2006 and their estimated results of operations for the periods covered thereby, assuming that the events specified in the preceding sentence had actually occurred at such date or at the beginning of the periods covered thereby.

(b) Since June 30, 2005, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(c) The forecasts of consolidated balance sheets, income statements and cash flow statements of Holdings and its Subsidiaries for each fiscal year ending after the Closing Date until the seventh anniversary of the Closing Date (the "**Forecasts**"), copies of which have been furnished to Administrative Agent prior to the Closing Date in a form reasonably satisfactory to it, have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such forecasts, it being understood that actual results may vary from such forecasts and that such variations may be material.

4.6. Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of Holdings or any Borrower, threatened in writing or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against Holdings or any of its Subsidiaries or against any of their properties or revenues that either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

4.7. No Default. Neither Holdings nor any of its Subsidiaries is in default under or with respect to, or a party to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.8. Ownership of Property; Liens. Each Credit Party and each of its Subsidiaries has good and legal title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Liens permitted

by Section 6.1 and except where the failure to have such title could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

4.9. Environmental Compliance. (a) There are no claims, actions, suits, or proceedings alleging potential liability or responsibility for violation of, or otherwise relating to, any Environmental Law that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as specifically disclosed in Schedule 4.9(b) or except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (i) none of the properties currently or formerly owned, leased or operated by any Credit Party or any of its Subsidiaries is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (ii) there are no and never have been any underground or aboveground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned, leased or operated by any Credit Party or any of its Subsidiaries or, to its knowledge, on any property formerly owned or operated by any Credit Party or any of its Subsidiaries; (iii) there is no asbestos or asbestos-containing material on any property currently owned or operated by any Credit Party or any of its Subsidiaries; and (iv) Hazardous Materials have not been released, discharged or disposed of by any Person on any property currently or formerly owned, leased or operated by any Credit Party or any of its Subsidiaries and Hazardous Materials have not otherwise been released, discharged or disposed of by any of the Credit Parties and their Subsidiaries at any other location.

(c) The properties owned, leased or operated by Holdings and its Subsidiaries do not contain any Hazardous Materials in amounts or concentrations which (i) constitute, or constituted a violation of, (ii) require remedial action under, or (iii) could give rise to liability under, Environmental Laws, which violations, remedial actions and liabilities, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(d) Except as specifically disclosed in Schedule 4.9(d), neither Holdings nor any of its Subsidiaries is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law except for such investigation or assessment or remedial or response action that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(e) All Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Credit Party or any of its Subsidiaries have been disposed of in a manner not reasonably expected to result, individually or in the aggregate, in a Material Adverse Effect.

(f) Except as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect, none of the Credit Parties and their Subsidiaries has contractually assumed any liability or obligation under or relating to any Environmental Law.

4.10. Taxes. Except as set forth in Schedule 4.10, Holdings and its Subsidiaries have filed all material Federal, state and other tax returns and reports required to be filed, and have paid all material Federal, state and other taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those (a) which are not overdue by more than thirty (30) days or (b) which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP.

4.11. ERISA Compliance. (a) Except as set forth in Schedule 4.11(a) or as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance in with the applicable provisions of ERISA, the Internal Revenue Code and other Federal or state Laws.

(b) (i) No ERISA Event has occurred during the five year period prior to the date on which this representation is made or deemed made with respect to any Pension Plan; (ii) no Pension Plan has an "accumulated funding deficiency" (as defined in Section 412 of the Internal Revenue Code), whether or not waived; (iii) neither any Credit Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither any Credit Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither any Credit Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA, except, with respect to each of the foregoing clauses of this Section 4.11(b), as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

4.12. Subsidiaries; Equity Interests. As of the Closing Date, no Credit Party has any Subsidiaries other than those specifically disclosed in Schedule 4.12, and all of the outstanding Equity Interests in material Subsidiaries have been validly issued, are fully paid and nonassessable and all Equity Interests owned by a Credit Party are owned free and clear of all Liens except (i) those created under the Collateral Documents and (ii) any nonconsensual Lien that is permitted under Section 6.1. As of the Closing Date, Schedule 4.12 (a) sets forth the name and jurisdiction of each Subsidiary, (b) sets forth the ownership interest of Holdings, Company and any other Subsidiary thereof in each Subsidiary, including the percentage of such ownership and (c) identifies each Subsidiary that is a Subsidiary the Equity Interests of which are required to be pledged on the Closing Date pursuant to Section 3.1(h).

4.13. Margin Regulations; Investment Company Act; Public Utility Holding Company Act. (a) No Borrower is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Loans or drawings under any Letter of Credit will be used for any purpose that violates Regulation U of the Board of Governors.

(b) None of Holdings, any Person Controlling Holdings, or any Subsidiary Holdings (i) is a "holding company," or a "subsidiary company" of a "holding company," or an

"affiliate" of a "holding company" or of a "subsidiary company" of a "holding company," within the meaning of the Public Utility Holding Company Act of 1935, or (ii) is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

4.14. Disclosure. No report, financial statement, certificate or other written information furnished by or on behalf of any Credit Party to any Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Credit Document (as modified or supplemented by other information so furnished) when taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information and pro forma financial information, Holdings and Company represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood that such projections may vary from actual results and that such variances may be material.

4.15. Intellectual Property; Licenses, Etc. Each of the Credit Parties and their Subsidiaries own, license or possess the right to use, all of the trademarks, service marks, trade names, domain names, copyrights, patents, licenses, technology, software, know-how database rights, design rights and other intellectual property rights (collectively, "**IP Rights**") that are reasonably necessary for the operation of their respective businesses as currently conducted, and, without conflict with the rights of any Person, except to the extent such conflicts, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. To the knowledge of any Borrower, no IP Rights used by any Credit Party or any Subsidiary thereof in the operation of their respective businesses as currently conducted infringes upon any intellectual property rights held by any Person except for such infringements, individually or in the aggregate, which could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the IP Rights, is pending or, to the knowledge of any Borrower, threatened against any Credit Party or Subsidiary thereof, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

4.16. Solvency. On the Closing Date after giving effect to the Transaction, the Credit Parties, on a consolidated basis, are Solvent.

4.17. Subordination of Junior Financing. The Obligations are "Senior Debt," "Senior Indebtedness," "Guarantor Senior Debt" or "Senior Secured Financing" (or any comparable term) under, and as defined in, any Junior Financing Documentation.

4.18. Labor Matters. Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against any of Holdings, Company or its Subsidiaries pending or, to the knowledge of Holdings or Company, threatened; (b) hours worked by and payment made to employees of each of Holdings, Company or its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with such matters; and (c) all payments due from any of Holdings, Company or its Subsidiaries on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant party.

4.19. Collateral Documents. The provisions of the Collateral Documents are effective to create in favor of Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject to Liens permitted by Section 6.01) on all right, title and interest of the respective Credit Parties in the Collateral described therein. Except for filings completed prior to the Closing Date and as contemplated hereby and by the Collateral Documents, no filing or other action will be necessary to perfect or protect such Liens.

4.20. Patriot Act. To the extent applicable, each Credit Party is in compliance, in all material respects, with the (i) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the Untied States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001). No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

SECTION 5. AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder which is accrued and payable shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, each of Holdings and Company shall, and shall (except in the case of the covenants set forth in Sections 5.1, 5.2 and 5.3) cause each Subsidiary to:

5.1. Financial Statements. Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) as soon as available, but in any event within ninety (90) days after the end of each Fiscal Year (beginning with the Fiscal Year ending on June 30, 2006), (i) a consolidated balance sheet of Holdings and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, stockholders' equity and cash flows for such fiscal year setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP; and (ii) with respect to such consolidated financial statements, audited and accompanied by a report and opinion of Ernst & Young LLP or any other independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to a "going concern" emphasis paragraph or a qualification or disclaimer related to generally accepted accounting principles or generally accepted auditing standards or other material qualification or exception (provided that a paragraph in the audit report emphasizing a change in accounting as the result of new accounting rules promulgated by regulatory bodies such as the Financial Accounting Standards Board, the SEC or the American Institute of Certified Public Accountants shall be permitted);

(b) as soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) Fiscal Quarters of each Fiscal Year (beginning with the Fiscal

Quarter ending on September 30, 2006), a consolidated balance sheet of Holdings and its Subsidiaries as at the end of such fiscal quarter, and the related (i) consolidated statements of income or operations for such fiscal quarter and for the portion of the fiscal year then ended and (ii) consolidated statements of cash flows for the portion of the fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of Company as fairly presenting in all material respects the financial condition, results of operations, stockholders' equity and cash flows of Holdings and its Subsidiaries in accordance with GAAP, subject only to audit and normal year-end adjustments and the absence of footnotes;

(c) as soon as available, and in any event no later than sixty (60) days after the end of each Fiscal Year, a detailed consolidated budget for the following fiscal year (including a projected consolidated balance sheet of Holdings and its Subsidiaries as of the end of the following fiscal year, the related consolidated statements of projected cash flow and projected income and a summary of the material underlying assumptions applicable thereto), and, as soon as available, significant revisions, if any, of such budget and projections with respect to such fiscal year (collectively, the "**Projections**"), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections are based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect; and

(d) simultaneously with the delivery of each set of consolidated financial statements referred to in Sections 5.1(a) and 5.1(b) above, the related consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Subsidiaries (if any) from such consolidated financial statements.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 5.1 may be satisfied with respect to financial information of Holdings and its Subsidiaries by furnishing (A) the applicable financial statements of any direct or indirect parent of Holdings or (B) Company' s or Holdings' (or any direct or indirect parent thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; provided that, with respect to each of clauses (A) and (B), (1) to the extent such information relates to a parent of Holdings, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such parent, on the one hand, and the information relating to Holdings and its Subsidiaries on a standalone basis, on the other hand and (2) to the extent such information is in lieu of information required to be provided under Section 5.1(a), such materials are accompanied by a report and opinion of Ernst & Young LLP or any other independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to a "going concern" emphasis paragraph or a qualification or disclaimer related to generally accepted accounting principles or generally accepted auditing standards or other material qualification or exception (provided that a paragraph in the audit report emphasizing a change in accounting as the result of new accounting rules promulgated by regulatory bodies such as the Financial Accounting Standards Board, the SEC or the American Institute of Certified Public Accountants shall be permitted).

5.2. Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) no later than five (5) days after the delivery of the financial statements referred to in Section 5.1(a), a certificate of its independent registered public accounting firm certifying such financial statements and stating that in making the examination necessary therefor no knowledge was obtained of any Event of Default under Section 6.10 or, if any such Event of Default shall exist, stating the nature and status of such event;

(b) no later than five (5) days after the delivery of the financial statements referred to in Section 5.1(a) and (b), a duly completed Compliance Certificate signed by a Responsible Officer of Company and, if such Compliance Certificate demonstrates an Event of Default of any covenant under Section 6.10, any of the Equity Investors may deliver, together with such Compliance Certificate, notice of their intent to cure (a "**Notice of Intent to Cure**") such Event of Default pursuant to Section 8.3; provided that the delivery of a Notice of Intent to Cure shall in no way affect or alter the occurrence, existence or continuation of any such Event of Default or the rights, benefits, powers and remedies of Administrative Agent and the Lenders under any Credit Document;

(c) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which Holdings or Company files with the SEC or with any Governmental Authority that may be substituted therefor (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to Administrative Agent pursuant hereto;

(d) promptly after the furnishing thereof, copies of any material requests or material notices received by any Credit Party (other than in the ordinary course of business) or material statements or material reports furnished to any holder of debt securities of any Credit Party or of any of its Subsidiaries pursuant to the terms of any New Notes Documentation or Junior Financing Documentation in a principal amount greater than the Threshold Amount and not otherwise required to be furnished to Lenders pursuant to any other clause of this Section 5.2;

(e) together with the delivery of each Compliance Certificate pursuant to Section 5.2(b), (i) a certificate of a Responsible Officer of Company either confirming that there has been no change in such information since the date of the Perfection Certificate delivered on the Closing Date or the date of the most recent certificate delivered pursuant to this Section and/or identifying such changes and (ii) a description of each event, condition or circumstance during the last fiscal quarter covered by such Compliance Certificate requiring a mandatory prepayment under Section 2.14;

(f) promptly furnish to Collateral Agent written notice of any change (i) in any Credit Party' s corporate name or (ii) in any Credit Party' s jurisdiction of organization. Company agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for

Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral as contemplated in the Collateral Documents; and

(g) promptly, such additional information regarding the business, legal, financial or corporate affairs of any Credit Party or any Subsidiary, or compliance with the terms of the Credit Documents, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request.

Documents required to be delivered pursuant to Section 5.1(a) or (b) or Section 5.2(d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (A) on which Company posts such documents, or provides a link thereto on Company' s website on the Internet at the website address listed on Appendix B; or (B) on which such documents are posted on Company' s behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and Administrative Agent have access (whether a commercial, third-party website or whether sponsored by Administrative Agent); provided that: (1) upon written request by Administrative Agent, Company shall deliver paper copies of such documents to Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by Administrative Agent and (2) Company shall notify (which may be by facsimile or electronic mail) Administrative Agent of the posting of any such documents and provide to Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents. Notwithstanding anything contained herein, in every instance Company shall be required to provide paper copies of the Compliance Certificates required by Section 5.2(b) to Administrative Agent. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from Administrative Agent and maintaining its copies of such documents.

5.3. Notices. Promptly after obtaining knowledge thereof, notify Administrative Agent:

(a) of the occurrence of any Default; and

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including arising out of or resulting from (i) breach or non-performance of, or any default or event of default under, a Contractual Obligation of any Credit Party or any Subsidiary, (ii) any dispute, litigation, investigation, proceeding or suspension between any Credit Party or any Subsidiary and any Governmental Authority, (iii) the commencement of, or any material development in, any litigation or proceeding affecting any Credit Party or any Subsidiary, including pursuant to any applicable Environmental Laws or Education Laws or the assertion or occurrence of any noncompliance by any Credit Party or as any of its Subsidiaries with, or liability under, any Environmental Law or Environmental Permit or any Education Law, or (iv) the occurrence of any ERISA Event.

Each notice pursuant to this Section shall be accompanied by a written statement of a Responsible Officer of Company (x) that such notice is being delivered pursuant to Section 5.3(a) or (b) (as applicable) and (y) setting forth details of the occurrence referred to therein and stating what action Company has taken and proposes to take with respect thereto.

5.4. Payment of Obligations. Pay, discharge or otherwise satisfy as the same shall become due and payable, all its material obligations and liabilities in respect of taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property.

5.5. Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 6.4 or 6.5 and (b) take all reasonable action to maintain all rights, privileges (including its good standing), permits, licenses and franchises necessary or desirable in the normal conduct of its business, except (i) to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect or (ii) pursuant to a transaction permitted by Section 6.4 or 6.5.

5.6. Maintenance of Properties. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted, and (b) make in all material respects necessary renewals, replacements, modifications, improvements, upgrades, extensions and additions thereof or thereto in accordance with prudent industry practice.

5.7. Maintenance of Insurance. (a) Maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as Company and its Subsidiaries) as are customarily carried under similar circumstances by such other Persons; and (b) if requested by the Administrative Agent or any Lender through the Administrative Agent, deliver a certificate from Company' s insurance broker(s) in form and substance satisfactory to Administrative Agent outlining all material insurance coverage maintained as of the date of such certificate by Holdings and its Subsidiaries to the extent not unduly burdensome for Company. Each such policy of insurance shall (i) name Collateral Agent, on behalf of Secured Parties as an additional insured thereunder as its interests may appear and (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, satisfactory in form and substance to Collateral Agent, that names Collateral Agent, on behalf of Lenders as the loss payee thereunder.

5.8. Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except if the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, Company will, and will cause each Subsidiary to, comply with (i) all applicable Laws, the violation of which would terminate or materially impair the eligibility of Company or any Subsidiary for participation, if applicable, in student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C.A. § 1070 et seq., where such termination or material impairment would have a Material Adverse Effect, (ii) the federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., and all other consumer credit laws applicable to Company or any Subsidiary in connection with the advancing of student loans, except for such laws and regulations the violation of which,

in the aggregate, will not result in the assessment of penalties and damages claims against Company or any Subsidiary where such penalties and damage claims would have a Material Adverse Effect, (iii) all statutory and regulatory requirements for authorization to provide post-secondary education in the jurisdictions in which its educational facilities are located, except for such requirements the violation of which will not have a Material Adverse Effect, and (iv) if applicable, all requirements for continuing its accreditations, except for such requirements the violation of which would not have a Material Adverse Effect (including cases where the governing board of the institution in good faith elected to seek or permit the termination of such accreditation which would not have a Material Adverse Effect) (the laws, regulations and requirements referred to in this sentence prior to giving effect to any materiality carve-outs are collectively referred to as the "**Education Laws**").

5.9. Books and Records. Maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity with GAAP consistently applied shall be made of all material financial transactions and matters involving the assets and business of Holdings, Company or such Subsidiary, as the case may be.

5.10. Inspection Rights. Permit representatives and independent contractors of Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the reasonable expense of Company and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to Company; provided that, excluding any such visits and inspections during the continuation of an Event of Default, only Administrative Agent on behalf of Lenders may exercise rights of Administrative Agent and Lenders under this Section 5.10 and Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year absent the existence of an Event of Default and only one (1) such time shall be at Company' s expense; provided further that when an Event of Default exists, Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of Company at any time during normal business hours and upon reasonable advance notice. Administrative Agent and Lenders shall give Company the opportunity to participate in any discussions with Company' s independent public accountants.

5.11. Compliance with Environmental Laws. Except, in each case, to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, comply, and take all reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and, in each case to the extent required by Environmental Laws, conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws.

5.12. Subsidiaries. In the event that any Person becomes an Included Domestic Subsidiary of Holdings, (a) promptly cause such Included Domestic Subsidiary to become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and

delivering to Administrative Agent and Collateral Agent a Counterpart Agreement, and (b) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates as are similar to those described in Sections 3.1(c), 3.1(g), 3.1(h) and 3.1(j). In the event that any Person becomes a Foreign Subsidiary of Holdings, and the ownership interests of such Foreign Subsidiary are owned by Holdings or by any Included Domestic Subsidiary thereof, Company shall, or shall cause such Included Domestic Subsidiary to, deliver, all such documents, instruments, agreements, and certificates as are similar to those described in Section 3.1(b), and Company shall take, or shall cause such Included Domestic Subsidiary to take, all of the actions referred to in Section 3.1(i)(h) necessary to grant and to perfect a First Priority Lien in favor of Collateral Agent, for the benefit of Secured Parties, under the Pledge and Security Agreement in 66% of such ownership interests.

5.13. Additional Material Real Estate Assets. In the event that any Credit Party acquires a Material Real Estate Asset and such interest has not otherwise been made subject to the Lien of the Collateral Documents in favor of Collateral Agent, for the benefit of Secured Parties, then such Credit Party shall promptly take all such actions and execute and deliver, or cause to be executed and delivered, all such mortgages, documents, instruments, agreements, opinions and certificates similar to those described in Sections 3.1(g), 3.1(h) and 5.15 with respect to each such Material Real Estate Asset that Collateral Agent shall reasonably request to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority security interest in such Material Real Estate Assets.

5.14. Further Assurances. At any time or from time to time upon the request of Administrative Agent, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Administrative Agent or Collateral Agent may reasonably request in order to effect fully the purposes of the Credit Documents. In furtherance and not in limitation of the foregoing, each Credit Party shall take such actions as Administrative Agent or Collateral Agent may reasonably request from time to time to ensure that the Obligations are guarantied by the Guarantors and are secured by substantially all of the assets of Holdings and its Subsidiaries and all of the outstanding Equity Interests in Company and its Subsidiaries (subject to limitations contained in the Credit Documents with respect to Excluded Subsidiaries).

5.15. Survey of Closing Date Mortgaged Property. Within thirty (30) days after the Closing Date, (i) deliver to Collateral Agent an ALTA survey with respect to any Closing Date Mortgaged Property, dated not earlier than April 10, 1997, certified to Collateral Agent and the relevant Title Company, accompanied by an "affidavit of no change" executed by the surveyor issuing such ALTA survey or the Credit Party owning such Closing Date Mortgaged Property and dated not more than thirty (30) days prior to the Closing Date in form and substance reasonably satisfactory to Collateral Agent and such Title Company, and disclose only such state of facts as shall be reasonably satisfactory to Collateral Agent, and (ii) cause such Title Company to add any endorsements to the Title Policy as Collateral Agent may reasonably request.

SECTION 6. NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder which is accrued and payable shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, Holdings and Company shall not, nor shall they permit any of their Subsidiaries to, directly or indirectly:

6.1. Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Credit Document;

(b) Liens existing on the date hereof and listed on Schedule 6.1(b) and any modifications, replacements, renewals or extensions thereof; provided that (i) the Lien does not extend to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 6.3, and (B) proceeds and products thereof, and (ii) the renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by Section 6.3;

(c) Liens for taxes, assessments or governmental charges which are not overdue for a period of more than thirty (30) days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) statutory Liens of landlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens arising in the ordinary course of business which secure amounts not overdue for a period of more than thirty (30) days or if more than thirty (30) days overdue, are unfiled and no other action has been taken to enforce such Lien or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(e) (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to Holdings, Company or any Subsidiary;

(f) deposits to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions, encroachments, protrusions and other similar encumbrances and minor title defects affecting real property which, in the aggregate, do

not in any case materially interfere with the ordinary conduct of the business of Company or any material Subsidiary;

(h) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.1(h);

(i) Liens securing Indebtedness permitted under Section 6.3(e); provided that such Liens do not at any time extend to or cover any assets (except for accessions to such assets) other than the assets subject to such Capitalized Leases; and provided further that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(j) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which do not (i) interfere in any material respect with the business of Company or any material Subsidiary or (ii) secure any Indebtedness;

(k) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(l) Liens (i) of a collection bank arising under Section 4-210 of the UCC on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business; and (iii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(m) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Sections 6.2 (i) and (n) to be applied against the purchase price for such Investment, and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 6.5, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(n) Liens in favor of Company or a Subsidiary securing Indebtedness permitted under Section 6.3(d);

(o) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Subsidiary, in each case after the date hereof (other than Liens on the Equity Interests of any Person that becomes a Subsidiary); provided that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition), and (iii) the Indebtedness secured thereby is permitted under Section 6.3(e), (g) or (h);

(p) any interest or title of a lessor under leases entered into by Company or any of its Subsidiaries in the ordinary course of business;

(q) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by Company or any of its Subsidiaries in the ordinary course of business permitted by this Agreement;

(r) Liens deemed to exist in connection with Investments in repurchase agreements under Section 6.2;

(s) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(t) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of Holdings, Company or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of Holdings, Company and its Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of Holdings, Company or any Subsidiary in the ordinary course of business;

(u) Liens solely on any cash earnest money deposits made by Holdings, Company or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(v) (i) Liens placed upon the Equity Interests of any Subsidiary acquired pursuant to a Permitted Acquisition to secure Indebtedness incurred pursuant to Section 6.3(h) in connection with such Permitted Acquisition and (ii) Liens placed upon the assets of such Subsidiary and any of its Subsidiaries to secure a Guarantee by such Subsidiary and its Subsidiaries of any such Indebtedness incurred pursuant to Section 6.3(h);

(w) ground leases in respect of real property on which facilities owned or leased by Company or any of its Subsidiaries are located;

(x) Liens securing Indebtedness of Qualified Non-Wholly-Owned Subsidiaries and Wholly-Owned Subsidiaries of Company permitted under Section 6.3(t); and

(y) other Liens securing Indebtedness of Company outstanding in an aggregate principal amount not to exceed $35,000,000.

6.2. Investments. Make or hold any Investments, except:

(a) Investments by Company or a Subsidiary in assets that were Cash Equivalents when such Investment was made;

(b) loans or advances to officers, directors and employees of Holdings, Company and its Subsidiaries (i) for reasonable and customary business-related travel, entertainment,

relocation and analogous ordinary business purposes, (ii) in connection with such Person' s purchase of Equity Interests of Holdings (or any direct or indirect parent thereof) (provided that the amount of such loans and advances shall be contributed to Company in cash as common equity) and (iii) for purposes not described in the foregoing clauses (i) and (ii), in an aggregate principal amount outstanding not to exceed $5,000,000;

(c) Investments (i) by Holdings, Company or any Subsidiary in any Credit Party (excluding any new Subsidiary which becomes a Credit Party), (ii) by any Subsidiary that is not a Credit Party in any other such Subsidiary that is also not a Credit Party, and (iii) by Company or any Subsidiary in (A) any Wholly Owned Subsidiary that is not a Credit Party or (B) any Qualified Non-Wholly-Owned Subsidiary that is not a Credit Party;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;

(e) Investments consisting of Liens, Indebtedness, fundamental changes, Dispositions and Restricted Payments permitted under Sections 6.1, 6.3, 6.4, 6.5 and 6.6, respectively;

(f) Investments existing or contemplated on the date hereof and set forth on Schedule 6.2(f) and any modification, replacement, renewal, reinvestment or extension thereof; provided that the amount of the original Investment is not increased except by the terms of such Investment (to the extent such increase is noted on Schedule 6.2(f)) or as otherwise permitted by this Section 6.2;

(g) Investments in Swap Agreements permitted under Section 6.3;

(h) promissory notes and other noncash consideration received in connection with Dispositions permitted by Section 6.5;

(i) any Permitted Acquisition, so long as Holdings and its Subsidiaries shall be in compliance with the financial covenant set forth in Section 6.10(a) on a pro forma basis after giving to such acquisition as of the last day of the Fiscal Quarter most recently ended (as determined in accordance with Section 6.10(c)); provided that for purposes of this Section 6.2(i), the applicable maximum Total Leverage Ratio required by Section 6.10(a) shall be reduced by an amount equal to 0.50:1;

(j) the Transaction;

(k) Investments in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers consistent with past practices;

(l) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary

course of business or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(m) loans and advances to Holdings (or any direct or indirect parent thereof) in lieu of, and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof), Restricted Payments to the extent permitted to be made to Holdings (or such parent) in accordance with Sections 6.6(h) or (i);

(n) so long as immediately after giving effect to any such Investment, no Default has occurred and is continuing and Holdings and its Subsidiaries will be in pro forma compliance with the covenants set forth in Section 6.10, other Investments that do not exceed (x) if, as of the last day of the immediately preceding Test Period (after giving pro forma effect to such Investment) the Total Leverage Ratio is 4.50:1 or less, $100,000,000 in the aggregate and (y) if, as of the last day of the immediately preceding Test Period (after giving pro forma effect to such Investment) the Total Leverage Ratio is greater than 4.50:1, $50,000,000 in the aggregate, in each case net of any return representing return of capital in respect of any such investment and valued at the time of the making thereof; provided that, such amount shall be increased by (i) the Net Cash Proceeds of Permitted Equity Issuances (other than Permitted Equity Issuances made pursuant to Section 8.3) that are Not Otherwise Applied and (ii) if, as of the last day of the immediately preceding Test Period (after giving pro forma effect to such Investments) the Total Leverage Ratio is 5.50:1 or less, the amount of Cumulative Excess Cash Flow that is Not Otherwise Applied;

(o) advances of payroll payments to employees in the ordinary course of business;

(p) Investments to the extent that payment for such Investments is made solely with capital stock of Holdings;

(q) Investments of a Subsidiary acquired after the Closing Date or of a corporation merged into Company or merged or consolidated with a Subsidiary in accordance with Section 6.4 after the Closing Date to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger or consolidation and were in existence on the date of such acquisition, merger or consolidation;

(r) Guarantees by Holdings, Company or any Subsidiary of leases (other than Capitalized Leases) or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business; and

(s) Investments in assets useful to the business of Holdings and its Subsidiaries made with any Asset Sale Reinvestment Deferred Amount and Insurance/Condemnation Reinvestment Deferred Amount (each as defined in Section 2.14).

6.3. Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of Holdings, Company and any of its Subsidiaries under the Credit Documents;

(b) Indebtedness (including intercompany Indebtedness) outstanding on the date hereof and listed on Schedule 6.3(b) and any Permitted Refinancing thereof;

(c) Guarantees by Holdings, Company and its Subsidiaries in respect of Indebtedness of Company or any Subsidiary otherwise permitted hereunder; provided that (A) no Guarantee by any Credit Party of any New Note or Junior Financing shall be permitted unless such Credit Party shall have also provided a Guarantee of the Obligations substantially on the terms set forth in the Guaranty and (B) if the Indebtedness being Guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness;

(d) Indebtedness of Holdings or any Subsidiary owing to Holdings or any other Subsidiary to the extent constituting an Investment permitted by Section 6.2; provided that (i) all such Indebtedness of any Credit Party owed to any Person that is not a Credit Party shall be subject to the subordination terms set forth in Section 4.4.3 of the Pledge and Security Agreement and (ii) all such Indebtedness of any Credit Party owed to another Credit Party (A) shall be evidenced by the Intercompany Note, which shall be subject to a First Priority Lien pursuant to the Pledge and Security Agreement and (B) shall be unsecured and subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the Intercompany Note;

(e) Indebtedness with respect to Capitalized Leases in an aggregate amount, together with the aggregate amount of Indebtedness incurred pursuant to Section 6.3(g), not to exceed at any time an amount equal to the greater of $160,000,000 and 4% of Total Assets;

(f) Indebtedness in respect of Swap Agreements designed to hedge against interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes;

(g) purchase money Indebtedness in an aggregate amount, together with the aggregate amount of Indebtedness incurred pursuant to Section 6.3(e), not to exceed at any time an amount equal to the greater of $160,000,000 and 4% of Total Assets; provided, any such Indebtedness (i) shall be secured only by the asset acquired in connection with the incurrence of such Indebtedness, and (ii) shall constitute not less than 85% of the aggregate consideration paid with respect to such asset;

(h) (i) the following Indebtedness assumed in connection with Permitted Acquisitions (provided that such Indebtedness is not incurred in contemplation of any such Permitted Acquisition): (x) Indebtedness assumed by Holdings, (y) Indebtedness assumed by Company, provided that such Indebtedness is unsecured and is subordinated to the Obligations on terms no less favorable to the Lenders than the subordination terms set forth in the Senior Subordinated Notes Indenture as of the Closing Date and (z) other Indebtedness assumed by Company and its Subsidiaries in an aggregate amount not to exceed $125,000,000 at any one time outstanding,
(ii) Indebtedness incurred by Holdings or Company to finance a Permitted Acquisition, provided that such Indebtedness is unsecured and is subordinated to the Obligations on terms no less favorable to the Lenders than the subordination terms set forth in the Senior

Subordinated Notes Indenture as of the Closing Date and (iii) any Permitted Refinancing of the foregoing, provided that with respect to any unsecured and/or subordinated Indebtedness, the Permitted Refinancing thereof shall be similarly unsecured and/or subordinated; provided that, in each case of the foregoing clauses (i), (ii) and (iii), such Indebtedness and all Indebtedness resulting from any Permitted Refinancing thereof (A) both immediately prior and after giving effect thereto, (1) no Default shall exist or result therefrom and (2) Holdings and its Subsidiaries will be in pro forma compliance with the covenants set forth in Section 6.10, (B) matures after, and does not require any scheduled amortization (other than nominal amortization) or other scheduled payments of principal prior to, the date that is 91 days after the Term Loan Maturity Date (it being understood that such Indebtedness may have mandatory prepayment, repurchase or redemptions provisions satisfying the requirement of clause (C) hereof) and (C) has terms and conditions (other than interest rate, redemption premiums and subordination terms), taken as a whole, that are not materially less favorable to Company as the terms and conditions of the New Notes as of the Closing Date; provided that a certificate of a Responsible Officer delivered to Administrative Agent at least five Business Days prior to the assumption or incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that Company has determined in good faith that such terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent notifies Company within such five Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees).

(i) Indebtedness representing deferred compensation to employees of Company and its Subsidiaries incurred in the ordinary course of business;

(j) Indebtedness in an aggregate amount not to exceed $15,000,000 at any time consisting of promissory notes issued by any Credit Party to current or former officers, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of Holdings permitted by Section 6.6;

(k) Indebtedness incurred by Holdings, Company or its Subsidiaries in any Disposition constituting indemnification obligations or obligations in respect of purchase price or other similar adjustments;

(l) Indebtedness consisting of obligations of Holdings, Company or its Subsidiaries under deferred compensation or other similar arrangements incurred by such Person in connection with the Transaction and Permitted Acquisitions or any other Investment expressly permitted hereunder;

(m) Cash Management Obligations and other Indebtedness in respect of netting services, overdraft protections and similar arrangements in each case in connection with deposit accounts;

(n) Indebtedness incurred by Company or any of its Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health,

disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims; provided that any reimbursement obligations in respect thereof are reimbursed within 30 days following the incurrence thereof;

(o) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by Company or any of its Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice;

(p) unsecured Indebtedness of Holdings ("**Permitted Holdings Debt**") (i) that is not subject to any Guarantee by Company or any Subsidiary, (ii) that will not mature prior to the date that is 91 days after the Term Loan Maturity Date, (iii) that has no scheduled amortization or payments of principal (it being understood that such Indebtedness may have mandatory prepayment, repurchase or redemption provisions satisfying the requirements of clause (v) hereof), (iv) that does not require any payments in cash of interest or other amounts in respect of the principal thereof prior to the earlier to occur of (A) the date that is five (5) years from the date of the issuance or incurrence thereof and (B) the date that is 91 days after the Term Loan Maturity Date, and (v) that has mandatory prepayment, repurchase or redemption, covenant, default and remedy provisions customary for senior discount notes of an issuer that is the parent of a borrower under senior secured credit facilities, and in any event, with respect to covenant, default and remedy provisions, no more restrictive than those set forth in the Senior Subordinated Notes Indenture as of the Closing Date, taken as a whole (other than provisions customary for senior discount notes of a holding company); provided that a certificate of a Responsible Officer delivered to Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that Company has determined in good faith that such terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless Administrative Agent notifies Company within such five Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees); provided, further, that any such Indebtedness shall constitute Permitted Holdings Debt only if (1) both before and after giving effect to the issuance or incurrence thereof, no Default shall have occurred and be continuing and (2) Holdings and its Subsidiaries will be in pro forma compliance with the covenants set forth in Section 6.10 (it being understood that any capitalized or paid-in-kind or accreted principal on such Indebtedness is not subject to this proviso);

(q) Indebtedness supported by a Letter of Credit, in a principal amount not to exceed the face amount of such Letter of Credit;

(r) Indebtedness in respect of the New Notes and any Permitted Refinancing thereof;

(s) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;

(t) Indebtedness of Qualified Non-Wholly-Owned Subsidiaries and Wholly Owned Subsidiaries of Company in an aggregate amount not to exceed at any time (x) if, as of the last day of the immediately preceding Test Period (after giving pro forma effect to such Indebtedness) the Total Leverage Ratio is less than 4.50:1, $50,000,000 and (y) otherwise, $25,000,000;

(u) other Indebtedness of Company in an aggregate amount not to exceed at any time $200,000,000; and

(v) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (u) above.

6.4. Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:

(a) any Subsidiary may merge with (i) any Borrower (including a merger, the purpose of which is to reorganize such Borrower into a new jurisdiction); provided that such Borrower shall be the continuing or surviving Person and (y) such merger does not result in any Borrower ceasing to be incorporated under the Laws of the United States, any state thereof or the District of Columbia, or (ii) any one or more other Subsidiaries; provided that when any Subsidiary that is a Credit Party is merging with another Subsidiary, a Credit Party shall be the continuing or surviving Person;

(b) (i) any Subsidiary that is not a Credit Party may merge or consolidate with or into any other Subsidiary that is not a Credit Party and (ii) any Subsidiary (other than a Borrower) may liquidate or dissolve or change its legal form if Holdings determines in good faith that such action is in the best interests of Holdings and its Subsidiaries and if not materially disadvantageous to the Lenders;

(c) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to Company or to another Subsidiary; provided that if the transferor in such a transaction is a Guarantor or a Borrower, then (i) the transferee must either be a Borrower or a Guarantor or (ii) to the extent constituting an Investment, such Investment must be permitted under Sections 6.2 and 6.3;

(d) so long as no Default exists or would result therefrom, Company may merge with any other Person; provided that (i) Company shall be the continuing or surviving corporation or (ii) if the Person formed by or surviving any such merger or consolidation is not Company (any such Person, the "**Successor Company**"), (A) the Successor Company and its Subsidiaries shall be in compliance with the financial covenants set forth in Section 6.10 on a pro forma basis after giving effect to such merger or consolidation as of the last day of the Fiscal Quarter most recently ended, (B) the Successor Company shall be an entity organized or existing under the laws of the United States, any state thereof, the District of Columbia or any territory thereof, (C) the Successor Company shall expressly assume all the obligations of Company

under this Agreement and the other Credit Documents to which Company is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent, (D) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Guaranty confirmed that its Guarantee shall apply to the Successor Company' s obligations under this Agreement, (E) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Pledge and Security Agreement confirmed that its obligations thereunder shall apply to the Successor Company' s obligations under this Agreement, (F) each mortgagor of a Closing Date Mortgaged Property, unless it is the other party to such merger or consolidation, shall have by an amendment to or restatement of the applicable Mortgage confirmed that its obligations thereunder shall apply to the Successor Company' s obligations under this Agreement, and (G) Company shall have delivered to Administrative Agent an officer' s certificate and an opinion of counsel, each stating that such merger or consolidation and such supplement to this Agreement or any Collateral Document comply with this Agreement; provided, further, that if the foregoing are satisfied, the Successor Company will succeed to, and be substituted for, Company under this Agreement;

(e) so long as no Default exists or would result therefrom, any Subsidiary may merge with any other Person in order to effect an Investment permitted pursuant to Section 6.2; provided that the continuing or surviving Person shall be a Subsidiary, which together with each of its Subsidiaries, shall have complied with the requirements of Section 5.11;

(f) Holdings and its Subsidiaries may consummate the Merger; and

(g) so long as no Default exists or would result therefrom, a Disposition, the purpose of which is to effect a Disposition permitted pursuant to Section 6.5.

6.5. Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions of property no longer used or useful in the conduct of the business of Company and its Subsidiaries;

(b) Dispositions of assets that do not constitute Asset Sales;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property;

(d) Dispositions of property to Company or to a Subsidiary; provided that if the transferor of such property is a Guarantor or a Borrower (i) the transferee thereof must either be a Borrower or a Guarantor or (ii) to the extent such transaction constitutes an Investment, such transaction is permitted under Section 6.2;

(e) Dispositions permitted by Sections 6.4 and 6.6 and Liens permitted by Section 6.1;

(f) Dispositions of property pursuant to sale-leaseback transactions; provided that the fair market value of all property so Disposed of after the Closing Date (taken together with the aggregate book value of all property Disposed of pursuant to Section 6.5(k)) shall not exceed $125,000,000;

(g) Dispositions of Cash Equivalents;

(h) Dispositions of accounts receivable in connection with the collection or compromise thereof;

(i) leases, subleases, licenses or sublicenses, in each case in the ordinary course of business and which do not materially interfere with the business of Holdings, Company and its Subsidiaries;

(j) transfers of property subject to Casualty Events upon receipt of the Net Cash Proceeds of such Casualty Event;

(k) Dispositions of property not otherwise permitted under this Section 6.5; provided that (i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Default exists), no Default shall exist or would result from such Disposition, (ii) the aggregate book value of all property Disposed of in reliance on this clause (k) (taken together with the aggregate fair market value of all property Disposed of pursuant to Section 6.5(f)) shall not exceed $125,000,000 and (iii) with respect to any Disposition pursuant to this clause (k) for a purchase price in excess of $3,500,000, Company or a Subsidiary shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Liens permitted by Section 6.1 and Liens permitted by Section 6.1(s) and clauses (i) and (ii) of Section 6.1(t)); provided, however, that for the purposes of this clause (iii), (A) any liabilities (as shown on Company' s or such Subsidiary' s most recent balance sheet provided hereunder or in the footnotes thereto) of Company or such Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that are assumed by the transferee with respect to the applicable Disposition and for which Company and all of its Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities received by Company or such Subsidiary from such transferee that are converted by Company or such Subsidiary into cash (to the extent of the cash received) within 180 days following the closing of the applicable Disposition and (C) any Designated Non-Cash Consideration received by Company or such Subsidiary in respect of such Disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (C) that is at that time outstanding, not in excess of 1.5% of Total Assets at the time of the receipt of such Designated Non-cash Consideration, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value, shall be deemed to be cash;

(l) Dispositions listed on Schedule 6.5(l); and

(m) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements.

provided that any Disposition of any property pursuant to this Section 6.5 (except pursuant to Sections 6.5(e) and except for Dispositions from a Credit Party to another Credit Party), shall be for no less than the fair market value of such property at the time of such Disposition. To the extent any Collateral is Disposed of as expressly permitted by this Section 6.5 to any Person other than Holdings, Company or any Subsidiary, such Collateral shall be sold free and clear of the Liens created by the Credit Documents, and Administrative Agent or Collateral Agent, as applicable, shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

6.6. Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Subsidiary may make Restricted Payments to Company and to other Subsidiaries (and, in the case of a Restricted Payment by a non-wholly owned Subsidiary, to Company and any other Subsidiary and to each other owner of Equity Interests of such Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(b) Holdings, Company and each Subsidiary may declare and make dividend payments or other distributions payable solely in the Equity Interests (other than Disqualified Equity Interests not otherwise permitted by Section 6.3) of such Person;

(c) so long as no Default shall have occurred and be continuing or would result therefrom, from and after the date Company delivers an irrevocable written notice to the Administrative Agent stating that Company will make Restricted Payments to Holdings that are used by Holdings solely to fund cash interest payments required to be made by Holdings and permitted to be made by Holdings under this Agreement (the "**Holdings Restricted Payments Election**"), Company may make such Restricted Payments to Holdings;

(d) Restricted Payments made on the Closing Date to consummate the Transaction;

(e) to the extent constituting Restricted Payments, Holdings, Company and its Subsidiaries may enter into and consummate transactions expressly permitted by any provision of Section 6.4 or 6.8 other than Section 6.8(f);

(f) repurchases of Equity Interests in Holdings, Company or any Subsidiary deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(g) Holdings may pay (or make Restricted Payments to allow any direct or indirect parent thereof to pay) for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of Holdings (or of any such parent of Holdings) by any future, present or former employee or director of Holdings (or any direct or indirect parent of Holdings) or any of its Subsidiaries in connection with the termination of employment, death or disability of such

individual pursuant to any employee or director equity plan, employee or director stock option plan or any other employee or director benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee or director of Holdings or any of its Subsidiaries;

(h) Company and its Subsidiaries may make Restricted Payments to Holdings:

(i) the proceeds of which will be used to pay (or to make Restricted Payments to allow any direct or indirect parent of Holdings to pay) the tax liability to each relevant jurisdiction in respect of any tax returns for the relevant jurisdiction of Holdings (or such parent) attributable to Holdings, Company or its Subsidiaries;

(ii) the proceeds of which shall be used by Holdings to pay (or to make Restricted Payments to allow any direct or indirect parent of Holdings to pay) its operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business, in an aggregate amount, together with loans and advances to Holdings made pursuant to Section 6.2(m) in lieu of Restricted Payments permitted by this sub-clause (ii), not to exceed $1,000,000 in any fiscal year plus any reasonable and customary indemnification claims made by directors or officers of Holdings (or any parent thereof) attributable to the ownership or operations of Company and its Subsidiaries;

(iii) the proceeds of which shall be used by Holdings to pay franchise taxes and other fees, taxes and expenses required to maintain its (or any of its direct or indirect parents') corporate existence;

(iv) the proceeds of which shall be used by Holdings to make Restricted Payments permitted by Section 6.6(g);

(v) to finance any Investment permitted to be made pursuant to Section 6.2; provided that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (B) Holdings shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) to be contributed to Company or its Subsidiaries or (2) the merger (to the extent permitted in Section 6.4) of the Person formed or acquired into Company or its Subsidiaries in order to consummate such Permitted Acquisition, in each case, in accordance with the requirements of Sections 5.12 and 5.13; and

(vi) the proceeds of which shall be used by Holdings to pay (or to make Restricted Payments to allow any direct or indirect parent thereof to pay) fees and expenses (other than to Affiliates) related to any unsuccessful equity or debt offering permitted by this Agreement; and

(i) in addition to the foregoing Restricted Payments and so long as no Default shall have occurred and be continuing or would result therefrom, Company may make additional Restricted Payments to Holdings the proceeds of which may be utilized by Holdings to make

additional Restricted Payments, in an aggregate amount, together with the aggregate amount of (1) prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings made pursuant to Section 6.12(a)(iv) and (2) loans and advances to Holdings made pursuant to Section 6.2(m) in lieu of Restricted Payments permitted by this clause (i), not to exceed the sum of (A) $60,000,000, (B) the aggregate amount of the Net Cash Proceeds of Permitted Equity Issuances (other than Permitted Equity Issuances made pursuant to Section 8.3) that are Not Otherwise Applied and (C) if the Total Leverage Ratio as of the last day of the immediately preceding Test Period (after giving pro forma effect to such additional Restricted Payments) is 5.50:1 or less, the amount of Cumulative Excess Cash Flow that is Not Otherwise Applied. For the purpose of this Agreement, "**Cumulative Excess Cash Flow**" means the sum of Consolidated Excess Cash Flow (but not less than zero in any period) for the fiscal year ending on June 30, 2007 and Consolidated Excess Cash Flow for each succeeding and completed fiscal year.

6.7. Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by Company and its Subsidiaries on the date hereof or any business reasonably related or ancillary thereto.

6.8. Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of Company, whether or not in the ordinary course of business, other than (a) transactions among Credit Parties or any Subsidiary or any entity that becomes a Subsidiary as a result of such transaction, (b) on terms substantially as favorable to Holdings, Company or such Subsidiary as would be obtainable by Holdings, Company or such Subsidiary at the time in a comparable arm' s-length transaction with a Person other than an Affiliate, (c) the payment of fees and expenses related to the Transaction, (d) the issuance of Equity Interests to the management of Company or any of its Subsidiaries in connection with the Transaction, (e) the payment of management and monitoring fees to the Sponsors in an aggregate amount in any fiscal year not to exceed the amount permitted to be paid pursuant to the Sponsor Management Agreement as in effect on the date hereof and any Sponsor Termination Fees not to exceed the amount set forth in the Sponsor Management Agreement as in effect on the date hereof and related indemnities and reasonable expenses, (f) equity issuances, repurchases, retirements or other acquisitions or retirements of Equity Interests by Holdings permitted under Section 6.6, (g) loans and other transactions by Holdings, Company and its Subsidiaries to the extent permitted under this Section 6, (h) employment and severance arrangements between Holdings, Company and its Subsidiaries and their respective officers and employees in the ordinary course of business, (i) without limiting Section 6.6(h), payments by Holdings (and any direct or indirect parent thereof), Company and its Subsidiaries pursuant to the tax sharing agreements among Holdings (and any such parent thereof), Company and its Subsidiaries on customary terms to the extent attributable to the ownership or operation of Company and its Subsidiaries, (j) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, officers and employees of Holdings, Company and its Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of Holdings, Company and its Subsidiaries, (k) transactions pursuant to permitted agreements in existence on the Closing Date and set forth on Schedule 6.8 or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect, (l) dividends, redemptions and repurchases permitted under Section 6.6, and (m) customary payments by Holdings, Company and any of its Subsidiaries to the Sponsors made for any financial advisory, financing,

underwriting or placement services or in respect of other investment banking activities (including in connection with acquisitions or divestitures), which payments are approved by the majority of the members of the board of directors or a majority of the disinterested members of the board of directors of Holdings or Company, in good faith.

6.9. Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Credit Document) that limits the ability of (a) any Subsidiary of Company that is not a Guarantor to make Restricted Payments to Company or any Guarantor or (b) Company or any other Credit Party to create, incur, assume or suffer to exist Liens on property of such Person for the benefit of Lenders with respect to the Obligations or under the Credit Documents; provided that the foregoing clauses (a) and (b) shall not apply to Contractual Obligations which (i) (x) exist on the date hereof and (to the extent not otherwise permitted by this Section 6.9) are listed on Schedule 6.9 hereto and (y) to the extent Contractual Obligations permitted by clause (x) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted renewal, extension or refinancing of such Indebtedness so long as such renewal, extension or refinancing does not expand the scope of such Contractual Obligation, (ii) are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary of Company, so long as such Contractual Obligations were not entered into solely in contemplation of such Person becoming a Subsidiary of Company, (iii) arise in connection with any Disposition permitted by Section 6.5 to the extent such Contractual Obligations are in effect prior to the consummation of such Disposition; (iv) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 6.2 and applicable solely to such joint venture entered into in the ordinary course of business, (v) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 6.3 but solely to the extent any negative pledge relates to the property financed by or the subject of such Indebtedness (and excluding in any event any Indebtedness constituting any Junior Financing), (vi) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto, (vii) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to Section 6.3(e) or 6.3(g) to the extent that such restrictions apply only to the property or assets securing such Indebtedness or, in the case of Indebtedness incurred pursuant to Section 6.3(g) only, to the Subsidiaries incurring or guaranteeing such Indebtedness, (viii) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of Company or any Subsidiary, (ix) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (x) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business and (xi) are required by any applicable Education Laws or any other applicable laws.

6.10. Financial Covenants. (a) Total Leverage Ratio. Permit the Total Leverage Ratio as of the last day of any Test Period (beginning with the Test Period ending on December 31, 2006) to be greater than the ratio set forth below opposite the last day of such Test Period:

Year	March 31	June 30	September 30	December 31
2006	–	–	–	8.25:1
2007	8.00:1	8.00:1	7.75:1	7.75:1
2008	7.25:1	7.25:1	7.00:1	7.00:1
2009	6.75:1	6.75:1	6.25:1	6.25:1
2010	5.75:1	5.75:1	5.25:1	5.25:1
2011	4.75:1	4.75:1	4.25:1	4.25:1
2012	4.00:1	4.00:1	3.50:1	3.50:1
2013	3.50:1	3.50:1	–	–

(b) Interest Coverage Ratio. Permit the Interest Coverage Ratio for any Test Period (beginning with the Test Period ending on December 31, 2006) to be less than the ratio set forth below opposite the last day of such Test Period:

Year	March 31	June 30	September 30	December 31
2006	–	–	–	1.40:1
2007	1.40:1	1.40:1	1.40:1	1.50:1
2008	1.50:1	1.55:1	1.60:1	1.65:1
2009	1.70:1	1.70:1	1.80:1	1.90:1
2010	2.00:1	2.00:1	2.10:1	2.20:1
2011	2.30:1	2.30:1	2.50:1	2.50:1

2012	2.50:1	2.50:1	2.75:1	2.75:1
2013	2.75:1	2.75:1	–	–

(c) Certain Calculations. With respect to any period during which a Permitted Acquisition, an Asset Sale, an Investment or a merger or consolidation has occurred or an Indebtedness is incurred (each, a "**Subject Transaction**"), for purposes of determining compliance with the financial covenants set forth in this Section 6.10, Consolidated EBITDA shall be calculated with respect to such period on a pro forma basis (including pro forma adjustments arising out of events which are directly attributable to a specific transaction, are factually supportable and are expected to have a continuing impact, in each case determined on a basis consistent with Article 11 of Regulation S-X promulgated under the Securities Act and as interpreted by the staff of the Securities and Exchange Commission, which would include cost savings resulting from head count reduction, closure of facilities and similar restructuring charges, which pro forma adjustments shall be certified by the chief financial officer or treasurer of Holdings) using the historical financial statements of any business so acquired or to be acquired or sold or to be sold and the consolidated financial statements of Holdings and its Subsidiaries which shall be reformulated as if such Subject Transaction, and any Indebtedness incurred or repaid in connection therewith, had been consummated or incurred or repaid at the beginning of such period (and assuming that such Indebtedness bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the weighted average of the interest rates applicable to outstanding Loans incurred during such period).

6.11. Accounting Changes. Make any change in fiscal year; provided, however, that Company may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, Company and

Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

6.12. Prepayments, Etc. of Indebtedness; Amendment of Agreements. (a) Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled interest shall be permitted) the Senior Subordinated Notes or any other Indebtedness that is required to be subordinated to the Obligations pursuant to the terms of the Credit Documents (collectively, "**Junior Financing**") or make any payment in violation of any subordination terms of any Junior Financing Documentation, except (i) the refinancing thereof with the Net Cash Proceeds of any Indebtedness (to the extent such Indebtedness constitutes a Permitted Refinancing and, if applicable, is permitted pursuant to Section 6.3(h)), to the extent not required to prepay any Loans pursuant to Section 2.14, or of any Indebtedness of Holdings, (ii) the conversion of any Junior Financing to Equity Interests (other than Disqualified Equity Interests) of Holdings or any of its direct or indirect parents, (iii) the prepayment of Indebtedness of Company or any Subsidiary to Company or any Subsidiary to the extent permitted by the Collateral Documents and (iv) prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings prior to their scheduled maturity in an aggregate amount, together with the aggregate amount of (1) Restricted Payments made pursuant to Section 6.6(i) and (2) loans and advances to Holdings made pursuant to Section 6.2(m), not to exceed the sum of (A) the amount of the Net Cash Proceeds of Permitted Equity Issuances (other than Permitted Equity Issuances made pursuant to Section 8.3) that are Not Otherwise Applied and (B) if, as of the last day of the immediately preceding Test Period (after giving pro forma effect to such prepayments, redemptions, purchases, defeasances and other payments) the Total Leverage Ratio is 5.50:1 or less, the amount of Cumulative Excess Cash Flow that is Not Otherwise Applied.

(b) Amend, modify or change in any manner materially adverse to the interests of the Lenders any term or condition of any Junior Financing Documentation or any Organization Document without the consent of the Arrangers.

6.13. Equity Interests of Company and Subsidiaries. Permit any Domestic Subsidiary that is a Subsidiary to be a non-wholly owned Subsidiary, except as a result of or in connection with a dissolution, merger, consolidation or Disposition of a Subsidiary permitted by Section 6.4, 6.5 or an Investment in any Person permitted under Section 6.2.

6.14. Holding Company. In the case of Holdings, conduct, transact or otherwise engage in any business or operations other than those incidental to (i) its ownership of the Equity Interests of Company, (ii) the maintenance of its legal existence, (iii) the performance of the Credit Documents, the Merger Agreement and the other agreements contemplated by the Merger Agreement , (iv) any public offering of its common stock or any other issuance of its Equity Interests not prohibited by this Section 6 and (v) any transaction that Holdings is permitted to enter into or consummate under this Section 6.

6.15. Capital Expenditures.

(a) Make any Capital Expenditure except for Capital Expenditures not exceeding, in the aggregate for Holdings and its Subsidiaries during each fiscal year set forth

below, the sum of (x) the amount set forth opposite such fiscal year and (y) the amount of Cumulative Excess Cash Flow that is Not Otherwise Applied:

Fiscal Year	Amount
2007	$125,000,000
2008	$135,000,000
2009	$145,000,000
2010	$155,000,000
2011	$165,000,000
2012	$175,000,000
2013	$185,000,000

(b) Notwithstanding anything to the contrary contained in clause (a) above, to the extent that the aggregate amount of Capital Expenditures made by Holdings and its Subsidiaries in any fiscal year pursuant to Section 6.15(a) is less than the maximum amount of Capital Expenditures permitted by Section 6.15(a) with respect to such fiscal year, the amount of such difference (the "**Rollover Amount**") may be carried forward and used to make Capital Expenditures in the two succeeding fiscal years; provided that Capital Expenditures in any fiscal year shall be counted against the base amount set forth in Section 6.15(a) with respect to such fiscal year prior to being counted against any Rollover Amount available with respect to such fiscal year.

6.16. Interest Rate Protection. No later than ninety (90) days following the Closing Date and at all times thereafter until the second anniversary of the Closing Date, Company shall obtain and cause to be maintained protection against fluctuations in interest rates pursuant to one or more Interest Rate Agreements in form and substance reasonably satisfactory to Administrative Agent and with parties reasonably acceptable to Administrative Agent (which may include any Lender), in order to ensure that no less than 50% of the aggregate principal amount of the total Indebtedness of Holdings and its Subsidiaries then outstanding is either (i) subject to such Interest Rate Agreements or (ii) Indebtedness that bears interest at a fixed rate.

SECTION 7. GUARANTY

7.1. Guaranty of the Obligations. Subject to the provisions of Section 7.2, Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to Administrative Agent for the ratable benefit of the Beneficiaries the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the "**Guaranteed Obligations**").

7.2. Contribution by Guarantors. All Guarantors desire to allocate among themselves (collectively, the "**Contributing Guarantors**"), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a "**Funding Guarantor**") under this Guaranty such that its Aggregate

Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor' s Aggregate Payments to equal its Fair Share as of such date. "**Fair Share**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the obligations Guaranteed. "**Fair Share Contribution Amount**" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the "**Fair Share Contribution Amount**" with respect to any Contributing Guarantor for purposes of this Section 7.2, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. "**Aggregate Payments**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (A) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including, without limitation, in respect of this Section 7.2), minus (B) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 7.2 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.2.

7.3. Payment by Guarantors. Subject to Section 7.2, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of a Borrower to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in cash, to Administrative Agent for the ratable benefit of Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for a Borrower' s becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against such Borrower for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

7.4. Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by

any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Administrative Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between any Borrower and any Beneficiary with respect to the existence of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of any Borrower and the obligations of any other guarantor (including any other Guarantor) of the obligations of any Borrower, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against any Borrower or any of such other guarantors and whether or not any Borrower is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor' s liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor' s covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor' s liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor' s liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith or the applicable Swap Agreement and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales,

whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any Borrower or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Credit Documents or any Hedge Agreements; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Credit Documents or any Swap Agreements, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Credit Documents, any of the Swap Agreements or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Credit Document, such Swap Agreement or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Credit Documents or any of the Swap Agreements or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary' s consent to the change, reorganization or termination of the corporate structure or existence of Holdings or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set-offs or counterclaims which any Borrower may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

7.5. Waivers by Guarantors. Each Guarantor hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against any Borrower, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from any Borrower, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of any Beneficiary in favor of any Borrower or any other Person, or (iv) pursue any other remedy in the

power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of any Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of any Borrower or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary' s errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor' s obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor' s liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, the Swap Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to any Borrower and notices of any of the matters referred to in Section 7.4 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

7.6. Guarantors' Rights of Subrogation, Contribution, etc. Until the Guaranteed Obligations shall have been indefeasibly paid in full and the Revolving Commitments shall have terminated and all Letters of Credit shall have expired or been cancelled, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against any Borrower or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including without limitation (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against any Borrower with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against any Borrower, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been indefeasibly paid in full and the Revolving Commitments shall have terminated and all Letters of Credit shall have expired or been cancelled, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including, without limitation, any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against any Borrower or against any collateral or security, and any rights of contribution such Guarantor may have against any such

other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against any Borrower, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations shall not have been finally and indefeasibly paid in full, such amount shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

7.7. Subordination of Other Obligations. Any Indebtedness of any Borrower or any Guarantor now or hereafter held by any Guarantor (the "**Obligee Guarantor**") is hereby subordinated in right of payment to the Guaranteed Obligations, and any such Indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

7.8. Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been paid in full and the Revolving Commitments shall have terminated and all Letters of Credit shall have expired or been cancelled. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

7.9. Authority of Guarantors or Borrowers. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or Borrowers or the officers, directors or any agents acting or purporting to act on behalf of any of them.

7.10. Financial Condition of Borrowers. Any Credit Extension may be made to any Borrower or continued from time to time, and any Swap Agreements may be entered into from time to time, in each case without notice to or authorization from any Guarantor regardless of the financial or other condition of such Borrower at the time of any such grant or continuation or at the time such Swap Agreement is entered into, as the case may be. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor' s assessment, of the financial condition of any Borrower. Each Guarantor has adequate means to obtain information from any Borrower on a continuing basis concerning the financial condition of such Borrower and its ability to perform its obligations under the Credit Documents and the Swap Agreements, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of any Borrower and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of any Borrower now known or hereafter known by any Beneficiary.

7.11. Bankruptcy, etc. (a) So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of Administrative Agent acting pursuant to

the instructions of Requisite Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against any Borrower or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Borrower or any other Guarantor or by any defense which Borrower or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve any Borrower of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay Administrative Agent, or allow the claim of Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by any Borrower, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

7.12. Discharge of Guaranty Upon Sale of Guarantor. If all of the Equity Interests of any Guarantor or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such sale.

SECTION 8. EVENTS OF DEFAULT AND REMEDIES

8.1. Events of Default. Any of the following shall constitute an Event of Default:

(a) *Non-Payment*. Any Borrower or any other Credit Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any other Credit Document; or

(b) *Specific Covenants*. Company fails to perform or observe any term, covenant or agreement contained in any of Sections 2.6, 5.3(a) or 5.5(a) (solely with respect to Holdings and Company) or Section 6; provided that any Event of Default under Section 6.10 is subject to cure as contemplated by Section 8.3; or

(c) *Other Defaults*. Any Credit Party fails to perform or observe any other covenant or agreement (not specified in Section 8.1(a) or (b) above) contained in any Credit Document on its part to be performed or observed and such failure continues for thirty (30) days after notice thereof by the Administrative Agent to Company; or

(d) *Representations and Warranties.* Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of Company or any other Credit Party herein, in any other Credit Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) *Cross-Default.* Any Credit Party or any Subsidiary (i) fails to make any payment beyond the applicable grace period with respect thereto, if any (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate principal amount of not less than the Threshold Amount, or (ii) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; provided that this clause (e)(ii) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; or

(f) *Insolvency Proceedings, Etc.* Any Credit Party or any of its Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) *Inability to Pay Debts*; *Attachment.* (i) Any Credit Party or any Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts in excess of the Threshold Amount as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of the Credit

Parties, taken as a whole, and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(h) *Judgments.* There is entered against any Credit Party or any Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and has not denied coverage) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(i) *ERISA.* (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Credit Party under Title IV of ERISA in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect, or (ii) any Credit Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect; or

(j) *Invalidity of Credit Documents.* Any material provision of any Credit Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 6.4 or 6.5) or as a result of acts or omissions by Administrative Agent or any Lender or the satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Credit Party contests in writing the validity or enforceability of any provision of any Credit Document; or any Credit Party denies in writing that it has any or further liability or obligation under any Credit Document (other than as a result of repayment in full of the Obligations and termination of all Commitments), or purports in writing to revoke or rescind any Credit Document; or

(k) *Change of Control.* There occurs any Change of Control; or

(l) *Collateral Documents.* (i) Any Collateral Document after delivery thereof shall for any reason (other than pursuant to the terms thereof including as a result of a transaction permitted under Section 6.4 or 6.5) cease to create a valid and perfected lien, with the priority required by the Collateral Documents, (or other security purported to be created on the applicable Collateral) on and security interest in any material portion of the Collateral purported to be covered thereby, subject to Liens permitted under Section 7.1, except to the extent that any such loss of perfection or priority results from the failure of Administrative Agent or the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Documents or to file UCC continuation statements and except as to Collateral consisting of real property to the extent that such losses are covered by a lender' s title insurance policy and such insurer has not denied coverage, or (ii) any of the Equity Interests of Company ceasing to be pledged pursuant to the Pledge and Security Agreement free of Liens other than Liens created by the Pledge and Security Agreement or any nonconsensual Liens arising solely by operation of Law; or

(m) *Junior Financing Documentation.* (i) Any of the Obligations of the Credit Parties under the Credit Documents for any reason shall cease to be "Senior Indebtedness" (or any comparable term) or "Senior Secured Financing" (or any comparable term) under, and as defined in any Junior Financing Documentation or (ii) the subordination provisions set forth in any Junior Financing Documentation shall, in whole or in part, cease to be effective or cease to be legally valid, binding and enforceable against the holders of any Junior Financing, if applicable.

8.2. Remedies Upon Event of Default. If any Event of Default occurs and is continuing, **THEN**, (x) upon the occurrence of any Event of Default described in Section 8.1(f), automatically, and (y) upon the occurrence of any other Event of Default, at the request of (or with the consent of) Requisite Lenders, upon notice to Company by Administrative Agent, (a) the Revolving Commitments, if any, of each Lender having such Revolving Commitments and the obligation of Issuing Bank to issue any Letter of Credit shall immediately terminate; (b) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Credit Party: (i) the unpaid principal amount of and accrued interest on the Loans, (ii) an amount equal to the maximum amount that may at any time be drawn under all Letters of Credit then outstanding (regardless of whether any beneficiary under any such Letter of Credit shall have presented, or shall be entitled at such time to present, the drafts or other documents or certificates required to draw under such Letters of Credit), and (iii) all other Obligations; provided, the foregoing shall not affect in any way the obligations of Lenders under Section 2.3(b)(v) or Section 2.4(e); (c) Administrative Agent may cause Collateral Agent to enforce any and all Liens and security interests created pursuant to Collateral Documents; and (d) Administrative Agent shall direct Borrowers to pay (and each Borrower hereby agrees upon receipt of such notice, or upon the occurrence of any Event of Default specified in Sections 8.1(f) and (g) to pay) to Administrative Agent such additional amounts of cash as reasonable requested by Issuing Bank, to be held as security for such Borrower' s reimbursement Obligations in respect of Letters of Credit then outstanding.

8.3. Company' s Right to Cure. (a) Notwithstanding anything to the contrary contained in Section 8.1, in the event of any Event of Default under any covenant set forth in Section 6.10 and until the expiration of the tenth (10th) day after the date on which financial statements are required to be delivered with respect to the applicable fiscal quarter hereunder, Holdings may engage in a Permitted Equity Issuance to any of the Equity Investors and apply the amount of the Net Cash Proceeds thereof to increase Consolidated EBITDA with respect to such applicable quarter; provided that such Net Cash Proceeds (i) are actually received by Company (including through capital contribution of such Net Cash Proceeds by Holdings to Company) no later than ten (10) days after the date on which financial statements are required to be delivered with respect to such fiscal quarter hereunder, (ii) are Not Otherwise Applied and (iii) do not exceed the aggregate amount necessary to cure such Event of Default under Section 6.10 for any applicable period. The parties hereby acknowledge that this Section 8.3(a) may not be relied on for purposes of calculating any financial ratios other than as applicable to Section 6.10 and shall not result in any adjustment to any amounts other than the amount of the Consolidated EBITDA referred to in the immediately preceding sentence.

(b) In each period of four fiscal quarters, there shall be at least one (1) fiscal quarter in which no cure set forth in Section 8.3(a) is made. In each period of eight fiscal quarters, there shall be at least four (4) consecutive fiscal quarters in which no cure set forth in Section 8.3(a) is made.

SECTION 9. AGENTS

9.1. Appointment of Agents. Credit Suisse is hereby appointed Syndication Agent hereunder, and each Lender hereby authorizes Credit Suisse to act as Syndication Agent in accordance with the terms hereof and the other Credit Documents. BNP is hereby appointed Administrative Agent and Collateral Agent hereunder and under the other Credit Documents and each Lender hereby authorizes BNP to act as Administrative Agent and Collateral Agent in accordance with the terms hereof and the other Credit Documents. Each of MLCC and Bank of America is hereby appointed a Documentation Agent hereunder, and each Lender hereby authorizes each of MLCC and Bank of America to act as a Documentation Agent in accordance with the terms hereof and the other Credit Documents. Each Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Credit Documents, as applicable. The provisions of this Section 9 are solely for the benefit of Agents and Lenders and no Credit Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Holdings or any of its Subsidiaries. Each of Syndication Agent and Documentation Agents, without consent of or notice to any party hereto, may assign any and all of its rights or obligations hereunder to any of its Affiliates. As of the Closing Date, neither Credit Suisse, in its capacity as Syndication Agent, nor MLCC or Bank of America, in its capacity as a Documentation Agent, shall have any obligations but shall be entitled to all benefits of this Section 9.

9.2. Powers and Duties. Each Lender irrevocably authorizes each Agent to take such action on such Lender' s behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Credit Documents. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall have, by reason hereof or any of the other Credit Documents, a fiduciary relationship in respect of any Lender; and nothing herein or any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Credit Documents except as expressly set forth herein or therein.

9.3. General Immunity.

(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Credit Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial

or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of any Credit Party, any Lender or any person providing the Settlement Service to any Agent or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Credit Party or any other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Credit Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or the Letter of Credit Usage or the component amounts thereof.

(b) Exculpatory Provisions. No Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent under or in connection with any of the Credit Documents except to the extent caused by such Agent' s gross negligence or willful misconduct. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from Requisite Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, including any settlement confirmation or other communication issues by any Settlement Service, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Holdings and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Credit Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5).

(c) Delegation of Duties. Administrative Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Credit Document by or through any one or more sub-agents appointed by Administrative Agent. Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 9.3 and of Section 9.6 shall apply to any of the Affiliates of Administrative Agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 9.3 and of Section 9.6 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if

such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by the Administrative Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Credit Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to Administrative Agent and not to any Credit Party, Lender or any other Person and no Credit Party, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent.

9.4. Agents Entitled to Act as Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans and the Letters of Credit, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Holdings or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Borrowers for services in connection herewith and otherwise without having to account for the same to Lenders.

9.5. Lenders' Representations, Warranties and Acknowledgment.

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Holdings and its Subsidiaries in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Holdings and its Subsidiaries. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement, an Assignment or a Joinder Agreement and funding its Tranche B Term Loan and/or Revolving Loans on the Closing Date or by the funding of any New Term Loans or New Revolving Loans, as the case may be, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, Requisite Lenders or Lenders, as applicable on the Closing Date or as of the date of funding of such New Loans.

9.6. Right to Indemnity. Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent, to the extent that such Agent shall not have been reimbursed by any Credit Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent in exercising its powers, rights and remedies or performing its duties hereunder or under the other Credit Documents or otherwise in its capacity as such Agent in any way relating to or arising out of this Agreement or the other Credit Documents; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent' s gross negligence or willful misconduct. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender' s Pro Rata Share thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

9.7. Successor Administrative Agent, Collateral Agent and Swing Line Lender. Administrative Agent may resign at any time by giving thirty days' prior written notice thereof to Lenders and Company, and Administrative Agent may be removed at any time with or without cause by an instrument or concurrent instruments in writing delivered to Company and Administrative Agent and signed by Requisite Lenders. Upon any such notice of resignation or any such removal, Requisite Lenders shall have the right, upon five Business Days' notice to Company, to appoint a successor Administrative Agent. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Administrative Agent and the retiring or removed Administrative Agent shall promptly (a) transfer to such successor Administrative Agent all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Credit Documents, and (b) execute and deliver to such successor Administrative Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the security interests created under the Collateral Documents, whereupon such retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring or removed Administrative Agent' s resignation or removal hereunder as Administrative Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder. Any resignation or removal of BNP as Administrative Agent pursuant to this Section shall also constitute the resignation or removal of BNP or its successor as Collateral Agent, and any successor Administrative Agent appointed pursuant to this Section shall, upon its acceptance of such appointment, become the successor Collateral Agent for all purposes hereunder. Any resignation or removal of BNP or its successor as Administrative Agent pursuant to this Section shall also constitute the resignation or removal

of BNP or its successor as Swing Line Lender, and any successor Administrative Agent appointed pursuant to this Section shall, upon its acceptance of such appointment, become the successor Swing Line Lender for all purposes hereunder. In such event (i) Borrowers shall prepay any outstanding Swing Line Loans made by the retiring or removed Administrative Agent in its capacity as Swing Line Lender, (ii) upon such prepayment, the retiring or removed Administrative Agent and Swing Line Lender shall surrender any Swing Line Note held by it to Borrowers for cancellation, and (iii) Borrowers shall issue, if so requested by successor Administrative Agent and Swing Line Loan Lender, a new Swing Line Note to the successor Administrative Agent and Swing Line Lender, in the principal amount of the Swing Line Loan Sublimit then in effect and with other appropriate insertions.

9.8. Collateral Documents and Guaranty.

(a) Agents under Collateral Documents and Guaranty. Each Lender hereby further authorizes Administrative Agent or Collateral Agent, as applicable, on behalf of and for the benefit of Secured Parties, to be the agent for and representative of Lenders with respect to the Guaranty, the Collateral and the Collateral Documents. Subject to Section 10.5, without further written consent or authorization from Lenders, Administrative Agent or Collateral Agent, as applicable may execute any documents or instruments necessary to (i) in connection with a sale or disposition of assets permitted by this Agreement, release any Lien encumbering any item of Collateral that is the subject of such sale or other disposition of assets or to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented or (ii) release any Guarantor from the Guaranty pursuant to Section 7.12 or with respect to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented.

(b) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Credit Documents to the contrary notwithstanding, each Borrower, Administrative Agent, Collateral Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Administrative Agent, on behalf of Lenders in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Collateral Agent, and (ii) in the event of a foreclosure by Collateral Agent on any of the Collateral pursuant to a public or private sale, Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Requisite Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale.

SECTION 10. MISCELLANEOUS

10.1. Notices.

(a) Notices Generally. Any notice or other communication herein required or permitted to be given to a Credit Party, Syndication Agent, Collateral Agent, Administrative Agent, Swing Line Lender, Issuing Bank or Documentation Agent, shall be sent to such Person' s address as set forth on Appendix B or in the other relevant Credit Document, and in the case of any Lender, the address as indicated on Appendix B or otherwise indicated to Administrative Agent in writing. Except as otherwise set forth in paragraph (b) below, each notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile or telex, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided, no notice to any Agent shall be effective until received by such Agent; provided further, any such notice or other communication shall at the request of the Administrative Agent be provided to any sub-agent appointed pursuant to Section 9.3(c) hereto as designated by the Administrative Agent from time to time.

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the Issuing Bank pursuant to Section 2 if such Lender or the Issuing Bank, as applicable, has notified Administrative Agent that it is incapable of receiving notices under such Section by electronic communication. Administrative Agent or any Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender' s receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

10.2. Expenses. Whether or not the transactions contemplated hereby shall be consummated, Borrowers agree to pay promptly (a) all the actual and reasonable costs and expenses of preparation of the Credit Documents and any consents, amendments, waivers or other modifications thereto; (b) all the costs of furnishing all opinions by counsel for Borrowers and the other Credit Parties; (c) the reasonable fees, expenses and disbursements of counsel to Agents (in each case including allocated costs of internal counsel) in connection with the negotiation, preparation, execution and administration of the Credit Documents and any

consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Company; (d) all the actual costs and reasonable expenses of creating and perfecting Liens in favor of Collateral Agent, for the benefit of Lenders pursuant hereto, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements of counsel to each Agent and of counsel providing any opinions that any Agent or Requisite Lenders may request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (e) all the actual costs and reasonable fees, expenses and disbursements of any auditors, accountants, consultants or appraisers; (f) all the actual costs and reasonable expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (g) all other actual and reasonable costs and expenses incurred by each Agent in connection with the syndication of the Loans and Commitments and the negotiation, preparation and execution of the Credit Documents and any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby; and (h) after the occurrence of a Default or an Event of Default, all costs and expenses, including reasonable attorneys' fees (including allocated costs of internal counsel) and costs of settlement, incurred by any Agent and Lenders in enforcing any Obligations of or in collecting any payments due from any Credit Party hereunder or under the other Credit Documents by reason of such Default or Event of Default (including in connection with the sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or pursuant to any insolvency or bankruptcy cases or proceedings.

10.3. Indemnity.

(a) In addition to the payment of expenses pursuant to Section 10.2, whether or not the transactions contemplated hereby shall be consummated, each Credit Party agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, each Agent and Lender and the officers, partners, members, directors, trustees, advisors, employees, agents, sub-agents and Affiliates of each Agent and each Lender (each, an "**Indemnitee**"), from and against any and all Indemnified Liabilities; provided, no Credit Party shall have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence or willful misconduct of that Indemnitee. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Credit Party shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

(b) To the extent permitted by applicable law, no Credit Party shall assert, and each Credit Party hereby waives, any claim against each Lender, each Agent and their respective Affiliates, directors, employees, attorneys, agents or sub-agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, arising out of, as a result of, or in any way related to, this Agreement or any Credit Document or any agreement or instrument contemplated

hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and Holdings and each Borrower hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor. No Credit Party shall have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Credit Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date). If any amounts due under this Section 10.3 shall be have been paid after demand therefor, the applicable Indemnitee shall promptly refund such amount to the extent that there is a final judicial or arbitral determination that such Indemnitee was not entitled to indemnification or contribution rights with respect to such payment pursuant to the express terms of this Section 10.3.

10.4. Set-Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Lender is hereby authorized by each Credit Party at any time or from time to time subject to the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to any Credit Party or to any other Person (other than Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of any Credit Party against and on account of the obligations and liabilities of any Credit Party to such Lender hereunder, the Letters of Credit and participations therein and under the other Credit Documents, including all claims of any nature or description arising out of or connected hereto, the Letters of Credit and participations therein or with any other Credit Document, irrespective of whether or not (a) such Lender shall have made any demand hereunder or (b) the principal of or the interest on the Loans or any amounts in respect of the Letters of Credit or any other amounts due hereunder shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured.

10.5. Amendments and Waivers.

(a) Requisite Lenders' Consent. Subject to the additional requirements of Sections 10.5(b) and 10.5(c), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall in any event be effective without the written concurrence of the Requisite Lenders.

(b) Affected Lenders' Consent. Without the written consent of each Lender (other than a Defaulting Lender) that would be affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

(i) extend the scheduled final maturity of any Loan or Note;

(ii) waive, reduce or postpone any scheduled repayment (but not prepayment);

(iii) extend the stated expiration date of any Letter of Credit beyond the Revolving Commitment Termination Date;

(iv) reduce the rate of interest on any Loan (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.10) or any fee or any premium payable hereunder;

(v) extend the time for payment of any such interest or fees;

(vi) reduce the principal amount of any Loan or any reimbursement obligation in respect of any Letter of Credit;

(vii) amend, modify, terminate or waive any provision of this Section 10.5(b), Section 10.5(c) or any other provision of this Agreement that expressly provides that the consent of all Lenders is required;

(viii) amend the definition of "**Requisite Lenders**" or "**Pro Rata Share**"**;** provided, with the consent of Requisite Lenders, additional extensions of credit pursuant hereto may be included in the determination of "**Requisite Lenders**" or "**Pro Rata Share**" on substantially the same basis as the Term Loan Commitments, the Term Loans, the Revolving Commitments and the Revolving Loans are included on the Closing Date; or

(ix) release all or substantially all of the Collateral or all or substantially all of the Guarantors from the Guaranty except as expressly provided in the Credit Documents.

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall:

(i) increase any Revolving Commitment of any Lender over the amount thereof then in effect without the consent of such Lender; provided, no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default shall constitute an increase in any Revolving Commitment of any Lender;

(ii) amend, modify, terminate or waive any provision hereof relating to the Swing Line Sublimit or the Swing Line Loans without the consent of Swing Line Lender;

(iii) alter the required application of any repayments or prepayments as between Classes pursuant to Section 2.15 without the consent of Lenders holding more than 50% of the aggregate Tranche B Term Loan Exposure of all Lenders, Revolving Exposure of all Lenders or New Term Loan Exposure of all Lenders, as applicable, of each Class which is being allocated a lesser repayment or prepayment as a result thereof; provided, Requisite Lenders may waive, in whole or in part, any prepayment so long as the application, as between Classes, of any portion of such prepayment which is still required to be made is not altered;

(iv) amend, modify, terminate or waive any obligation of Lenders relating to the purchase of participations in Letters of Credit as provided in Section 2.4(e) without the written consent of Administrative Agent and of Issuing Bank; or

(v) amend, modify, terminate or waive any provision of Section 9 as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the consent of such Agent.

(d) Execution of Amendments, etc. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Credit Party, on such Credit Party.

10.6. Successors and Assigns; Participations.

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders. No Credit Party' s rights or obligations hereunder nor any interest therein may be assigned or delegated by any Credit Party without the prior written consent of all Lenders. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Agents and Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Each Borrower, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until recorded in the Register following receipt of an Assignment Agreement effecting the assignment or transfer thereof as provided in Section 10.6(d). Each assignment shall be recorded in the Register on the "Effective Date" specified in the applicable Assignment Agreement, prompt notice thereof shall be provided to Company and a copy of such Assignment Agreement shall be maintained. The date of such recordation of a transfer shall be referred to herein as the "**Assignment Effective Date.**" Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including, without limitation, all or a portion of its Commitment or Loans owing to it or other Obligations

(provided, however, that each such assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any Loan and any related Commitments):

(i) to any Person meeting the criteria of clause (i) of the definition of the term of "Eligible Assignee" upon the giving of notice to Company and Administrative Agent; provided that in the case of any assignment of Revolving Loans or Revolving Commitments to such Person (unless such Person is already a Lender with a Revolving Commitment), such assignment shall require the consent of the Issuing Bank, such consent not to be unreasonably withheld or delayed, and

(ii) to any Person meeting the criteria of clause (ii) of the definition of the term of "Eligible Assignee" upon giving of notice to Company and Administrative Agent and, in the case of assignments of Revolving Loans, Revolving Commitments or Term Loans to any such Person (except in the case of assignments made by or to BNP), consented to by each of Company, Administrative Agent and, other than in respect of Term Loans, Issuing Bank (each such consent not to be (x) unreasonably withheld or delayed or, (y) in the case of Company, required at any time an Event of Default under Section 8.1(a) or (f) shall have occurred and then be continuing); provided, further, each such assignment pursuant to this Section 10.6(c)(ii) shall be in an aggregate amount of not less than (A) $5,000,000 (or such lesser amount as may be agreed to by Company and Administrative Agent or as shall constitute the aggregate amount of the Revolving Commitments and Revolving Loans of the assigning Lender) with respect to the assignment of the Revolving Commitments and Revolving Loans and (B) $1,000,000 (or such lesser amount as may be agreed to by Company and Administrative Agent or as shall constitute the aggregate amount of the Tranche B Term Loan or New Term Loans of a Series of the assigning Lender) with respect to the assignment of Term Loans.

(d) Mechanics. Assignments of Term Loans, Revolving Loans and Revolving Commitments by Lenders may be made via an electronic settlement system acceptable to Administrative Agent as designated in writing from time to time to the Lenders by Administrative Agent (the "**Settlement Service**"). Each such assignment shall be effected by the assigning Lender and proposed assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be consistent with the other provisions of this Section 10.6. Each assignor Lender and proposed assignee shall comply with the requirements of the Settlement Service in connection with effecting any transfer of Loans pursuant to the Settlement Service. Assignments and assumptions of Term Loans, Revolving Loans and Revolving Commitments (regardless of whether the Settlement Service is utilized) shall require the execution and delivery to the Administrative Agent of an Assignment Agreement. Assignments made pursuant to the foregoing provision shall be effective as of the Assignment Effective Date. In connection with all assignments there shall be delivered to Administrative Agent such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver pursuant to Section 2.20(c). A processing fee of $3,500 will be required to be paid to Administrative Agent in connection with any assignments (other than contemporaneous assignments by or to two or more Related Funds).

(e) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments and Loans, as the case may be, represents and warrants as of the Closing Date or as of the Assignment Effective Date that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be; and (iii) it will make or invest in, as the case may be, its Commitments or Loans for its own account in the ordinary course and without a view to distribution of such Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Commitments or Loans or any interests therein shall at all times remain within its exclusive control).

(f) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the "Assignment Effective Date" (i) the assignee thereunder shall have the rights and obligations of a "Lender" hereunder to the extent of its interest in the Loans and Commitments as reflected in the Register and shall thereafter be a party hereto and a "Lender" for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights which survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender' s rights and obligations hereunder, such Lender shall cease to be a party hereto on the Assignment Effective Date; provided, anything contained in any of the Credit Documents to the contrary notwithstanding, (x) Issuing Bank shall continue to have all rights and obligations thereof with respect to such Letters of Credit until the cancellation or expiration of such Letters of Credit and the reimbursement of any amounts drawn thereunder and (y) such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Commitments shall be modified to reflect any Commitment of such assignee and any Revolving Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Administrative Agent for cancellation, and thereupon Borrowers shall issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Revolving Commitments and/or outstanding Loans of the assignee and/or the assigning Lender.

(g) Participations. Each Lender shall have the right at any time to sell one or more participations to any Person (other than Holdings, any of its Subsidiaries or any of its Affiliates) in all or any part of its Commitments, Loans or in any other Obligation. The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (i) extend the final scheduled maturity of any Loan, Note or Letter of Credit (unless such Letter of Credit is not extended beyond the Revolving Commitment Termination Date) in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant' s participation over the

amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without the consent of any participant if the participant' s participation is not increased as a result thereof), (ii) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement or (iii) release all or substantially all of the Collateral under the Collateral Documents (except as expressly provided in the Credit Documents) supporting the Loans hereunder in which such participant is participating. Borrowers agree that each participant shall be entitled to the benefits of Sections 2.18(c), 2.19 and 2.20 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (c) of this Section; provided, (i) a participant shall not be entitled to receive any greater payment under Section 2.19 or 2.20 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, unless the sale of the participation to such participant is made with Company' s prior written consent and (ii) a participant that would be a Non-US Lender if it were a Lender shall not be entitled to the benefits of Section 2.20 unless Company is notified of the participation sold to such participant and such participant agrees, for the benefit of the applicable Borrower, to comply with Section 2.20 as though it were a Lender. To the extent permitted by the applicable law, each participant also shall be entitled to the benefits of Section 10.4 as though it were a Lender, provided such Participant agrees to be subject to Section 2.17 as though it were a Lender.

(h) Certain Other Assignments. In addition to any other assignment permitted pursuant to this Section 10.6, any Lender may assign and/or pledge all or any portion of its Loans, the other Obligations owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender including, without limitation, any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank; provided, no Lender, as between any Borrower and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further, in no event shall the applicable Federal Reserve Bank, pledgee or trustee be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

10.7. Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

10.8. Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Credit Party set forth in Sections 2.18(c), 2.19, 2.20, 10.2, 10.3 and 10.4 and the agreements of Lenders set forth in Sections 2.17, 9.3(b) and 9.6 shall survive the payment of the Loans, the cancellation or expiration of the Letters of Credit and the reimbursement of any amounts drawn thereunder, and the termination hereof.

10.9. No Waiver; Remedies Cumulative. No failure or delay on the part of any Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents or any of the Swap Agreements. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

10.10. Marshalling; Payments Set Aside. Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent, on behalf of Lenders), or any Agent or Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.11. Severability. In case any provision in or obligation hereunder or under any other Credit Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

10.12. Obligations Several; Independent Nature of Lenders' Rights. The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

10.13. Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

10.14. APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND

SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF.

10.15. CONSENT TO JURISDICTION. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY CREDIT PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER CREDIT DOCUMENT, OR ANY OF THE OBLIGATIONS, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH CREDIT PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (A) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (B) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (C) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE CREDIT PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1; (D) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (C) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE CREDIT PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (E) AGREES THAT AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY CREDIT PARTY IN THE COURTS OF ANY OTHER JURISDICTION.

10.16. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN

WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10.17. Confidentiality. Each Lender shall hold all non-public information regarding Company and its Subsidiaries and their businesses identified as such by Company and obtained by such Lender pursuant to the requirements hereof in accordance with such Lender' s customary procedures for handling confidential information of such nature, it being understood and agreed by Company that, in any event, a Lender may make (i) disclosures of such information to Affiliates of such Lender and to their agents and advisors (and to other persons authorized by a Lender or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.17), (ii) disclosures of such information reasonably required by any pledgee referred to in Section 10.6(h) or any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation by such Lender of any Loans or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) in Swap Agreements (provided, such counterparties and advisors are advised of and agree to be bound by the provisions of this Section 10.17), (iii) disclosure to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any confidential information relating to the Credit Parties received by it from any Agent or any Lender, and (iv) disclosures required or requested by any governmental agency or representative thereof or by the NAIC or pursuant to legal or judicial process; provided, unless specifically prohibited by applicable law or court order, each Lender shall make reasonable efforts to notify Company of any request by any governmental agency or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by such governmental agency) for disclosure of any such non-public information prior to disclosure of such information.

10.18. Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Borrowers shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and Borrowers

to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender' s option be applied to the outstanding amount of the Loans made hereunder or be refunded to Borrowers.

10.19. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

10.20. Effectiveness. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Borrower and Administrative Agent of written or telephonic notification of such execution and authorization of delivery thereof.

10.21. Patriot Act. Each Lender and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Act**"), it is required to obtain, verify and record information that identifies each Borrower, which information includes the name and address of such Borrower and other information that will allow such Lender or Administrative Agent, as applicable, to identify such Borrower in accordance with the Act.

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

10.23. Public-Side Lenders. Company and each Lender acknowledge that certain of the Lenders may be "public-side" Lenders (Lenders that do not wish to receive material non-public information with respect to Holdings, its Subsidiaries or their securities) and, if documents or notices required to be delivered pursuant to Section 5.1 or Section 5.2 or otherwise are being distributed through IntraLinks/ IntraAgency or another relevant website (the "**Platform**"), any document or notice that Holdings has indicated contains Nonpublic Information shall not be posted on that portion of the Platform designated for such public-side Lenders. If Holdings has not indicated whether a document or notice delivered pursuant to Section 5.1 or Section 5.2 contains Nonpublic Information, Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive material nonpublic information with respect to Holdings, its Subsidiaries and their securities.

[Remainder of page intentionally left blank**]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

EDUCATION MANAGEMENT LLC

By: _____

Name: John R. McKernan, Jr.

Title: Chairman and Chief Executive Officer

EDUCATION MANAGEMENT HOLDINGS LLC

By: _____

Name: John R. McKernan, Jr.

Title: President and Chief Executive Officer

EDUCATION MANAGEMENT FINANCE CORP.

By: _____

Name: John R. McKernan, Jr.

Title: President and Chief Executive Officer

ACADEMIC REVIEW, INC.

ASSOCIATION FOR ADVANCED TRAINING IN THE BEHAVIORAL SCIENCES

ARGOSY UNIVERSITY FAMILY CENTER, INC.

BROWN MACKIE HOLDING COMPANY

THE CONNECTING LINK, INC.

EDMC MARKETING AND ADVERTISING, INC.

EDMC AVIATION, INC.

HIGHER EDUCATION SERVICES, INC.

MCM UNIVERSITY PLAZA, INC.

By: _____

Name: J. Devitt Kramer

Title: Secretary

AID RESTAURANT, INC.

By: _____

Name: Simon Lumley

Title: President, Secretary and Treasurer

AIH RESTAURANT, INC.

By: _____

Name: Larry Horn

Title: President, Secretary and Treasurer

AIIM RESTAURANT, INC.

By: _____

Name: Joseph L. Marzano, Jr.

Title: President, Secretary and Treasurer

BNP PARIBAS,
as Administrative Agent, Collateral Agent, Swing Line Lender, Issuing Bank and a Lender

By: _____

Name:

Title:

By: _____

Name:

Title:

CREDIT SUISSE SECURITIES (USA) LLC,
as Syndication Agent

By: _____

Name:

Title:

BANK OF AMERICA, N.A.,

as a Documentation Agent and a Lender

By: _____

Name:

Title:

MERRILL LYNCH CAPITAL CORPORATION,

as a Documentation Agent and a Lender

By: _____

Name:

Title:

BAYERISCHE HYPO- UND VEREINSBANK AG,
NEW YORK BRANCH

as a Lender

By: _____

Name:

Title:

THE CIT GROUP/EQUIPMENT FINANCING, INC.,

as a Lender

By: _____

Name:

Title:

CREDIT SUISSE, CAYMAN ISLANDS BRANCH,

as a Lender

By: _____

Name:

Title:

FIFTH THIRD BANK,

as a Lender

By: _____

Name:

Title:

GOLDMAN SACHS CREDIT PARTNERS L.P.,

as a Lender

By: _____

Name:

Title:

SUMITOMO MITSUI BANKING CORPORATION,

as a Lender

By: _____

Name:

Title:

Tranche B Term Loan Commitments

Lender	Tranche B Term Loan Commitment	Pro Rata Share
Goldman Sachs Credit Partners L.P.	$ 1,185,000,000	100 %
Total	**$ 1,185,000,000**	**100 %**

APPENDIX A-2
TO CREDIT AND GUARANTY AGREEMENT

Revolving Commitments

Lender	Revolving Commitment	Pro Rata Share
Credit Suisse, Cayman Islands Branch	$ 56,250,000	18.750000000%
Goldman Sachs Credit Partners L.P.	$ 51,562,500	17.187500000%
Merrill Lynch Capital Corporation	$ 51,562,500	17.187500000%
BNP Paribas	$ 45,000,000	15.000000000%
Bank of America, N.A.	$ 28,125,000	9.375000000 %
Sumitomo Mitsui Banking Corporation	$ 25,000,000	8.333333333 %
Bayerische Hypo- Und Vereinsbank AG, New York Branch	$ 20,000,000	6.666666666 %
Fifth Third Bank	$ 12,500,000	4.166666666 %
The CIT Group/Equipment Financing, Inc.	$ 10,000,000	3.333333333 %
Total	**$ 300,000,000**	**100 %**

APPENDIX B
TO CREDIT AND GUARANTY AGREEMENT

Notice Addresses

EDUCATION MANAGEMENT LLC
c/o EDMC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222
Attention: John R. McKernan, Jr., Chairman and Chief Executive Officer
Telephone: 412-562-0900
Facsimile: 412-562-0598
Email: jmckernan@edmc.edu

EDUCATION MANAGEMENT HOLDINGS LLC
c/o EDMC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222
Attention: John R. McKernan, Jr., President and Chief Executive Officer
Telephone: 412-562-0900
Facsimile: 412-562-0598
Email: jmckernan@edmc.edu

EDUCATION MANAGEMENT FINANCE CORP.
c/o EDMC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222
Attention: John R. McKernan, Jr., President and Chief Executive Officer
Telephone: 412-562-0900
Facsimile: 412-562-0598
Email: jmckernan@edmc.edu

ACADEMIC REVIEW, INC.
c/o EDMC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222
Attention: Gregory M. St. L. O' Brien, President
Facsimile: 412-562-0598

AID RESTAURANT, INC.
c/o EDMC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222
Attention: Simon Lumley, President
Facsimile: 412-562-0598

AIH RESTAURANT, INC.
c/o EDMC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222
Attention: Larry Horn, President
Facsimile: 412-562-0598

AIIM RESTAURANT, INC.
c/o EDMC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222
Attention: Joseph L. Marzano, Jr., President
Facsimile: 412-562-0598

ARGOSY UNIVERSITY FAMILY CENTER, INC.
c/o EDMC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222
Attention: William Cowan, President
Facsimile: 412-562-0598

ASSOCIATION FOR ADVANCED TRAINING IN THE BEHAVIORAL SCIENCES
c/o EDMC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222
Attention: Gregory M. St. L. O' Brien, President
Facsimile: 412-562-0598

APPENDIX B-2

BROWN MACKIE HOLDING COMPANY
c/o EDMC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222
Attention: Danny Finuf, President
Facsimile: 412-562-0598

EDMC AVIATION, INC.
c/o EDMC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222
Attention: John R. McKernan, Jr., President
Facsimile: 412-562-0598

EDMC MARKETING AND ADVERTISING, INC.
c/o EDMC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222
Attention: Joseph Charlson, President
Facsimile: 412-562-0598

HIGHER EDUCATION SERVICES, INC.
c/o EDMC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222
Attention: John T. South III, President
Facsimile: 412-562-0598

MCM UNIVERSITY PLAZA, INC.
c/o EDMC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222
Attention: Gregory M. St. L. O' Brien, President
Facsimile: 412-562-0598

APPENDIX B-3

THE CONNECTING LINK, INC.
c/o EDMC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222
Attention: Gregory M. St. L. O' Brien, President
Facsimile: 412-562-0598

in each case, with a copy to:
General Counsel
c/o EDMC
210 Sixth Avenue, 33rd Floor
Pittsburgh, Pennsylvania 15222
Attention: Devitt Kramer, Senior Vice President – Corporate Counsel and Compliance
Telephone: 412-995-7315
Facsimile: 412-995-7322

and

SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, New York 10017
Attention: Jay M. Ptashek
Telephone: 212-455-2753
Facsimile: 212-455-2502

APPENDIX B-4

BNP PARIBAS,
as Administrative Agent, Collateral Agent,
Swing Line Lender, Issuing Bank and a Lender

Administrative Agent' s Principal Office

BNP PARIBAS
787 Seventh Avenue
New York, NY 10019
Attention: Gregg Bonardi
Facsimile: 212-841-2996
Email: gregg.bonardi@americas.bnpparibas.com

Administrative Agent' s Principal Office (for Assignments)

BNP PARIBAS
787 Seventh Avenue
New York, NY 10019
Attention: Milagros Carrillo
Facsimile: 212-841-3636
Email: milagros.carrillo@americas.bnpparibas.com

Administrative Agent (for funding) and Swing Line Lender' s Principal Office:

BNP PARIBAS
919 Third Avenue
New York, NY 10022
Attention: Angel Rivera
Facsimile: 212-471-6697
Email: angel.rivera@americas.bnpparibas.com

Issuing Bank' s Principal Office:

BNP PARIBAS
919 Third Avenue
New York, NY 10022
Attention: Terry Greenberg
Facsimile: 212-471-6996
Email: terry.greenberg@americas.bnpparibas.com

BANK OF AMERICA, N.A.,
as a Documentation Agent and a Lender

BANK OF AMERICA, N.A.
100 North Tryon Street
NCI-007-17-15
Charlotte, North Carolina 28209
Attention: Alysa Trakas
Telephone: 704-387-2640
Facsimile: 704-386-9607

with a copy to:

BANK OF AMERICA, N.A.
901 Main Street
TX1-492-14-11
Dallas, Texas 75202
Attention: Annette Hunt
Telephone: 214-209-4108
Facsimile: 214-290-8378

APPENDIX B-6

MERRILL LYNCH CAPITAL CORPORATION,
as a Documentation Agent and a Lender

MERRILL LYNCH CAPITAL CORPORATION
4 World Financial Center, 22nd Floor
New York, New York 10080
Attention: Michael E. O' Brien
Vice President
Telephone: (212) 449-0948
Facsimile: (212) 738-1186
Email: m_obrien@ml.com

with a copy to:

MERRILL LYNCH CAPITAL CORPORATION
4 World Financial Center, 22nd Floor
New York, New York 10080
Attention: Olya Naurnova
Telephone: (212) 449-3241
Facsimile: (212) 738-1186

APPENDIX B-7

BAYERISCHE HYPO- UND VEREINSBANK AG, NEW YORK BRANCH,
as a Lender

BAYERISCHE HYPO- UND VEREINSBANK AG,
NEW YORK BRANCH
150 East 42nd Street
New York, New York 10017-6707
Attention: Sven Schuessler
Telephone: 212-672-5407
Facsimile: 212-672-5413

APPENDIX B-8

THE CIT GROUP/EQUIPMENT FINANCING, INC.,
as a Lender

THE CIT GROUP/EQUIPMENT FINANCING, INC.
11 West 42nd Street
13th Floor
New York, New York 10036
Attention: Derek Nolan
Telephone: 212-461-7841
Facsimile: 212-461-7851

APPENDIX B-9

CREDIT SUISSE, CAYMAN ISLANDS BRANCH,
as a Lender

Lender' s Principal Office:

CREDIT SUISSE, CAYMAN ISLANDS BRANCH
Corporate Banking − Americas
11 Madison Avenue
New York, New York 10010-3629
Attention: Brian T. Caldwell, Director
Telephone: 212-325-0029
Facsimile: 212-325-8321

with a copy to:

CREDIT SUISSE, CAYMAN ISLANDS BRANCH
Corporate Banking − Americas
11 Madison Avenue
New York, New York 10010-3629
Attention: Laurence M. Lapeyre
Telephone: 212-325-5022
Facsimile: 212-325-8319

APPENDIX B-10

FIFTH THIRD BANK,
as a Lender

FIFTH THIRD BANK
707 Grant Street, 21st Floor
Pittsburgh, Pennsylvania 15219
Attention: Jim Janovsky
Telephone: 412-291-5457
Facsimile: 412-291-5411

with a copy to:

FIFTH THIRD BANK
707 Grant Street, 21st Floor
Pittsburgh, Pennsylvania 15219
Attention: Marty McGinty
Telephone: 216-274-5098
Facsimile: 216-274-5145

GOLDMAN SACHS CREDIT PARTNERS L.P.,
as a Lender:

GOLDMAN SACHS CREDIT PARTNERS L.P.
c/o Goldman, Sachs & Co.
30 Hudson Street, 17th Floor
Jersey City, NJ 07302
Attention: SBD Operations
Attention: Pedro Ramirez
Telecopier: (212) 357-4597
Email: gsd.link@gs.com

with a copy to:

GOLDMAN SACHS CREDIT PARTNERS L.P.
1 New York Plaza
New York, New York 10004
Attention: Anisha Malhotra
Telecopier: (212) 902-3000

SUMITOMO MITSUI BANKING CORPORATION,
as a Lender

SUMITOMO MITSUI BANKING CORPORATION
277 Park Avenue
New York, New York 10172
Attention: Elaine Tung
Telephone: 212-224-4142
Facsimile: 212-224-4383

APPENDIX B-13

Exhibit 10.2

EXECUTED COPY

PLEDGE AND SECURITY AGREEMENT

dated as of June 1, 2006

between

EACH OF THE GRANTORS PARTY HERETO

and

BNP PARIBAS,

as Collateral Agent

TABLE OF CONTENTS

This **PLEDGE AND SECURITY AGREEMENT**, dated as of June 1, 2006 (this "**Agreement**"), between **EACH OF THE UNDERSIGNED**, whether as an original signatory hereto or as an Additional Grantor (as herein defined) (each, a "**Grantor**"), and **BNP PARIBAS** ("**BNP**"), as collateral agent for the Secured Parties (as herein defined) (in such capacity as collateral agent, the "**Collateral Agent**").

RECITALS:

WHEREAS, reference is made to that certain **CREDIT AND GUARANTY AGREEMENT**, dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among Education Management LLC, a Delaware limited liability company ("**Company**"), Education Management Holdings LLC, a Delaware limited liability company ("**Holdings**"), certain Subsidiaries of Holdings, as Guarantors, the Lenders party thereto from time to time, Credit Suisse Securities (USA) LLC, as Syndication Agent, and BNP, as Administrative Agent and as Collateral Agent, and Merrill Lynch Corporation and Bank of America, N.A., as Documentation Agents;

WHEREAS, subject to the terms and conditions of the Credit Agreement, certain Grantors may enter into one or more Swap Agreements with one or more Lender Counterparties;

WHEREAS, in consideration of the extensions of credit and other accommodations of Lenders and Lender Counterparties as set forth in the Credit Agreement and the Swap Agreements, respectively, each Grantor has agreed to secure such Grantor' s obligations under the Credit Documents and the Swap Agreements as set forth herein; and

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, each Grantor and the Collateral Agent agree as follows:

SECTION 1. DEFINITIONS; GRANT OF SECURITY.

1.1 **General Definitions**. In this Agreement, the following terms shall have the following meanings:

"**Account Debtor**" shall mean each Person who is obligated on a Receivable or any Supporting Obligation related thereto,

"**Accounts**" shall mean all "accounts" as defined in Article 9 of the UCC.

"**Additional Grantors**" shall have the meaning assigned in Section 5.2.

"**Agreement**" shall have the meaning set forth in the preamble.

"**Cash Proceeds**" shall have the meaning assigned in Section 7.6.

"**Chattel Paper**" shall mean all "chattel paper" as defined in Article 9 of the UCC.

"**Collateral**" shall have the meaning set forth in Section 2.1.

"**Collateral Agent**" shall have the meaning set forth in the preamble.

"**Collateral Records**" shall mean books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

"**Collateral Support**" shall mean all property (real or personal) assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a lien or security interest in such real or personal property.

"**Commercial Tort Claims**" shall mean all "commercial tort claims" as defined in Article 9 of the UCC, including, without limitation, all commercial tort claims listed on Schedule 4.8.

"**Commodities Accounts**" shall mean all "commodity accounts" as defined in Article 9 of the UCC.

"**Company**" shall have the meaning set forth in the recitals.

"**Controlled Foreign Corporation**" shall mean "controlled foreign corporation" as defined in the Tax Code.

"**Copyright Licenses**" shall mean any and all agreements providing for the granting of any right in or to Copyrights (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(B) .

"**Copyright Security Agreement**" shall mean a Copyright Security Agreement, substantially in the form of Exhibit D, executed and delivered by a Grantor in favor of the Collateral Agent for the benefit of the Secured Parties.

"**Copyrights**" shall mean all United States, and foreign copyrights, including but not limited to copyrights in software and databases, and all Mask

Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or unregistered, and, with respect to any and all of the foregoing: (i) all registrations and applications therefor including, without limitation, the registrations and applications referred to in Schedule 4.7(A), (ii) all extensions and renewals thereof, (iii) all rights corresponding thereto throughout the world, (iv) all rights to sue for past, present and future infringements thereof, and (v) all Proceeds of the foregoing, including, without limitation, royalties, income, payments, claims, damages and proceeds of suit.

"**Credit Agreement**" shall have the meaning set forth in the recitals.

"**Deposit Accounts**" shall mean all "deposit accounts" as defined in Article 9 of the UCC.

"**Documents**" shall mean all "documents" as defined in Article 9 of the UCC.

"**Equipment**" shall mean all "equipment" as defined in Article 9 of the UCC.

"**General Intangibles**" shall mean all "general intangibles" as defined in Article 9 of the UCC.

"**Goods**" shall mean all "goods" as defined in Article 9 of the UCC.

"**Grantors**" shall have the meaning set forth in the preamble.

"**Instruments**" shall mean all "instruments" as defined in Article 9 of the UCC.

"**Intellectual Property**" shall mean, collectively, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets, and the Trade Secret Licenses.

"**Intellectual Property Security Agreement**" shall mean a Copyright Security Agreement, a Patent Security Agreement or a Trademark Security Agreement.

"**Inventory**" shall mean all "inventory" as defined in Article 9 of the UCC.

"**Investment Accounts**" shall mean the Securities Accounts, Commodities Accounts and Deposit Accounts.

"**Investment Related Property**" shall mean: (i) all "investment property" (as such term is defined in Article 9 of the UCC) and (ii) all of the following (regardless of whether classified as investment property under the

UCC): all Pledged Equity Interests, Pledged Debt, the Investment Accounts and certificates of deposit.

"**Lender**" shall have the meaning set forth in the recitals.

"**Letter of Credit Right**" shall mean "letter-of-credit right" as defined in Article 9 of the UCC.

"**Lien**" shall mean (i) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing and (ii) in the case of Pledged Equity Interests, any purchase option, call or similar right of a third party with respect to such Pledged Equity Interests.

"**Patent Licenses**" shall mean all agreements providing for the granting of any right in or to Patents (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(D).

"**Patent Security Agreement**" shall mean a Patent Security Agreement, substantially in the form of Exhibit C, executed and delivered by a Grantor in favor of the Collateral Agent for the benefit of the Secured Parties.

"**Patents**" shall mean all United States and foreign patents and certificates of invention, or similar industrial property rights, and applications for any of the foregoing, including, but not limited to: (i) each patent and patent application referred to in Schedule 4.7(C) hereto, (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations thereof, (iii) all rights corresponding thereto throughout the world, (iv) all inventions and improvements described therein, (v) all rights to sue for past, present and future infringements thereof, and (vi) all Proceeds of the foregoing, including, without limitation, royalties, income, payments, claims, damages, and proceeds of suit.

"**Permitted Liens**" shall mean Liens permitted by Section 6.1 of the Credit Agreement.

"**Person**" shall mean and include corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governmental authorities.

"**Pledge Supplement**" shall mean any supplement to this agreement in substantially the form of Exhibit A.

"**Pledged Debt**" shall mean all Indebtedness owed to such Grantor, including, without limitation, all Indebtedness described on Schedule 4.4 under the heading "Pledged Debt", issued by the obligors named therein, the instruments evidencing such Indebtedness, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Indebtedness.

"**Pledged Equity Interests**" shall mean all Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests.

"**Pledged LLC Interests**" shall mean all interests in any limited liability company including, without limitation, all limited liability company interests listed on Schedule 4.4 under the heading "Pledged LLC Interests" and the certificates, if any, representing such limited liability company interests and any interest of such Grantor on the books and records of such limited liability company or on the books and records of any securities intermediary pertaining to such interest and, subject to Section 2.2, all dividends, distributions, warrants, rights and options from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such limited liability company interests.

"**Pledged Partnership Interests**" shall mean all interests in any general partnership, limited partnership, limited liability partnership or other partnership including, without limitation, all partnership interests listed on Schedule 4.4 under the heading "Pledged Partnership Interests" and the certificates, if any, representing such partnership interests and any interest of such Grantor on the books and records of such partnership or on the books and records of any securities intermediary pertaining to such interest and, subject to Section 2.2, all dividends, distributions, warrants, rights and options from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such partnership interests.

"**Pledged Stock**" shall mean all shares of capital stock owned by such Grantor, including, without limitation, all shares of capital stock described on Schedule 4.4 under the heading "Pledged Stock", and the certificates, if any, representing such shares and any interest of such Grantor in the entries on the books of the issuer of such shares or on the books of any securities intermediary pertaining to such shares, and, subject to Section 2.2, all dividends, distributions, warrants, rights and options from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares.

"**Pledged Trust Interests**" shall mean all interests in a Delaware business trust or other statutory trust including, without limitation, all trust interests listed on Schedule 4.4 under the heading "Pledged Trust Interests" and the certificates, if any, representing such trust interests and any interest of such Grantor on the books and records of such trust or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions,

cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such trust interests.

"**Proceeds**" shall mean: (i) all "proceeds" as defined in Article 9 of the UCC, (ii) payments or distributions made with respect to any Investment Related Property and (iii) whatever is receivable or received when Collateral or proceeds are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary.

"**Receivables**" shall mean all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including, without limitation all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or, subject to Section 2.2, Investment Related Property, together with all of Grantor' s rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivables Records.

"**Receivables Records**" shall mean (i) all original copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables, (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including, without limitation, all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of Grantor or any computer bureau or agent from time to time acting for Grantor or otherwise, (iii) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or secured parties, and certificates, acknowledgments, or other writings, including, without limitation, lien search reports, from filing or other registration officers, (iv) all credit information, reports and memoranda relating thereto and (v) all other written or nonwritten forms of information related in any way to the foregoing or any Receivable.

"**Record**" shall have the meaning specified in Article 9 of the UCC.

"**Recordable Intellectual Property**" shall mean (i) any Patent issued by the United States Patent and Trademark Office and any exclusive Patent License with respect to a Patent so issued, (ii) any Trademark registered with the United States Patent and Trademark Office and any exclusive Trademark License with respect to a Trademark so registered, (iii) any Copyright registered with the United States Copyright Office and any exclusive Copyright License with respect to a Copyright so registered, and all rights in or under any of the foregoing.

"**Secured Obligations**" shall have the meaning assigned in Section 3.1.

"**Secured Parties**" shall mean the Agents, Lenders and the Lender Counterparties and shall include, without limitation, all former Agents, Lenders and Lender Counterparties to the extent that any Obligations owing to such Persons were incurred while such Persons were Agents, Lenders or Lender Counterparties and such Obligations have not been paid or satisfied in full.

"**Securities**" shall mean any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options, warrants, bonds, debentures, notes, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"**Securities Accounts**" shall mean all "securities accounts" as defined in Article 8 of the UCC.

"**Supporting Obligation**" shall mean all "supporting obligations" as defined in Article 9 of the UCC.

"**Tax Code**" shall mean the United States Internal Revenue Code of 1986, as amended from time to time.

"**Trademark Licenses**" shall mean any and all agreements providing for the granting of any right in or to Trademarks (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(F).

"**Trademark Security Agreement**" shall mean a Trademark Security Agreement, substantially in the form of Exhibit E, executed and delivered by a Grantor in favor of the Collateral Agent for the benefit of the Secured Parties.

"**Trademarks**" shall mean all United States, and foreign trademarks, trade names, corporate names, company names, business names, fictitious business names, Internet domain names, service marks, certification marks, collective marks, logos, other source or business identifiers, designs and general intangibles of a like nature, all registrations and applications for any of the foregoing including, but not limited to: (i) the registrations and applications referred to in Schedule 4.7(E), (ii) all extensions or renewals of any of the foregoing, (iii) all of the goodwill of the business connected with the use of and symbolized by the foregoing, (iv) the right to sue for past, present and future infringement or dilution of any of the foregoing or for any injury to goodwill, and (v) all Proceeds of the foregoing, including, without limitation, royalties, income, payments, claims, damages, and proceeds of suit.

"**Trade Secret Licenses**" shall mean any and all agreements providing for the granting of any right in or to Trade Secrets (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(G).

"**Trade Secrets**" shall mean all trade secrets and all other confidential or proprietary information and know-how whether or not reduced to a writing or other tangible form, including but not limited to: (i) the right to sue for past, present and future misappropriation or other violation of any trade secret, and (ii) all Proceeds of the foregoing, including, without limitation, royalties, income, payments, claims, damages, and proceeds of suit.

"**UCC**" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York or, when the context implies, the Uniform Commercial Code as in effect from time to time in any other applicable jurisdiction.

"**United States**" shall mean the United States of America.

1.2 **Definitions; Interpretation.** All capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement or, if not defined therein, in the UCC. References to "Sections," "Exhibits" and "Schedules" shall be to Sections, Exhibits and Schedules, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. If any conflict or inconsistency exists between this Agreement and the Credit Agreement, the Credit Agreement shall govern. All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC.

SECTION 2. GRANT OF SECURITY.

2.1 **Grant of Security.** Each Grantor hereby grants to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest in and continuing lien on all of such Grantor' s right, title and interest in, to and under all personal property of such Grantor including, but not limited to the following, in

each case whether now owned or existing or hereafter acquired or arising and wherever located (all of which, except as provided in Section 2.2, being hereinafter collectively referred to as the "**Collateral**"):

(a) Accounts;

(b) Chattel Paper;

(c) Documents;

(d) General Intangibles;

(e) Goods;

(f) Instruments;

(g) Intellectual Property;

(h) Investment Related Property;

(i) Letter of Credit Rights;

(j) Commercial Tort Claims;

(k) to the extent not otherwise included above, all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing; and

(l) to the extent not otherwise included above, all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

2.2 **Certain Limited Exclusions.** Notwithstanding anything herein to the contrary, in no event shall the Collateral include, and no Grantor shall be deemed to have granted a security interest in, nor shall the security interest granted under Section 2.1 hereof attach to:

(a) any lease, Intellectual Property, General Intangible, license, contract, property right, asset or agreement to which any Grantor is a party or any of its rights or interests thereunder if and for so long as the grant of such security interest shall constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of any Grantor therein or (ii) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, property right, asset or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity), *provided however* that the Collateral shall include and such security interest shall attach immediately at such time as the condition

causing such abandonment, invalidation or unenforceability shall be remedied and to the extent severable, shall attach immediately to any portion of such Lease, license, contract, property rights or agreement that does not result in any of the consequences specified in (i) or (ii) above;

(b) in any of the outstanding capital stock of a Controlled Foreign Corporation in excess of 66% of the voting power of all classes of capital stock of such Controlled Foreign Corporation entitled to vote; *provided* that immediately upon the amendment of the Tax Code to allow the pledge of a greater percentage of the voting power of capital stock in a Controlled Foreign Corporation without adverse tax consequences, the Collateral shall include, and the security interest granted by each Grantor shall attach to, such greater percentage of capital stock of each Controlled Foreign Corporation;

(c) including any intent-to-use (ITU) United States trademark application for which an amendment to allege use or statement of use has not been filed under 15 U.S.C. § 1051(c) or 15 U.S.C. § 1051(d), respectively, or, if filed, has not been deemed in conformance with 15 U.S.C. § 1051(a), or examined and accepted, respectively, by the United States Patent and Trademark Office, in each case, only to the extent the grant of security interest in such intent-to-use Trademark is in violation of 15 U.S.C. § 1060 and only unless and until a "Statement of Use" or "Amendment to Allege Use" is filed, has been deemed in conformance with 15 U.S.C. §1051(a) or examined and accepted, respectively, by the United States Patent and Trademark Office at which point such Trademarks shall automatically be included as Collateral;

(d) any property of any person acquired by a Grantor after the Closing Date pursuant to Section 6.2(i) of the Credit Agreement, if and to the extent that, and for so long as, (A) such grant of security interest would violate applicable law or any contractual obligation binding upon such property and (B) such law or obligation existed at the time of the acquisition thereof and was not created or made binding upon such property in contemplation of or in connection with the acquisition of such subsidiary (provided that the foregoing clause (B) shall not apply in the case of a joint venture, including a joint venture that is a Subsidiary); provided that each Grantor shall use its commercially reasonable efforts to avoid any such restriction described in this clause (d); and

(e) any general or limited partnership interests in a general or limited partnership or membership in a limited liability company to the extent not permitted under the applicable organizational instrument pursuant to which such partnership or limited liability company is formed, provided that such Grantor shall, following the request of the Collateral Agent use commercially reasonable efforts to obtain waiver, amendment or other modification of such organizational instrument necessary to allow for the granting of a Lien on such general or limited partnership interests, as the case may be, by such Grantor hereunder.

SECTION 3. SECURITY FOR OBLIGATIONS; GRANTORS REMAIN LIABLE.

3.1 **Security for Obligations.** This Agreement secures, and the Collateral is collateral security for, the prompt and complete payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. §362(a) (and any successor provision thereof)), of all Obligations with respect to every Grantor (the "**Secured Obligations**").

3.2 **Continuing Liability Under Collateral.** Notwithstanding anything herein to the contrary, (i) each Grantor shall remain liable for all obligations under the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Collateral Agent or any Secured Party, (ii) each Grantor shall remain liable under each of the agreements included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and neither the Collateral Agent nor any Secured Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall the Collateral Agent nor any Secured Party have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, and (iii) the exercise by the Collateral Agent of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral.

SECTION 4. REPRESENTATIONS AND WARRANTIES AND COVENANTS.

4.1 **Generally.**

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date and on each Credit Date, that:

(i) it owns the Collateral purported to be owned by it or otherwise has the rights it purports to have in each item of Collateral and, as to all Collateral whether now existing or hereafter acquired, will continue to own or have such rights in each item of the Collateral, in each case free and clear of any and all Liens, rights or claims of all other Persons other than Permitted Liens;

(ii) on the Closing Date, it has indicated on Schedule 4.1: (1) the full legal name of such Grantor, (2) the type of organization of such Grantor, (3) the jurisdiction of organization of such Grantor, (4) its organizational identification number and (5) the jurisdiction where the chief executive office or its sole place of business is located.

(iii) (1) upon the filing of all UCC financing statements naming each Grantor as "debtor" and the Collateral Agent as "secured party" and describing the Collateral in the filing office located in state of organization of such Grantor and other filings delivered by each Grantor, (2) upon delivery of all Instruments, Chattel Paper and certificated Pledged Equity Interests and Pledged Debt, (3) upon sufficient identification of Commercial Tort Claims, (4) upon execution of a control agreement establishing the Collateral Agent' s "control" (within the meaning of Section 8-106, 9-106 or 9-104 of the UCC, as applicable) with respect to any Investment Account, (5) upon consent of the issuer with respect to Letter of Credit Rights, and (6) to the extent not subject to Article 9 of the UCC, upon recordation of the security interests granted hereunder in Patents, Trademarks and Copyrights in the applicable intellectual property registries, including but not limited to the United States Patent and Trademark Office and the United States Copyright Office, the security interests granted to the Collateral Agent hereunder constitute valid and perfected first priority Liens (subject in the case of priority only to Permitted Liens and to the rights of the United States government (including any agency or department thereof) with respect to United States government Receivables) on all of the Collateral;

(iv) other than the financing statements filed in favor of the Collateral Agent, no effective UCC financing statement, fixture filing or other instrument similar in effect under any applicable law covering all or any part of the Collateral is on file in any filing or recording office except for (x) financing statements for which proper termination statements have been delivered to the Collateral Agent for filing or for which payoff and Lien release letters containing authority to file such termination statements have been delivered to the Collateral Agent and (y) financing statements filed in connection with Permitted Liens;

(v) no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for the exercise by Collateral Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except (A) for the filings contemplated by clause (iii) above and (B) as may be required, in connection with the disposition of any Investment Related Property, by laws generally affecting the offering and sale of Securities;

(vi) except as could not reasonably be expected to result, either individually or in the aggregate in a Material Adverse Effect, all information supplied by any Grantor with respect to any of the Collateral (in each case taken as a whole with respect to any particular Collateral) is accurate and complete in all material respects;

(vii) none of the Collateral constitutes, or is the Proceeds of, "farm products" (as defined in the UCC);

(viii) it does not own any "as extracted collateral" (as defined in the UCC) or any timber to be cut; and

(ix) such Grantor has been duly organized as an entity of the type as set forth opposite such Grantor' s name on Schedule 4.1 solely under the laws of the jurisdiction as set forth opposite such Grantor' s name on Schedule 4.1 and remains duly existing as such. Such Grantor has not filed any certificates of domestication, transfer or continuance in any other jurisdiction.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) except for the security interest created by this Agreement, it shall not create or suffer to exist any Lien upon or with respect to any of the Collateral, except Permitted Liens, and such Grantor shall defend the Collateral against all Persons at any time claiming any interest therein;

(ii) except as could not reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect, it shall not produce, use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or any applicable statute, regulation or ordinance or any policy of insurance covering the Collateral;

(iii) it shall not (x) change such Grantor' s name or jurisdiction or organization except in compliance with Section 5.1(f) of the Credit Agreement or (y) change its corporate structure (e.g., by merger, consolidation or otherwise) except in compliance with Section 6.4 of the Credit Agreement; provided that (A) concurrently with such change in name or jurisdiction of organization, merger or consolidation, such Grantor shall execute and deliver to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, identifying such new proposed name, jurisdiction of organization or corporate structure and (B) such Grantor shall have taken all actions necessary or advisable to maintain the continuous validity, perfection and the same priority of the

Collateral Agent' s security interest in the Collateral intended to be granted and agreed to hereby; and

(iv) it shall not sell, transfer or assign (by operation of law or otherwise) any Collateral except as otherwise permitted under the Credit Agreement.

4.2 **Equipment and Inventory.**

(a) Representations and Warranties. Each Grantor represents and warrants, on the Closing Date and on each Credit Date, that except as could not reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect, any Goods now or hereafter produced by any Grantor included in the Collateral have been and will be produced in compliance with the requirements of the Fair Labor Standards Act, as amended.

(b) Covenants and Agreements. Each Grantor covenants and agrees that:

(i) it shall keep correct and accurate records of the Inventory in accordance with its customary practices and procedures, and in any event in conformity with GAAP; and

(ii) it shall not deliver any Document evidencing any Equipment and Inventory to any Person other than the issuer of such Document to claim the Goods evidenced therefor or the Collateral Agent.

4.3 **Receivables.**

(a) Representations and Warranties. Each Grantor represents and warrants, on the Closing Date and on each Credit Date, that no Receivable in excess of $500,000 individually or $2,500,000 in the aggregate is evidenced by, or constitutes, an Instrument or Chattel Paper which has not been delivered to, or otherwise subjected to the control of, the Collateral Agent to the extent required by, and in accordance with Section 4.3(c).

(b) Covenants and Agreements: Each Grantor hereby covenants and agrees that:

(i) it shall not amend, modify, terminate or waive any provision of any Receivable in any manner that could reasonably be expected to have a Material Adverse Effect. Other than in the ordinary course of business, during the continuance of an Event of Default, such Grantor shall not (A) grant any extension or renewal of the time of payment of any Receivable, (B) compromise or settle any dispute, claim or legal proceeding with respect to any Receivable for less than the total unpaid balance thereof, (C) release, wholly or partially, any Person liable for the payment thereof, or (D) allow any credit or discount thereon; and

(ii) except as otherwise provided in this subsection, each Grantor shall use its commercially reasonable efforts to collect all amounts due or to become due to such Grantor under any Receivable and to exercise each material right it may have under any Receivable, in each case, at its own expense. If so required by the Collateral Agent at any time after the occurrence and during the continuance of an Event of Default, any payments of Receivables received by any Grantor shall be forthwith (and in any event within two (2) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Collateral Agent if required, in a Securities Account or Deposit Account maintained under the control of the Collateral Agent, and until so turned over, all amounts and proceeds (including checks and other instruments) received by such Grantor in respect of the Receivables, any Supporting Obligation or Collateral Support shall be received in trust for the benefit of the Collateral Agent hereunder and shall be segregated from other funds of such Grantor and such Grantor shall not adjust, settle or compromise the amount or payment of any Receivable, or release wholly or partly any Account Debtor or obligor thereof; or allow any credit or discount thereon.

(c) Delivery and Control of Receivables. With respect to any Receivables in excess of $500,000 individually or $2,500,000 in the aggregate that is evidenced by, or constitutes, Chattel Paper or Instruments, each Grantor shall cause each originally executed copy thereof to be delivered to the Collateral Agent (or its agent or designee) appropriately indorsed to the Collateral Agent or indorsed in blank: (i) with respect to any such Receivables in existence on the date hereof; on or prior to the date hereof and (ii) with respect to any such Receivables hereafter arising, within ten (10) days of such Grantor acquiring rights therein. Any Receivable that is evidenced by, or constitutes, Chattel Paper or Instruments or would constitute "electronic chattel paper" under Article 9 of the UCC which would not otherwise required to be delivered in accordance with this subsection (c) shall be delivered or subjected to such control upon request of the Collateral Agent at any time during the continuance of an Event of Default.

4.4 **Investment Related Property.**

4.4.1 Investment Related Property Generally

(a) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) Subject to the limitation described in Section 2.2(b) with respect to the capital stock of any Controlled Foreign Corporation, in the event it acquires rights in any Investment Related Property constituting Pledged Equity Interests or Pledged Debt, after the date hereof, it shall comply with the requirements of Section 4.4.1(b) with respect to such new Investment Related Property. Notwithstanding the

foregoing, it is understood and agreed that the security interest of the Collateral Agent shall attach to all Investment Related Property immediately upon any Grantor' s acquisition of rights therein and shall not be affected by the failure of any Grantor to comply with Section 4.4.1.(b);

(ii) except as provided in the next sentence, in the event such Grantor receives any dividends, interest or distributions on any Investment Related Property, or any securities or other property upon the merger, consolidation, liquidation or dissolution of any issuer of any Investment Related Property, then (A) such dividends, interest or distributions and securities or other property shall be included in the definition of Collateral without further action and (B) such Grantor shall within ten (10) days take all steps, if any, necessary or advisable to ensure the validity, perfection, priority and, if applicable, control of the Collateral Agent over such Investment Related Property (including, without limitation, delivery thereof to the Collateral Agent) and pending any such action such Grantor shall be deemed to hold such dividends, interest, distributions, securities or other property in trust for the benefit of the Collateral Agent and shall segregate such dividends, distributions, Securities or other property from all other property of such Grantor. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing, the Collateral Agent authorizes each Grantor to retain all cash dividends and distributions and all payments of interest and principal;

(iii) each Grantor consents to the grant by each other Grantor of a Security Interest in all Investment Related Property to the Collateral Agent.

(b) Delivery and Control.

(i) Each Grantor agrees that with respect to any Investment Related Property in which it currently has rights it shall comply with the provisions of this Section 4.4.1(b) on or before the Closing Date and with respect to any Investment Related Property hereafter acquired by such Grantor it shall comply with the provisions of this Section 4.4.1(b) promptly upon acquiring rights therein, in each case in form and substance reasonably satisfactory to the Collateral Agent. With respect to any Investment Related Property that is represented by a certificate or that is an "instrument" (other than any Investment Related Property credited to a Securities Account) it shall cause such certificate or instrument to be delivered to the Collateral Agent, indorsed in blank by an "effective indorsement" (as defined in Section 8-107 of the UCC), regardless of whether such certificate constitutes a "certificated security" for purposes of the UCC. With respect to any Investment Related Property that is an "uncertificated security" for purposes of the UCC (other than any "uncertificated securities" credited to a Securities Account), it shall

cause the issuer (in the case of Pledged Equity Interests issued by a Subsidiary of a Grantor, mutual funds and other open-ended investments funds) and it shall use its commercially reasonable efforts to cause the issuer (in the case of all other Investment Related Property) of such uncertificated security to either (A) register the Collateral Agent as the registered owner thereof on the books and records of the issuer or (B) execute an agreement substantially in the form of Exhibit B hereto, pursuant to which such issuer agrees to comply with the Collateral Agent' s instructions with respect to such uncertificated security without further consent by such Grantor.

(c) Voting and Distributions.

(i) Unless an Event of Default shall have occurred and be continuing and the Collateral Agent shall have given written notice thereof:

(A) except as otherwise provided under the covenants and agreements relating to investment related property in this Agreement or elsewhere herein or in the Credit Agreement, each Grantor shall be entitled to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Investment Related Property or any part thereof;

(B) the Collateral Agent shall promptly execute and deliver (or cause to be executed and delivered) to each Grantor all proxies, and other instruments as such Grantor may from time to time reasonably request for the purpose of enabling such Grantor to exercise the voting and other consensual rights when and to the extent which it is entitled to exercise pursuant to clause (A) above; and

(C) Upon the occurrence and during the continuance of an Event of Default and written notice thereof by the Collateral Agent:

(1) all rights of each Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the Collateral Agent who shall thereupon have the sole right to exercise such voting and other consensual rights; provided that, unless otherwise directed by the Required Lenders, the Collateral Agent shall have the right from time to time following the occurrence and during the continuance of an Event of Default to permit the Grantors to exercise such rights; and

(2) in order to permit the Collateral Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder: (x) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent all proxies, dividend payment orders and other instruments as the Collateral Agent may from time to time reasonably request and (y) each Grantor acknowledges that the Collateral Agent may utilize the power of attorney set forth in Section 6.1.

After all Events of Default have been cured or waived and the Company has delivered to the Collateral Agent a certificate to that effect, each Grantor will have the right to exercise the voting and consensual rights that such Grantor would otherwise be entitled to exercise pursuant to the terms of Section 4.4.1(c)(i)(A).

4.4.2 Pledged Equity Interests

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date and on each Credit Date, that:

(i) on the Closing Date, Schedule 4.4 sets forth under the headings "Pledged Stock, "Pledged LLC Interests," "Pledged Partnership Interests" and "Pledged Trust Interests," respectively, all of the Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests owned by any Grantor and such Pledged Equity Interests constitute the percentage of issued and outstanding shares of stock, percentage of membership interests, percentage of partnership interests or percentage of beneficial interest of the respective issuers thereof indicated on such Schedule;

(ii) it is the record and beneficial owner of the Pledged Equity Interests free of all Liens, rights or claims of other Persons other than Permitted Liens; and none of such Pledged Equity Interests is subject to any option to purchase or similar right of any Person, except as permitted by the Credit Agreement;

(iii) without limiting the generality of Section 4.1(a)(v), except as described in Schedule 4.4, on the Closing Date, no consent of any Person including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary is necessary or desirable in connection with the creation, perfection or first priority status of the security interest of the Collateral Agent in any Pledged Equity Interests or the exercise by the

Collateral Agent of the voting or other rights provided for in this Agreement or the exercise of remedies in respect thereof;

(v) except as described in Schedule 4.4, on the Closing Date, none of the Pledged LLC Interests nor Pledged Partnership Interests are or represent interests in issuers that: (a) are registered as investment companies or (b) are dealt in or traded on securities exchanges or markets; and

(vi) except as otherwise set forth on Schedule 4.4, on the Closing Date, all of the Pledged LLC Interests and Pledged Partnership Interests are or represent interests in issuers that have opted to be treated as securities under the uniform commercial code of any jurisdiction.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) Other than as permitted under the Credit Agreement or without the prior written consent of the Collateral Agent, it shall not vote to enable or take any other action to cause any issuer of any Pledged Partnership Interests or Pledged LLC Interests which are not securities (for purposes of the UCC) on the date hereof to elect or otherwise take any action to cause such Pledged Partnership Interests or Pledged LLC Interests to be treated as securities for purposes of the UCC; *provided, however*, notwithstanding the foregoing, if any issuer of any Pledged Partnership Interests or Pledged LLC Interests takes any such action in violation of the foregoing in this clause (i), such Grantor shall promptly notify the Collateral Agent in writing of any such election or action and, in such event, shall take all steps necessary or advisable to establish the Collateral Agent' s "control" thereof; and

(ii) each Grantor consents to the grant by each other Grantor of a security interest in all Investment Related Property to the Collateral Agent and, without limiting the foregoing, consents to the transfer of any Pledged Partnership Interest and any Pledged LLC Interest to the Collateral Agent or its nominee following the occurrence and during the continuance of an Event of Default and to the substitution of the Collateral Agent or its nominee as a partner in any partnership or as a member in any limited liability company with all the rights and powers related thereto.

4.4.3 Pledged Debt

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date and each Credit Date, that Schedule 4.4 sets forth under the heading "Pledged Debt" all of the Pledged Debt that is intercompany Indebtedness and otherwise in excess of $500,000 individually

owned by such Grantor on the Closing Date and, to the best of such Grantor' s knowledge, all of such Pledged Debt has been duly authorized, authenticated or issued, and delivered and is the legal, valid and binding obligation of the issuers thereof subject to the effect of applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting rights of creditors and general principles of equity and is not in default and constitutes all of the issued and outstanding inter-company Indebtedness;

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that: (i) it shall notify the Collateral Agent of any default under any Pledged Debt that has caused, either in any individual case or in the aggregate, a Material Adverse Effect and (ii) upon the occurrence and during the continuance of an Event of Default and after notice from the Collateral Agent thereof, all Indebtedness represented by any Pledged Debt shall be fully subordinated to the indefeasible payment in full in cash of the Secured Obligations.

4.5 **[Reserved].**

4.6 **Letter of Credit Rights.**

(a) Representations and Warranties. Except with respect to Letters of Credit issued under the Credit Agreement, each Grantor hereby represents and warrants, on the Closing Date and on each Credit Date, that:

(i) all material letters of credit in excess of $5,000,000 individually to which such Grantor has rights as a beneficiary on the Closing Date is listed on Schedule 4.6 hereto; and

(ii) it has obtained the consent of each issuer of any letter of credit in an amount in excess of $5,000,000 in the aggregate to the assignment of the proceeds of the letter of credit to the Collateral Agent.

(b) Covenants and Agreements. Except with respect to Letters of Credit issued under the Credit Agreement, each Grantor hereby covenants and agrees that with respect to any letter of credit in an amount in excess of $5,000,000 in the aggregate hereafter arising it shall obtain the consent of the issuer thereof to the assignment of the proceeds of the letter of credit to the Collateral Agent and shall deliver to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto.

4.7 **Intellectual Property.**

(a) Representations and Warranties. Except as disclosed in Schedule 4.7(H), each Grantor hereby represents and warrants, on the Closing Date and on each Credit Date, that:

(i) Schedule 4.7 sets forth a true and complete list of (A) all United States, state and foreign registrations of and applications to register Patents, Trademarks, and Copyrights owned by each Grantor and (B) all Patent Licenses, Trademark Licenses, Trade Secret Licenses and Copyright Licenses material to the business of such Grantor;

(ii) it owns or has the valid right to use all other Intellectual Property used in or necessary to conduct its business, free and clear of all Liens and licenses, except for Permitted Liens, license agreements executed in the normal course of business consistent with past practice and the licenses set forth on Schedule 4.7(B), (D), (F) and (G);

(iii) all registrations of and applications to register Copyrights, Trademarks and Patents and applications thereof owned by any Grantor have not been abandoned and have not been adjudged invalid or unenforceable, in whole or in part, and each Grantor has filed all necessary documents and has paid all renewal, maintenance, and other fees and taxes required to maintain each and every registration of and application to register the Copyrights, Trademarks and Patents listed on Schedule 4.7 in full force and effect, except to the extent that a particular Patent, Trademark or Copyright is not material to, or useful in, the business of such Grantor;

(iv) except as set forth in Schedule 4.7(H) and except for matters that are not material to such Grantor, no holding, decision, or judgment has been rendered in any action or proceeding before any court or administrative authority and no action or proceeding before any court or administrative authority is pending or, to the best of such Grantor' s knowledge, threatened challenging the validity of, such Grantor' s right to register, or such Grantor' s rights to own any material Intellectual Property owned by such Grantor;

(v) all registrations and applications for Copyrights, Patents and Trademarks listed on Schedule 4.7 are standing in the name of each Grantor, and none of the Trademarks, Patents, Copyrights or Trade Secrets has been licensed by any Grantor to any Affiliate or third party, except as disclosed in Schedule 4.7(B), (D), (F), or (G) and except for licenses executed in the ordinary course of business consistent with past practice;

(vi) except as set forth in Schedule 4.7(H), and except as would not have, individually or in the aggregate, a Material Adverse Effect, to the best of each Grantor' s knowledge, the conduct of such Grantor' s business does not infringe upon or otherwise violate any Trademark, Patent, Copyright or Trade Secret owned by a third party and no claim is pending against Grantor that any Intellectual Property owned or used by Grantor violates the asserted rights of any third party; and

(vii) to the best of each Grantor' s knowledge, no third party is infringing upon or otherwise violating any rights in any material Intellectual Property owned or used by such Grantor;

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees as follows until the payment in full of the Secured Obligations and termination of the Commitments:

(i) it shall not, without the prior consent of the Collateral Agent, which shall not be unreasonably withheld or delayed, do any act or omit to do any act whereby any of the Intellectual Property which is, in such Grantor' s reasonable business judgment, material to the business of Grantor may lapse, or be abandoned, dedicated to the public, or become unenforceable, or which would adversely affect the validity, grant, or enforceability of the security interest granted therein;

(ii) it shall, with respect to any Trademarks which are, in such Grantor' s reasonable business judgment, material to the business of any Grantor, maintain such Trademarks in full force free from any adjudication of abandonment or invalidity for non-use and maintain the level of the quality of products sold and services rendered under any of such Trademark at a level at least substantially consistent with the quality of such products and services as of the date hereof, and each Grantor shall take all steps reasonably necessary to insure that licensees of such Trademarks use such consistent standards of quality;

(iii) it shall, within thirty (30) days of the creation or acquisition of any Copyrightable work the registration of which is material to the business of Grantor, apply to register the Copyright in the United States Copyright Office when such registration is deemed necessary by the Grantor exercising its reasonable business judgment;

(iv) it shall promptly notify the Collateral Agent if it knows that any item of the Intellectual Property that is material to the business of any Grantor may become (A) abandoned or dedicated to the public or placed in the public domain other than by expiration in the normal course (and not in violation of clause (v) below), (B) invalid or unenforceable, or (C) subject to any adverse determination or development (including the institution of proceedings) in any action or proceeding (other than routine office actions and the like) in the United States Patent and Trademark Office, the United States Copyright Office, any state registry, any foreign counterpart of the foregoing, or any court;

(v) on the Closing Date, each applicable Grantor will sign and deliver to the Collateral Agent Intellectual Property Security Agreements with respect to all Recordable Intellectual Property then owned by it;

(vi) it shall take all commercially reasonable steps in the United States Patent and Trademark Office, the United States Copyright Office, any state registry or any foreign counterpart of the foregoing, to maintain and prosecute any application or registration of each Trademark, Patent, and Copyright owned by any Grantor and material to its business which is now or shall become included in the Intellectual Property including, but not limited to, those items on Schedule 4.7(A), (C) and (E);

(vii) in the event that a Grantor becomes aware that any material Intellectual Property owned by or exclusively licensed to any Grantor is being infringed, misappropriated, or diluted by a third party, such Grantor shall, as it deems necessary in the exercise of its reasonable business judgment, promptly take all commercially reasonable actions as are appropriate in the circumstances to stop such infringement, misappropriation, or dilution and protect its rights in such Intellectual Property including, but not limited to, the initiation of a suit for injunctive relief and to recover damages;

(viii) it shall on a semi-annual basis report to the Collateral Agent (A) the filing of any application to register any Intellectual Property owned by the Grantor with the United States Patent and Trademark Office, the United States Copyright Office, or any state registry or foreign counterpart of the foregoing (whether such application is filed by such Grantor or through any agent, employee, licensee, or designee thereof) and (B) the registration of any Intellectual Property owned by the Grantor by any such office, and upon the request of the Collateral Agent, it shall execute and deliver to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto;

(ix) it shall, promptly upon the reasonable request of the Collateral Agent, execute and deliver to the Collateral Agent any document reasonably required to acknowledge, confirm, register, record, or perfect the Collateral Agent' s interest in any part of the Intellectual Property, whether now owned or hereafter acquired;

(x) except with the prior consent of the Collateral Agent or as permitted under the Credit Agreement, each Grantor shall not execute or file any financing statements or other similar documents or instruments that remain in effect, except financing statements or similar documents or instruments filed or to be filed in favor of the Collateral Agent and each Grantor shall not sell, assign, transfer, grant an exclusive license otherwise outside of the ordinary course of business, consistent with past practice, grant any option, or create or suffer to exist any Lien upon or with respect to any material Intellectual Property, except for the

Lien created or permitted by and under this Agreement and the other Credit Documents;

(xi) it shall take all commercially reasonable steps reasonably necessary to protect the secrecy of all Trade Secrets, including, without limitation, entering into confidentiality agreements with relevant employees, except to the extent that a Trade Secret is no longer material or necessary to the business of such Grantor or the Trade Secret no longer derives substantial value from not being known to the public, as determined by such Grantor in its reasonable business judgment; and

(xii) it shall use proper statutory notice in connection with its use of any material registered Copyrights, Trademarks and Patents (and, if applicable, applications thereof) where necessary and proper in its reasonable business judgment.

4.8 **Commercial Tort Claims.**

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date and on each Credit Date, that Schedule 4.8 sets forth all Commercial Tort Claims of each Grantor on the Closing Date in excess of $5,000,000 in the aggregate; and

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that with respect to any Commercial Tort Claim in excess of $5,000,000 in the aggregate hereafter arising it shall deliver to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, identifying such new Commercial Tort Claims.

SECTION 5. ACCESS; RIGHT OF INSPECTION AND FURTHER ASSURANCES; ADDITIONAL GRANTORS.

5.1 **Further Assurances.**

(a) Each Grantor agrees that from time to time, at the expense of such Grantor, that it shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary, or that the Collateral Agent may reasonably request, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted hereby or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Grantor shall:

(i) file (or authorize the filing of) such financing or continuation statements, or amendments thereto, and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices, as may be necessary or desirable, or as the Collateral Agent may

reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby; and

(ii) take all actions reasonable and necessary to ensure the recordation of appropriate evidence of the liens and security interest granted hereunder in the Copyrights, Patents and Trademarks with any intellectual property registry in which said Copyrights, Patents or Trademarks is registered or in which an application for registration is pending including, without limitation, the United States Patent and Trademark Office, the United States Copyright Office, the various Secretaries of State, and the foreign counterparts on any of the foregoing.

(b) Each Grantor hereby authorizes the Collateral Agent to file a Record or Records, including, without limitation, financing or continuation statements, and amendments thereto, in any jurisdictions and with any filing offices as the Collateral Agent may determine, in its sole discretion, are necessary or advisable to perfect the security interest granted to the Collateral Agent herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Collateral Agent may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the Collateral Agent herein, including, without limitation, describing such property as "all assets" or "all personal property, whether now owned or hereafter acquired." Each Grantor shall furnish to the Collateral Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent may reasonably request.

(c) Each Grantor hereby authorizes the Collateral Agent to modify this Agreement after obtaining such Grantor' s approval of or signature to such modification by amending Schedule 4.7 to include reference to any right, title or interest in any existing Intellectual Property or any Intellectual Property acquired or developed by any Grantor after the execution hereof or to delete any reference to any right, title or interest in any Intellectual Property in which any Grantor no longer has or claims any right, title or interest.

5.2 **Additional Grantors.** From time to time subsequent to the date hereof, additional Persons may become parties hereto as additional Grantors (each, an "**Additional Grantor**"), by executing a Counterpart Agreement. Upon delivery of any such counterpart agreement to the Collateral Agent, notice of which is hereby waived by Grantors, each Additional Grantor shall be a Grantor and shall be as fully a party hereto as if Additional Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of Collateral Agent not to cause any Subsidiary of Company to become an Additional Grantor hereunder. This Agreement shall be fully effective as to any Grantor that is or becomes a party

hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

SECTION 6. COLLATERAL AGENT APPOINTED ATTORNEY-IN-FACT.

6.1 **Power of Attorney.** Each Grantor hereby irrevocably appoints the Collateral Agent (such appointment being coupled with an interest) as such Grantor' s attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, the Collateral Agent or otherwise, from time to time in the Collateral Agent' s reasonable discretion to take any action and to execute any instrument that the Collateral Agent may deem reasonably necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, the following:

(a) upon the occurrence and during the continuance of any Event of Default, to obtain and adjust insurance required to be maintained by such Grantor or paid to the Collateral Agent pursuant to the Credit Agreement;

(b) upon the occurrence and during the continuance of any Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(c) upon the occurrence and during the continuance of any Event of Default, to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (b) above;

(d) upon the occurrence and during the continuance of any Event of Default, to file any claims or take any action or institute any proceedings that the Collateral Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Collateral Agent with respect to any of the Collateral;

(e) to prepare and file any UCC financing statements against such Grantor as debtor;

(f) to prepare, sign, and file for recordation in any registry or similar office, appropriate evidence of the lien and security interest granted herein in the Copyrights, Patents or Trademarks in the name of such Grantor as debtor;

(g) upon the occurrence and during the continuance of any Event of Default to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement, including, without limitation, access to pay or discharge taxes or Liens (other than Permitted Liens) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be

determined by the Collateral Agent in its sole discretion, any such payments made by the Collateral Agent to become obligations of such Grantor to the Collateral Agent, due and payable immediately without demand; and

(h) upon the occurrence and during the continuance of any Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes, and to do, at the Collateral Agent' s option and such Grantor' s expense, at any time or from time to time, all acts and things that the Collateral Agent deems reasonably necessary to protect, preserve or realize upon the Collateral and the Collateral Agent' s security interest therein in accordance with the terms of this Agreement, all as fully and effectively as such Grantor might do.

6.2 **No Duty on the Part of Collateral Agent or Secured Parties.** The powers conferred on the Collateral Agent hereunder are solely to protect the interests of the Secured Parties in the Collateral and shall not impose any duty upon the Collateral Agent or any Secured Party to exercise any such powers. The Collateral Agent and the Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable judgment or order.

SECTION 7. REMEDIES.

7.1 **Generally.**

(a) If any Event of Default shall have occurred and be continuing, the Collateral Agent may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and remedies of a Secured Party on default under the UCC (whether or not the UCC applies to the affected Collateral) to collect, enforce or satisfy any Secured Obligations then owing, whether by acceleration or otherwise, and also may pursue any of the following separately, successively or simultaneously:

(i) require any Grantor to, and each Grantor hereby agrees that it shall at its expense and promptly upon request of the Collateral Agent forthwith, assemble all or part of the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place to be designated by the Collateral Agent that is reasonably convenient to both parties;

(ii) enter onto the property where any Collateral is located and take possession thereof with or without judicial process;

(iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Collateral Agent deems appropriate; and

(iv) without notice except as specified below or under the UCC, sell, assign, lease, license (on an exclusive or nonexclusive basis) or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Collateral Agent' s offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable.

(b) Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent or any Secured Party may be the purchaser of any or all of the Collateral at any public or private (to the extent to the portion of the Collateral being privately sold is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations) sale in accordance with the UCC and the Collateral Agent, as collateral agent for and representative of the Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale made in accordance with the UCC, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor agrees that it would not be commercially unreasonable for the Collateral Agent to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Each Grantor hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree, *provided* this sentence shall not restrict the operation of Section 9-615(1) of the UCC. If the proceeds of any sale or other disposition of the Collateral are

insufficient to pay all the Secured Obligations, Grantors shall be liable for the deficiency and the reasonable fees of any attorneys employed by the Collateral Agent to collect such deficiency. Each Grantor further agrees that a breach of any of the covenants contained in this Section will cause irreparable injury to the Collateral Agent, that the Collateral Agent has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities. Nothing in this Section shall in any way alter the rights of the Collateral Agent hereunder.

(c) Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent may sell the Collateral without giving any warranties as to the Collateral. The Collateral Agent may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(d) Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent shall have no obligation to marshal any of the Collateral.

7.2 **Application of Proceeds**. Except as expressly provided elsewhere in this Agreement, all proceeds received by the Collateral Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral, in each case pursuant to its exercise of remedies under this Section 7.1, shall be applied in full or in part by the Collateral Agent against, the Secured Obligations in the following order of priority: first, to the payment of all reasonable costs and expenses of such sale, collection or other realization, including reasonable fees and out-of-pocket expenses to the Collateral Agent and its agents and counsel, and all other reasonable out-of-pocket expenses, liabilities and advances made or incurred by the Collateral Agent in connection therewith, and all amounts for which the Collateral Agent is entitled to indemnification hereunder (in its capacity as the Collateral Agent and not as a Lender) and all advances made by the Collateral Agent hereunder for the account of the applicable Grantor, and to the payment of all reasonable costs and expenses paid or incurred by the Collateral Agent in connection with the exercise of any right or remedy hereunder or under the Credit Agreement, all in accordance with the terms hereof or thereof; second, to the extent of any excess of such proceeds, to the payment of all other Secured Obligations for the ratable benefit of the Lenders and the Lender Counterparties; and third, to the extent of any excess of such proceeds, to the payment to or upon the order of such Grantor or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

7.3 **Sales on Credit**. If Collateral Agent sells any of the Collateral upon credit, Grantor will be credited only with payments actually made by

purchaser and received by Collateral Agent and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Collateral Agent may resell the Collateral and Grantor shall be credited with proceeds of the sale.

7.4 **Investment Related Property**.

Each Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Investment Related Property conducted without prior registration or qualification of such Investment Related Property under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Investment Related Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sale may be at prices and on terms less favorable than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, each Grantor agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Investment Related Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would, or should, agree to so register it. If the Collateral Agent determines to exercise its right to sell any or all of the Investment Related Property, upon written request, each Grantor shall and shall cause each issuer of any Pledged Stock to be sold hereunder, each partnership and each limited liability company from time to time to furnish to the Collateral Agent all such information as the Collateral Agent may request in order to determine the number and nature of interest, shares or other instruments included in the Investment Related Property which may be sold by the Collateral Agent in exempt transactions under the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

7.5 **Intellectual Property**.

(a) Anything contained herein to the contrary notwithstanding, upon the occurrence and during the continuance of an Event of Default:

(i) the Collateral Agent shall have the right (but not the obligation) to bring suit or otherwise commence any action or proceeding in the name of any Grantor, the Collateral Agent or otherwise, in the Collateral Agent' s sole discretion, to enforce any Intellectual Property, in which event such Grantor shall, at the request of the Collateral

Agent, do any and all lawful acts and execute any and all documents required by the Collateral Agent in aid of such enforcement and such Grantor shall promptly, upon demand, reimburse and indemnify the Collateral Agent as provided in Section 10 hereof in connection with the exercise of its rights under this Section;

(ii) upon written demand from the Collateral Agent, each Grantor shall grant, assign, convey or otherwise transfer to the Collateral Agent or such Collateral Agent' s designee all of such Grantor' s right, title and interest in and to the Intellectual Property and shall execute and deliver to the Collateral Agent such documents as are necessary or appropriate to carry out the intent and purposes of this Agreement;

(iii) each Grantor agrees that such an assignment and/or recording shall be applied to reduce the Secured Obligations outstanding only to the extent that the Collateral Agent (or any Secured Party) receives cash proceeds in respect of the sale of, or other realization upon, the Intellectual Property; and

(iv) the Collateral Agent shall have the right to notify, or require each Grantor to notify, any obligors with respect to amounts due or to become due to such Grantor in respect of any licensed Intellectual Property, of the existence of the security interest created herein, to direct such obligors to make payment of all such amounts directly to the Collateral Agent, and, upon such notification and at the expense of such Grantor, to enforce collection of any such amounts and to adjust, settle or compromise the amount or payment thereof; in the same manner and to the same extent as such Grantor might have done;

(1) all amounts and proceeds (including checks and other instruments) received by Grantor in respect of amounts due to such Grantor in respect of the Collateral or any portion thereof shall be received in trust for the benefit of the Collateral Agent hereunder, shall be segregated from other funds of such Grantor and shall be forthwith paid over or delivered to the Collateral Agent in the same form as so received (with any necessary endorsement) to be held as cash Collateral and applied as provided by Section 7.6 hereof; and

(2) Grantor shall not adjust, settle or compromise the amount or payment of any such amount or release wholly or partly any obligor with respect thereto or allow any credit or discount thereon.

(b) If (i) an Event of Default shall have occurred and, by reason of cure, waiver, modification, amendment or otherwise, no longer be continuing, (ii) no other Event of Default shall have occurred and be continuing, (iii) an assignment or other transfer to the Collateral Agent of any rights, title and interests in and to the Intellectual Property shall have been previously made and

shall have become absolute and effective, and (iv) the Secured Obligations shall not have become immediately due and payable, upon the written request of any Grantor, the Collateral Agent shall promptly execute and deliver to such Grantor, at such Grantor' s sole cost and expense, such assignments or other transfer as may be necessary to reassign to such Grantor any such rights, title and interests as may have been assigned to the Collateral Agent as aforesaid, subject to any disposition thereof that may have been made by the Collateral Agent; *provided*, after giving effect to such reassignment, the Collateral Agent' s security interest granted pursuant hereto, as well as all other rights and remedies of the Collateral Agent granted hereunder, shall continue to be in full force and effect; and *provided further*, the rights, title and interests so reassigned shall be free and clear of any other Liens granted by or on behalf of the Collateral Agent and the Secured Parties.

(c) Solely for the purpose of enabling the Collateral Agent to exercise rights and remedies under this Section 7 and at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Agent, to the extent it has the right to do so, a nonexclusive license (exercisable without payment of royalty or other compensation to such Grantor but only exercisable so long as an Event of Default has occurred and is continuing), subject, in the case of Trademarks, to the grant of sufficient rights to quality control and inspection in favor of such Grantor to avoid the risk of invalidation of said Trademarks, to use, operate under, license, or sublicense any Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located.

7.6 **Cash Proceeds**. In addition to the rights of the Collateral Agent specified in Section 4.3 with respect to payments of Receivables, all proceeds of any Collateral received by any Grantor consisting of cash, checks and other non/cash items (collectively, "**Cash Proceeds**") (i) except as specified in clause (ii), shall be applied by such Grantor in a manner not inconsistent with the Credit Agreement, and (ii) if an Event of Default shall have occurred and be continuing, shall be held by such Grantor in trust for the Collateral Agent, segregated from other funds of such Grantor, and, unless otherwise agreed in writing by the Collateral Agent, shall, forthwith upon receipt by such Grantor, unless otherwise provided pursuant to Section 4.4.1(a)(ii), be turned over to the Collateral Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the Collateral Agent, if required). Any Cash Proceeds received by the Collateral Agent (whether from a Grantor or otherwise): (x) if no Event of Default shall have occurred and be continuing, shall be held by the Collateral Agent for the ratable benefit of the Secured Parties, as collateral security for the Secured Obligations (whether matured or unmatured) and (y) if an Event of Default shall have occurred and be continuing, may, in the sole discretion of the Collateral Agent, (A) be held by the Collateral Agent for the ratable benefit of the Secured Parties, as collateral security for the Secured Obligations (whether matured or unmatured) and/or (B) then or at any time thereafter may be applied by the Collateral Agent against the Secured Obligations then due and owing. Prior to an

Event of Default, any cash proceeds received by the Collateral Agent shall be paid to the Grantors.

SECTION 8. COLLATERAL AGENT.

The Collateral Agent has been appointed to act as Collateral Agent hereunder by Lenders and, by their acceptance of the benefits hereof, the other Secured Parties. The Collateral Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of Collateral), solely in accordance with this Agreement and the Credit Agreement. In furtherance of the foregoing provisions of this Section, each Secured Party, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Collateral hereunder, it being understood and agreed by such Secured Party that all rights and remedies hereunder may be exercised solely by the Collateral Agent for the benefit of Secured Parties in accordance with the terms of this Section. Collateral Agent may resign at any time by giving prior written notice thereof to Lenders and the Grantors, and Collateral Agent may be removed at any time with or without cause by an instrument or concurrent instruments in writing delivered to the Grantors and Collateral Agent signed by the Requisite Lenders. Upon any such notice of resignation or any such removal, Collateral Agent immediately shall be discharged from its duties and obligations under this Agreement and Requisite Lenders shall have the right, upon notice to the Administrative Agent, to appoint a successor Collateral Agent. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Collateral Agent under this Agreement, and the retiring or removed Collateral Agent under this Agreement shall promptly at the Grantors' expense (i) transfer to such successor Collateral Agent all sums, Securities and other items of Collateral held hereunder, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Agent under this Agreement, and (ii) execute and deliver to such successor Collateral Agent or otherwise authorize the filing of such amendments to financing statements, and take such other actions, as may be necessary in connection with the assignment to such successor Collateral Agent of the security interests created hereunder. After any retiring or removed Collateral Agent' s resignation or removal hereunder as the Collateral Agent, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Collateral Agent hereunder.

SECTION 9. CONTINUING SECURITY INTEREST; TRANSFER OF LOANS.

This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until the payment in full of all Secured

Obligations, the cancellation or termination of the Commitments and the cancellation or expiration of all outstanding Letters of Credit (or the cash collateralization thereof), be binding upon each Grantor, its successors and assigns and inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent and its successors, transferees and assigns for the benefit and on behalf of the Secured Parties. Without limiting the generality of the foregoing, but subject to the terms of the Credit Agreement, any Lender may assign or otherwise transfer any Loans held by it to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to Lenders herein or otherwise. Upon the payment in full of all Secured Obligations, the cancellation or termination of the Commitments and the cancellation or expiration of all outstanding Letters of Credit (or the cash collateralization thereof), the security interest granted hereby (other than with respect to any cash collateralization in respect of Letters of Credit) shall automatically terminate hereunder and of record and all rights to the Collateral shall revert to Grantors. Upon any such termination the Collateral Agent shall, at Grantors' expense, promptly execute and deliver to Grantors or otherwise authorize the filing of such documents as Grantors shall reasonably request, including financing statement amendments to evidence such termination. Upon any disposition of property permitted by the Credit Agreement (including a sale or other disposition of a Subsidiary, the Liens granted herein shall be deemed to be automatically released and such property shall automatically revert to the applicable Grantor with no further action on the part of any Person. The Collateral Agent shall, at Grantor' s expense, execute and deliver or otherwise authorize the filing of such documents as Grantors shall reasonably request, in form and substance reasonably satisfactory to the Collateral Agent, including financing statement amendments to evidence such release.

SECTION 10. STANDARD OF CARE; COLLATERAL AGENT MAY PERFORM.

The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property. Neither the Collateral Agent nor any of its directors, officers, employees or agents shall be liable for failure to, except to the extent such delay or failure arises from the gross negligence or willful misconduct of the Collateral Agent, as determined by a court of competent jurisdiction in a final, non-appealable judgment or order, demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral

upon the request of any Grantor or otherwise. If any Grantor fails to perform any agreement contained herein, the Collateral Agent may itself perform, or cause performance of, such agreement, and the expenses of the Collateral Agent incurred in connection therewith shall be payable by each Grantor under Section 10.2 of the Credit Agreement.

SECTION 11. MISCELLANEOUS.

Any notice required or permitted to be given under this Agreement shall be given in accordance with Section 10.1 of the Credit Agreement. No failure or delay on the part of the Collateral Agent in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Credit Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists. This Agreement shall be binding upon and inure to the benefit of the Collateral Agent and Grantors and their respective successors and assigns. No Grantor shall, without the prior written consent of the Collateral Agent given in accordance with the Credit Agreement, assign any right, duty or obligation hereunder. This Agreement and the other Credit Documents embody the entire agreement and understanding between Grantors and the Collateral Agent and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Credit Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document and may be delivered by facsimile or e-mail.

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE

LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ITS CONFLICTS OF LAW PROVISIONS (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATION LAWS).

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each Grantor and the Collateral Agent have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

EDUCATION MANAGEMENT LLC

By: _____
Name: John R. McKernan, Jr.
Title: Chairman and Chief Executive Officer

EDUCATION MANAGEMENT HOLDINGS LLC

By: _____
Name: John R. McKernan, Jr.
Title: President and Chief Executive Officer

EDUCATION MANAGEMENT FINANCE CORP.

By: _____
Name: John R. McKernan, Jr.
Title: President and Chief Executive Officer

ACADEMIC REVIEW, INC.

ASSOCIATION FOR ADVANCED TRAINING IN THE BEHAVIORAL SCIENCES

ARGOSY UNIVERSITY FAMILY CENTER, INC.

BROWN MACKIE HOLDING COMPANY

THE CONNECTING LINK, INC.

EDMC MARKETING AND ADVERTISING, INC.

EDMC AVIATION, INC.

HIGHER EDUCATION SERVICES, INC.

MCM UNIVERSITY PLAZA, INC.

By: _____

Name: J. Devitt Kramer

Title: Secretary

AID RESTAURANT, INC.

By: _____

Name: Simon Lumley

Title: President, Secretary and Treasurer

AIH RESTAURANT, INC.

By: _____

Name: Larry Horn

Title: President, Secretary and Treasurer

AIIM RESTAURANT, INC.

By: _____

Name: Joseph L. Marzano, Jr.

Title: President, Secretary and Treasurer

BNP PARIBAS,
as Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

GENERAL INFORMATION

Full Legal Name, Type of Organization, Jurisdiction of Organization, Chief Executive Office/Sole Place of Business and Organizational Identification Number of each Grantor:

Full Legal Name	Type of Organization	Jurisdiction of Organization	Chief Executive Office/Sole Place of Business	Organization I.D. #

SCHEDULE 4.1-1

INVESTMENT RELATED PROPERTY

Pledged Stock:

Grantor	Stock Issuer	Class of Stock	Certificated (Y/N)	Stock Certificate No.	Par Value	No. of Pledged Stock	% of Outstanding Stock of the Stock Issuer

Pledged LLC Interests:

Grantor	Limited Liability Company	Certificated (Y/N)	Certificate No. (if any)	No. of Pledged Units	% of Outstanding LLC Interests of the Limited Liability Company

Pledged Partnership Interests:

Grantor	Partnership	Type of Partnership Interests (e.g., general or limited)	Certificated (Y/N)	Certificate No. (if any)	% of Outstanding Partnership Interests of Partnership

Pledged Trust Interests:

Grantor	Trust	Class of Trust Interests	Certificated (Y/N)	Certificate No. (if any)	% of Outstanding Trust Interests of the Trust

Pledged Debt:

Grantor	Issuer	Original Principal Amount	Outstanding Principal Balance	Issue Date	Maturity Date

SCHEDULE 4.4-2

Name of Grantor	Description of Material Contract

SCHEDULE 4.5-1

Name of Grantor	Description of Letters of Credit

SCHEDULE 4.6-1

INTELLECTUAL PROPERTY

(A) Copyrights

(B) Copyright Licenses

(C) Patents

(D) Patent Licenses

(E) Trademarks

(F) Trademark Licenses

(G) Trade Secret Licenses

(H) Intellectual Property Exceptions

SCHEDULE 4.7-1

Name of Grantor	Commercial Tort Claims

SCHEDULE 4.8-1

PLEDGE SUPPLEMENT

This **PLEDGE SUPPLEMENT**, dated as of [mm/dd/yy], is delivered by **[NAME OF GRANTOR]**, a **[NAME OF STATE OF INCORPORATION]** [corporation] (the "**Grantor**") pursuant to the Pledge and Security Agreement, dated as of June 1, 2006 (as it may be from time to time amended, restated, modified or supplemented, the "**Security Agreement**"), among Education Management LLC, the other Grantors named therein, and BNP Paribas, as the Collateral Agent. Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed thereto in the Security Agreement.

Grantor hereby confirms the grant to the Collateral Agent set forth in the Security Agreement of, and does hereby grant to the Collateral Agent, a security interest in all of Grantor' s right, title and interest in and to all Collateral to secure the Secured Obligations, in each case whether now or hereafter existing or in which Grantor now has or hereafter acquires an interest and wherever the same may be located. Grantor represents and warrants that the attached Supplements to Schedules accurately and completely set forth all additional information required pursuant to the Security Agreement and hereby agrees that such Supplements to Schedules shall constitute part of the Schedules to the Security Agreement.

IN WITNESS WHEREOF, Grantor has caused this Pledge Supplement to be duly executed and delivered by its duly authorized officer as of the date first written above.

[NAME OF GRANTOR]

By: _____

Name:

Title:

Additional Information:

Full Legal Name, Type of Organization, Jurisdiction of Organization, Chief Executive Office/Sole Place of Business and Organizational Identification Number of each Grantor:

Full Legal Name	Type of Organization	Jurisdiction of Organization	Chief Executive Office/ Sole Place of Business	Organization I.D.#

EXHIBIT A-2

Additional Information:

Pledged Stock:

Pledged Partnership Interests:

Pledged LLC Interests:

Pledged Trust Interests:

Pledged Debt:

EXHIBIT A-3

Additional Information:

Name of Grantor	**Description of Letters of Credit**

EXHIBIT A-4

Additional Information:

(A) Copyrights

(B) Copyright Licenses

(C) Patents

(D) Patent Licenses

(E) Trademarks

(F) Trademark Licenses

(G) Trade Secret Licenses

(H) Intellectual Property Exceptions

EXHIBIT A-5

Additional Information:

Name of Grantor	Commercial Tort Claims

EXHIBIT A-6

UNCERTIFICATED SECURITIES CONTROL AGREEMENT

Uncertificated Securities Control Agreement, dated as of [_____], 20[__] (as amended, supplemented or otherwise modified from time to time, this "**Agreement**") among [_____] (the "**Pledgor**"), BNP PARIBAS, in its capacity as collateral agent for the Secured Parties, including its successors and assigns from time to time (the "**Collateral Agent**"), and [_____], a [_____] corporation (the "**Issuer**"). Capitalized terms used but not defined herein shall have the meaning assigned in the Pledge and Security Agreement dated as of June 1, 2006 (as amended, restated, supplemented or otherwise modified from time to time, the "**Security Agreement**") among the Pledgor, the other Grantors party thereto and the Collateral Agent. All references herein to the "**UCC**" shall mean the Uniform Commercial Code as in effect in the State of New York.

Section l. Registered Ownership of Shares. The Issuer hereby confirms and agrees that as of the date hereof the Pledgor is the registered owner of [_____] shares of the Issuer' s [common] stock (the "**Pledged Shares**") and the Issuer shall not change the registered owner of the Pledged Shares without the prior written consent of the Collateral Agent.

Section 2. Instructions. If at any time the Issuer shall receive instructions originated by the Collateral Agent relating to the Pledged Shares, the Issuer shall comply with such instructions without further consent by the Pledgor or any other person.

Section 3. Additional Representations and Warranties of the Issuer. The Issuer hereby represents and warrants to the Collateral Agent:

(a) It has not entered into, and until the termination of this agreement will not without the consent of the Collateral Agent enter into, any agreement with any other person relating the Pledged Shares pursuant to which it has agreed to comply with instructions issued by such other person; and

(b) It has not entered into, and until the termination of this agreement will not without the consent of the Collateral Agent enter into, any agreement with the Pledgor purporting to limit or condition the obligation of the Issuer to comply with Instructions as set forth in Section 2 hereof.

(c) Except for the claims and interests of the Collateral Agent and of the Pledgor in the Pledged Shares, the Issuer does not know of any claim to, or interest in, the Pledged Shares. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Pledged Shares, the Issuer will promptly notify the Collateral Agent and the Pledgor thereof.

(d) This Uncertificated Securities Control Agreement is the valid and legally binding obligation of the Issuer.

Section 4. Choice of Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT THAT THE SAME ARE NOT MANDATORILY APPLICABLE BY STATUTE AND THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

Section 5. Amendment; Modification. No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

Section 6. Voting Rights. Until such time as the Collateral Agent shall otherwise instruct the Issuer in writing the Pledgor shall have the right to vote the Pledged Shares.

Section 7. Successors; Assignment. The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors or heirs and personal representatives who obtain such rights solely by operation of law. The Collateral Agent may assign its rights hereunder in accordance with the Credit Agreement only with the express written consent of the Issuer and by sending written notice of such assignment to the Pledgor.

Section 8. Indemnification of Issuer. The Pledgor and the Collateral Agent hereby agree that (a) the Issuer is released from any and all liabilities to the Pledgor and the Collateral Agent arising from the terms of this Agreement and the compliance of the Issuer with the terms hereof, except to the extent that such liabilities arise from the Issuer' s negligence and (b) the Pledgor, its successors and assigns shall at all times indemnify and save harmless the Issuer from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Issuer with the terms hereof, except to the extent that such arises from the Issuer' s negligence or willful misconduct, and from and against any and all liabilities, losses, damages, costs, charges, reasonable counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement.

Section 9. Notices. Each notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or certified or registered United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof; upon receipt of telefacsimile or telex, or three Business Days after being sent by certified or registered United States mail, return receipt requested, postage prepaid and properly addressed to the party at the address set forth below.

Pledgor:

[Name]
[Address]
Attention:
Telecopier:

Collateral Agent:	[Name] [Address] Attention: Telecopier:
Issuer:	[Name] [Address] Attention: Telecopier:

Any party may change its address for notices in the manner set forth above.

Section 10. Termination. The obligations of the Issuer to the Collateral Agent pursuant to this Control Agreement shall continue in effect until the security interests of the Collateral Agent in the Pledged Shares have been terminated pursuant to the terms of the Security Agreement and the Collateral Agent has notified the Issuer of such termination in writing. The Collateral Agent agrees to provide Notice of Termination in substantially the form of Exhibit A hereto to the Issuer promptly upon the request of the Pledgor on or after the termination of the Collateral Agent' s security interest in the Pledged Shares pursuant to the terms of the Security Agreement. The termination of this Control Agreement shall not terminate the Pledged Shares or alter the obligations of the Issuer to the Pledgor pursuant to any other agreement with respect to the Pledged Shares.

Section 11. Counterparts. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Uncertificated Securities Control Agreement to be executed as of the date first above written by their respective officers thereunto duly authorized.

[NAME OF PLEDGOR]

By: _____

Name:

Title:

[NAME OF COLLATERAL AGENT],

Collateral Agent

By: _____

Name:

Title:

[NAME OF ISSUER]

By: _____

Name:

Title:

EXHIBIT A
TO UNCERTIFICATED SECURITIES ACCOUNT CONTROL AGREEMENT

[Letterhead of Collateral Agent]

[Date]

[Name and Address of Issuer]
Attention: [_____]

Re: Termination of Control Agreement

You are hereby notified that the Uncertificated Securities Control Agreement between you, [Name of Pledgor] (the "Pledgor") and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to Pledged Shares (as defined in the Uncertificated Securities Control Agreement) from the Pledgor. This notice terminates any obligations you may have to the undersigned with respect to the Pledged Shares; however, nothing contained in this notice shall alter any obligations which you may otherwise owe to the Pledgor pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to the Pledgor.

Very truly yours,

[NAME OF COLLATERAL AGENT],
as Collateral Agent

By: _____

Name:

Title:

PATENT SECURITY AGREEMENT

(Patents, Patent Applications and Exclusive Patent Licenses)

WHEREAS, [name of Lien Grantor], a _____ corporation[1] (herein referred to as the "**Lien Grantor**") owns, or in the case of licenses is a party to, the Patent Collateral (as defined below);

WHEREAS, Education Management LLC (the "**Company**"), Education Management Holdings LLC ("**Holdings**"), Certain Subsidiaries of Holdings, as Guarantors, the Lenders party thereto from time to time, Credit Suisse Securities (USA) LLC, as Syndication Agent, and BNP Paribas, as Administrative Agent and as Collateral Agent, and Merrill Lynch Corporation and Bank of America, N.A. as Documentation Agents are parties to a Credit Agreement dated as of June 1, 2006 (as amended from time to time, the "**Credit Agreement**"; the terms defined therein and not otherwise defined herein being used herein as therein defined); and

WHEREAS, pursuant to (i) a Pledge and Security Agreement dated as of June 1, 2006 (as amended and/or supplemented from time to time, the "**Security Agreement**") among the Company, the Grantors party thereto and BNP Paribas, as Collateral Agent for the Secured Parties referred to therein (in such capacity, together with its successors in such capacity, the "**Grantee**"), and (ii) certain other Security Documents (including this Agreement), the Lien Grantor has guaranteed certain obligations of the Company and secured such guarantee (the "**Lien Grantor' s Secured Guarantee**") by granting to the Grantee for the benefit of such Secured Parties a continuing security interest in personal property of the Lien Grantor, including all right, title and interest of the Lien Grantor in, to and under the Patent Collateral (as defined below);

WHEREAS, the Lien Grantor has duly authorized the execution, delivery and performance of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to induce the Lenders to make Loans and other financial accommodations to Company pursuant to the Credit Agreement, the Lien Grantor agrees, for the benefit of the Secured Parties as follows:

1. Grant of Security Interest. For the benefit of the Secured Parties to secure payment, performance and observance of the Secured Obligations, the Lien Grantor grants to the Grantee, a continuing security interest in, and a right of set-off against, and agrees to assign, transfer and convey, upon demand made upon the occurrence and during the continuance of an Event of Default without requiring further action by either party and to be effective upon such demand, all of the Lien Grantor' s right, title and interest in, to and under the following (all of the following

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[1] Modify as needed if the Lien Grantor is not a corporation.

items or types of property being herein collectively referred to as the "**Patent Collateral**"), whether now owned or existing or hereafter acquired or arising:

(i) each Patent owned by the Lien Grantor, including, without limitation, each Patent referred to in Schedule 1 hereto; and

(ii) each exclusive Patent License to which the Lien Grantor is a party, including, without limitation, each exclusive Patent License identified in Schedule 1 hereto.

The Lien Grantor irrevocably constitutes and appoints the Grantee and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full power and authority in the name of the Lien Grantor or in the Grantee' s name, from time to time, in the Grantee' s discretion, so long as any Event of Default shall have occurred and be continuing, to take with respect to the Patent Collateral any and all appropriate action which the Lien Grantor might take with respect to the Patent Collateral and to execute any and all documents and instruments which may be necessary or desirable to carry out the terms of this Patent Security Agreement and to accomplish the purposes hereof.

Except to the extent expressly permitted in the Security Agreement or the Credit Agreement, the Lien Grantor agrees not to sell, license, exchange, assign or otherwise transfer or dispose of, or grant any rights with respect to, or mortgage or otherwise encumber, any of the Patent Collateral.

2. Purpose. This Agreement has been executed and delivered by the Lien Grantor for the purpose of recording the grant of security interest herein with the United States Patent and Trademark Office. The security interest granted hereby has been granted to the Grantee in connection with the Security Agreement and is expressly subject to the terms and conditions thereof. The Security Agreement (and all rights and remedies of the Lenders thereunder) shall remain in full force and effect in accordance with its terms.

3. Acknowledgement. The foregoing security interest is granted in conjunction with the security interests granted by the Lien Grantor to the Grantee pursuant to the Security Agreement. The Lien Grantor acknowledges and affirms that the rights and remedies of the Grantee with respect to the security interest in the Patent Collateral granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein. In the event of any conflict between the terms of this Agreement and the terms of the Security Agreement, the terms of the Security Agreement shall govern.

4. Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided by reference in the Security Agreement.

5. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together constitute one and the same original.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective officers as of the ____ day of [month], [year].

[NAME OF LIEN GRANTOR]

By: _____

Name:

Title:

Acknowledged:

BNP PARIBAS,
as Collateral Agent

By: _____

Name:

Title:

By: _____

Name:

Title:

Schedule 1
to Patent
Security Agreement

[NAME OF LIEN GRANTOR]

PATENTS AND DESIGN PATENTS

Patent No.	Issued	Expiration	Country	Title

PATENT APPLICATIONS

Case No.	Serial No.	Country	Date	Filing Title

EXCLUSIVE PATENT LICENSES

Name of Agreement	Parties Licensor/ Licensee	Date of Agreement	Exclusively Licensed Patent/s

COPYRIGHT SECURITY AGREEMENT

(Copyright Registrations and Exclusive Copyright Licenses)

WHEREAS, [name of Lien Grantor], a _____ corporation[1] (herein referred to as the "**Lien Grantor**") owns, or in the case of licenses is a party to, the Copyright Collateral (as defined below);

WHEREAS, Education Management LLC (the "**Company**"), Education Management Holdings LLC ("**Holdings**"), Certain Subsidiaries of Holdings, as Guarantors, the Lenders party thereto from time to time, Credit Suisse Securities (USA) LLC, as Syndication Agent, and BNP Paribas, as Administrative Agent and as Collateral Agent, and Merrill Lynch Corporation and Bank of America, N.A. as Documentation Agents are parties to a Credit Agreement dated as of June 1, 2006 (as amended from time to time, the "**Credit Agreement**"; the terms defined therein and not otherwise defined herein being used herein as therein defined); and

WHEREAS, pursuant to (i) Pledge and Security Agreement dated as of June 1, 2006 (as amended and/or supplemented from time to time, the "**Security Agreement**") among the Company, the Grantors party thereto and BNP Paribas, as Collateral Agent for the Secured Parties referred to therein (in such capacity, together with its successors in such capacity, the "**Grantee**"), and (ii) certain other Security Documents (including this Agreement), the Lien Grantor has guaranteed certain obligations of the Company and secured such guarantee (the "**Lien Grantor' s Secured Guarantee**") by granting to the Grantee for the benefit of such Secured Parties a continuing security interest in personal property of the Lien Grantor, including all right, title and interest of the Lien Grantor in, to and under the Copyright Collateral (as defined below);

WHEREAS, the Lien Grantor has duly authorized the execution, delivery and performance of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to induce the Lenders to make Loans and other financial accommodations to Company pursuant to the Credit Agreement, the Lien Grantor agrees, for the benefit of the Secured Parties as follows:

1. Grant of Security Interest. For the benefit of the Secured Parties to secure payment, performance and observance of the Secured Obligations, the Lien Grantor pledges and grants to the Grantee, a continuing security interest in, and a right of set-off against, and agrees to assign, transfer and convey, upon demand made upon the occurrence and during the continuance of an Event of Default without requiring further action by either party and to be effective upon such demand, all of the Lien Grantor' s right, title and interest in, to and under the following (all of the

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[1] Modify as needed if the Lien Grantor is not a corporation.

following items or types of property being herein collectively referred to as the "**Copyright Collateral**"), whether now owned or existing or hereafter acquired or arising:

(i) each Copyright owned by the Lien Grantor, including, without limitation, each Copyright registration or application therefor referred to in Schedule 1 hereto; and

(ii) each exclusive Copyright License (as defined in the Security Agreement) to which the Lien Grantor is a party, including, without limitation, each exclusive Copyright License identified in Schedule 1 hereto.

The Lien Grantor irrevocably constitutes and appoints the Grantee and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full power and authority in the name of the Lien Grantor or in the Grantee' s name, from time to time, in the Grantee' s discretion, so long as any Event of Default shall have occurred and be continuing, to take with respect to the Copyright Collateral any and all appropriate action which the Lien Grantor might take with respect to the Copyright Collateral and to execute any and all documents and instruments which may be necessary or desirable to carry out the terms of this Copyright Security Agreement and to accomplish the purposes hereof.

Except to the extent expressly permitted in the Security Agreement or the Credit Agreement, the Lien Grantor agrees not to sell, license, exchange, assign or otherwise transfer or dispose of, or grant any rights with respect to, or mortgage or otherwise encumber, any of the Copyright Collateral.

2. Purpose. This Agreement has been executed and delivered by the Lien Grantor for the purpose of recording the grant of security interest herein with the United States Copyright Office. The security interest granted hereby has been granted to the Grantee in connection with the Security Agreement and is expressly subject to the terms and conditions thereof. The Security Agreement (and all rights and remedies of the Lenders thereunder) shall remain in full force and effect in accordance with its terms.

3. Acknowledgement. The foregoing security interest is granted in conjunction with the security interests granted by the Lien Grantor to the Grantee pursuant to the Security Agreement. The Lien Grantor acknowledges and affirms that the rights and remedies of the Grantee with respect to the security interest in the Copyright Collateral granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein. In the event of any conflict between the terms of this Agreement and the terms of the Security Agreement, the terms of the Security Agreement shall govern.

4. Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided by reference in the Security Agreement.

5. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together constitute one and the same original.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the ____ day of [month], [year].

[NAME OF LIEN GRANTOR]

By: _____

Name:

Title:

Acknowledged:

BNP PARIBAS,
as Collateral Agent

By: _____

Name:

Title:

By: _____

Name:

Title:

Schedule 1
to Copyright
Security Agreement

[NAME OF LIEN GRANTOR]

COPYRIGHT REGISTRATIONS

Registration No.	Registration Date	Title	Expiration Date

EXCLUSIVE COPYRIGHT LICENSES

Name of Agreement	Parties Licensor/Licensee	Date of Agreement	Exclusively Licensed Copyright/s

Exhibit D-4

TRADEMARK SECURITY AGREEMENT

(Trademark Registrations, Trademark Applications and Exclusive Trademark Licenses)

WHEREAS, [name of Lien Grantor], a _____ corporation[1] (herein referred to as the "**Lien Grantor**") owns, or in the case of licenses is a party to, the Trademark Collateral (as defined below);

WHEREAS, Education Management LLC (the "**Company**"), Education Management Holdings LLC ("**Holdings**"), Certain Subsidiaries of Holdings, as Guarantors, the Lenders party thereto from time to time, Credit Suisse Securities (USA) LLC, as Syndication Agent, and BNP Paribas, as Administrative Agent and as Collateral Agent, and Merrill Lynch Corporation and Bank of America, N.A. as Documentation Agents are parties to a Credit Agreement dated as of June 1, 2006 (as amended from time to time, the "**Credit Agreement**"; the terms defined therein and not otherwise defined herein being used herein as therein defined); and

WHEREAS, pursuant to (i) a Pledge and Security Agreement dated as of June 1, 2006 (as amended and/or supplemented from time to time, the "**Security Agreement**") among the Company, the Grantors party thereto and BNP Paribas, as Collateral Agent for the Secured Parties referred to therein (in such capacity, together with its successors in such capacity, the "**Grantee**"), and (ii) certain other Security Documents (including this Agreement), the Lien Grantor has guaranteed certain obligations of the Company and secured such guarantee (the "**Lien Grantor' s Secured Guarantee**") by granting to the Grantee for the benefit of such Secured Parties a continuing security interest in personal property of the Lien Grantor, including all right, title and interest of the Lien Grantor in, to and under the Trademark Collateral (as defined below);

WHEREAS, the Lien Grantor has duly authorized the execution, delivery and performance of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to induce the Lenders to make Loans and other financial accommodations to Company pursuant to the Credit Agreement, the Lien Grantor agrees, for the benefit of the Secured Parties as follows:

1. Grant of Security Interest. For the benefit of the Secured Parties to secure payment, performance and observance of the Secured Obligations, the Lien Grantor pledges and grants to the Grantee, a continuing security interest in, and a right of set-off against, and agrees to assign, transfer and convey, upon demand made upon the occurrence and during the continuance of an Event of Default without requiring further action by either party and to be effective upon such

[1] Modify as needed if the Lien Grantor is not a corporation.

demand, all of the Lien Grantor' s right, title and interest in, to and under the following (all of the following items or types of property being herein collectively referred to as the "**Trademark Collateral**"), whether now owned or existing or hereafter acquired or arising:

(i) each Trademark owned by the Lien Grantor, including, without limitation, each Trademark registration and application referred to in Schedule 1 hereto, but in all cases excluding any intent-to-use (ITU) United States trademark application for which an amendment to allege use or statement of use has not been filed under 15 U.S.C. § 1051(c) or 15 U.S.C. § 1051(d), respectively, or, if filed, has not been deemed in conformance with 15 U.S.C. § 1051(a), or examined and accepted, respectively, by the United States Patent and Trademark Office, in each case, only to the extent the grant of security interest in such intent-to-use Trademark is in violation of 15 U.S.C. § 1060 and only unless and until a "Statement of Use" or "Amendment to Allege Use" is filed, has been deemed in conformance with 15 U.S.C. §1051(a) or examined and accepted, respectively, by the United States Patent and Trademark Office at which point such Trademarks shall automatically be subject to the security interest granted herein and be deemed to be included as Trademark Collateral; and

(ii) each exclusive Trademark License to which the Lien Grantor is a party, including, without limitation, each exclusive Trademark License identified in Schedule 1 hereto.

The Lien Grantor irrevocably constitutes and appoints the Grantee and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full power and authority in the name of the Lien Grantor or in the Grantee' s name, from time to time, in the Grantee' s discretion, so long as any Event of Default shall have occurred and be continuing, to take with respect to the Trademark Collateral any and all appropriate action which the Lien Grantor might take with respect to the Trademark Collateral and to execute any and all documents and instruments which may be necessary or desirable to carry out the terms of this Trademark Security Agreement and to accomplish the purposes hereof.

Except to the extent expressly permitted in the Security Agreement or the Credit Agreement, the Lien Grantor agrees not to sell, license, exchange, assign or otherwise transfer or dispose of, or grant any rights with respect to, or mortgage or otherwise encumber, any of the Trademark Collateral.

2. Purpose. This Agreement has been executed and delivered by the Lien Grantor for the purpose of recording the grant of security interest herein with the United States Patent and Trademark Office. The security interest granted hereby has been granted to the Grantee in connection with the Security Agreement and is expressly subject to the terms and conditions thereof. The Security Agreement (and all rights and remedies of the Lenders thereunder) shall remain in full force and effect in accordance with its terms.

3. Acknowledgement. The foregoing security interest is granted in conjunction with the security interests granted by the Lien Grantor to the Grantee pursuant to the Security Agreement. The Lien Grantor acknowledges and affirms that the rights and remedies of the Grantee with respect to the security interest in the Trademark Collateral granted hereby are more fully set forth

in the Security Agreement, the terms and provisions of which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein. In the event of any conflict between the terms of this Agreement and the terms of the Security Agreement, the terms of the Security Agreement shall govern.

4. Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided by reference in the Security Agreement.

5. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together constitute one and the same original.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the ____ day of [month], [year].

[NAME OF LIEN GRANTOR]

By: _____
Name:
Title:

Acknowledged:

BNP PARIBAS,
as Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

Schedule 1
to Trademark
Security Agreement

[NAME OF LIEN GRANTOR]

U.S. TRADEMARK REGISTRATIONS

TRADEMARK	REG. NO.	REG. DATE

U.S. TRADEMARK APPLICATIONS

TRADEMARK APPLICATION	SERIAL. NO.	APPL. DATE

EXCLUSIVE TRADEMARK LICENSES

Name of Agreement	Parties Licensor/Licensee	Date of Agreement	Exclusively Licensed Trademark/s

COPYRIGHT SECURITY AGREEMENT

(Copyright Registrations and Exclusive Copyright Licenses)

WHEREAS, Education Management LLC (the "**Company**"), a Delaware limited liability company (herein referred to as the "**Lien Grantor**") owns, or in the case of licenses is a party to, the Copyright Collateral (as defined below);

WHEREAS, the Company, Education Management Holdings LLC ("**Holdings**"), Certain Subsidiaries of Holdings, as Guarantors, the Lenders party thereto from time to time, Credit Suisse Securities (USA) LLC, as Syndication Agent, and BNP Paribas, as Administrative Agent and as Collateral Agent, and Merrill Lynch Corporation and Bank of America, N.A. as Documentation Agents are parties to a Credit Agreement dated as of June 1, 2006 (as amended from time to time, the "**Credit Agreement**"; the terms defined therein and not otherwise defined herein being used herein as therein defined); and

WHEREAS, pursuant to (i) Pledge and Security Agreement dated as of June 1, 2006 (as amended and/or supplemented from time to time, the "**Security Agreement**") among the Company, the Grantors party thereto and BNP Paribas, as Collateral Agent for the Secured Parties referred to therein (in such capacity, together with its successors in such capacity, the "**Grantee**"), and (ii) certain other Security Documents (including this Agreement), the Lien Grantor has guaranteed certain obligations of the Company and secured such guarantee (the "**Lien Grantor' s Secured Guarantee**") by granting to the Grantee for the benefit of such Secured Parties a continuing security interest in personal property of the Lien Grantor, including all right, title and interest of the Lien Grantor in, to and under the Copyright Collateral (as defined below);

WHEREAS, the Lien Grantor has duly authorized the execution, delivery and performance of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to induce the Lenders to make Loans and other financial accommodations to Company pursuant to the Credit Agreement, the Lien Grantor agrees, for the benefit of the Secured Parties as follows:

1. Grant of Security Interest. For the benefit of the Secured Parties to secure payment, performance and observance of the Secured Obligations, the Lien Grantor pledges and grants to the Grantee, a continuing security interest in, and a right of set-off against, and agrees to assign, transfer and convey, upon demand made upon the occurrence and during the continuance of an Event of Default without requiring further action by either party and to be effective upon such demand, all of the Lien Grantor' s right, title and interest in, to and under the following (all of the following items or types of property being herein collectively referred to as the "**Copyright Collateral**"), whether now owned or existing or hereafter acquired or arising:

(i) each Copyright owned by the Lien Grantor, including, without limitation, each Copyright registration or application therefor referred to in Schedule 1 hereto; and

(ii) each exclusive Copyright License (as defined in the Security Agreement) to which the Lien Grantor is a party, including, without limitation, each exclusive Copyright License identified in Schedule 1 hereto.

The Lien Grantor irrevocably constitutes and appoints the Grantee and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full power and authority in the name of the Lien Grantor or in the Grantee' s name, from time to time, in the Grantee' s discretion, so long as any Event of Default shall have occurred and be continuing, to take with respect to the Copyright Collateral any and all appropriate action which the Lien Grantor might take with respect to the Copyright Collateral and to execute any and all documents and instruments which may be necessary or desirable to carry out the terms of this Copyright Security Agreement and to accomplish the purposes hereof.

Except to the extent expressly permitted in the Security Agreement or the Credit Agreement, the Lien Grantor agrees not to sell, license, exchange, assign or otherwise transfer or dispose of, or grant any rights with respect to, or mortgage or otherwise encumber, any of the Copyright Collateral.

2. Purpose. This Agreement has been executed and delivered by the Lien Grantor for the purpose of recording the grant of security interest herein with the United States Copyright Office. The security interest granted hereby has been granted to the Grantee in connection with the Security Agreement and is expressly subject to the terms and conditions thereof. The Security Agreement (and all rights and remedies of the Lenders thereunder) shall remain in full force and effect in accordance with its terms.

3. Acknowledgement. The foregoing security interest is granted in conjunction with the security interests granted by the Lien Grantor to the Grantee pursuant to the Security Agreement. The Lien Grantor acknowledges and affirms that the rights and remedies of the Grantee with respect to the security interest in the Copyright Collateral granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein. In the event of any conflict between the terms of this Agreement and the terms of the Security Agreement, the terms of the Security Agreement shall govern.

4. Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided by reference in the Security Agreement.

5. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together constitute one and the same original.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the 1st day of June, 2006.

EDUCATION MANAGEMENT LLC

By: _____

Name: J. Devitt Kramer
Title: Secretary

Acknowledged:

BNP PARIBAS,
as Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

Schedule 1
to Copyright
Security Agreement

EDUCATION MANAGEMENT LLC

COPYRIGHT REGISTRATIONS

Registration No.	Registration Date	Title
TX-2-855-734	June 19, 1990	Your investment in education.
TX-2-858-624	June 18, 1990	Your complete guide to financial aid.
TX-3-018-358	June 25, 1990	Student financial planning training manual: v. 1.
TX-3-066-291	April 22, 1991	Your investment in education: a practical guide to financial planning.
TX-3-123-662	April 22, 1991	Your complete guide to financial aid.
TXu-424-572	June 25, 1990	Education Management Corporation student financial planning software.
TXu-816-222	September 8, 1997	New media information design.
TXu-869-508	August 19, 1998	New media information design.

EXCLUSIVE COPYRIGHT LICENSES

Name of Agreement	Parties Licensor/Licensee	Date of Agreement	Exclusively Licensed Copyright/s

None.

Exhibit 10.4

TRADEMARK ASSIGNMENT

This TRADEMARK ASSIGNMENT (the "Agreement") is effective as of June 1, 2006 (the "Effective Date"), among Education Management Corporation, a Pennsylvania corporation ("EDMC"), American Educations Centers, Inc., a Delaware corporation and indirect, wholly-owned subsidiary of EDMC ("AEC"), and Education Management LLC, a Delaware limited liability company and indirect, wholly-owned subsidiary of EDMC ("EM LLC").

WITNESSETH:

WHEREAS, pursuant to the Asset Contribution Agreement between EDMC and EM LLC dated June 1, 2006, EDMC contributed substantially all of its assets and liabilities (including those of AEC) ("the "Transferred Assets") to EM LLC; and

WHEREAS, the Transferred Assets include all of EDMC' s and AEC' s right title and interest in and to the trademarks, service marks and trade names set forth on Schedule A (the "Marks");

NOW, THEREFORE, for good and valuable consideration (including that recited in the Asset Contribution Agreement),

1. EDMC and AEC hereby grant, convey and assign to EM LLC, by execution hereof, all of their right, title and interest in and to the Marks, including all goodwill appurtenant to such Marks, to be held and enjoyed by EM LLC, its successors and assigns.

2. EDMC and AEC further grant, convey and assign to EM LLC all of their right, title and interest in and to any and all proceeds, causes of action and rights of recovery for past and future infringement of the Marks, as well as all rights of renewal and extension of the Marks that are or may be secured in the United States, its territories and possessions and throughout the world, now or hereinafter in effect.

3. This Assignment is subject to any and all licenses or other rights that may have been granted by EDMC or AEC or their predecessors in interest with respect to the Marks prior to the Effective Date.

4. EM LLC is a successor to the ongoing and existing business of EDMC and AEC to which the Marks pertain for purposes of 15 U.S.C. § 1060.

5. This Agreement shall be deemed effective as between the parties as of the Effective Date.

6. EDMC and AEC will, without additional consideration, take such further actions and execute promptly such further documents as are necessary or desirable to transfer, vest, record and perfect good, valid and marketable title to the Marks in EM LLC. EDMC and AEC hereby authorize EM LLC to request the relevant government entity or agency, in each applicable country or jurisdiction, to record EM LLC as the assignee and owner of the Marks.

7. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto execute this Agreement as of the date first above written.

EDUCATION MANAGEMENT CORPORATION

_____

Name:

Title:

Date:

AMERICAN EDUCATION CENTERS, INC.

_____

Name:

Title:

Date:

SCHEDULE A

Education Management Corporation

Mark	*Country*	*Status*	*Appl. Date*	*Appl. No.*	*Reg. No.*	*Reg. Date*	*Next Deadline*	*Comments*
Al (Stylized)	United States	Registered	8/24/1999	75/783,586	2,371,036	7/25/2000	7/25/2010	Renewal due

Our Ref 05662 0098 00 0000 0 ***Class*** 41

Goods/Services: Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Al (Stylized)	China	Registered			3429624	6/14/2004	6/14/2014	Renewal due

Our Ref 05662 0098 0013 9 ***Class*** 41

Goods/Services: Schools (education); correspondence courses; physical education; instruction; training; education; instruction; educational information; educational assessments (educational or training consulting); arranging or organizing educational discussions; arranging or organizing meetings; arranging or organizing conferences; organizing cultural or educational exhibits; organizing or arranging seminars; book publications (excluding advertising materials); textbook publication (excluding advertising materials); publication of manuals; publication of textbook publication (excluding advertising materials); publication of manuals; publication of on-line books; printing on-line; providing on-line electronic publications (excluding what can be downloaded) (commercial products suspended); in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Al (Stylized)	China	Registered			3429609	8/28/2004	8/28/2014	Renewal due

Our Ref 05662 0098 0013 9 ***Class*** 14

Goods/Services: Necktie clips; awards/prizes; decorative pins; headgear
ornaments (made of rare metals); brooches (jewelry); necktie clips
(necktie decorative pins); necktie pins; key chains (small ornaments,
short decorative chains) (commercial products suspended), In Class 14.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
Al (Stylized)	China	Registered			3429626	10/7/2004	10/7/2014	Renewal due

Our Ref 05662 0098 0013 9 ***Class*** 21

Goods/Services: Daily-use dinnerware (cups, plates, kettles, jugs); daily-use chinaware (basins, bowls, plates, kettles, cutlery, jugs, pitchers), daily-use ceramic ware (basins, bowls, plates, jugs, pitchers, hot pots, kettles, ceramic eating utensils); glass cups (containers) (commercial products suspended), in Class 21.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
Al (Stylized)	China	Registered			3429608	12/28/2004	12/28/2014	Renewal due

Our Ref 05662 0098 0013 9 ***Class*** 16

Goods/Services: Printed time schedules; printed publications; instructional manuals; magazines (periodicals); binders, folders (stationery); folders (office supplies); paperweights; stationery; school supplies (stationery); writing implements; educational materials (excluding writing implements) (commercial products suspended), in Class 16.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
Al (Stylized)	Canada	Registered	1/15/2002	1,127,585	TMA611,020	5/25/2004	5/25/2019	Renewal due

Our Ref 05662 0098 00 0013 1 ***Class*** 41

Goods/Services: Education services, namely, providing courses of instruction at the post-secondary level in the fields of design, media arts, culinary arts, and fashion, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
AI ART INSTITUTE INTERNATIONAL & Design	United States	Registered	12/27/1989	74/014,617	1,652,020	7/23/1991	7/23/2011	Renewal due
Our Ref 05662 0033 00 0000 0 ***Class*** 41								***Goods/Services:*** Education services, namely, conducting classes and seminars in the fields of visual communication arts and design; interior and industrial design; fashion design, illustration and marketing, music and video business; travel and tourism; and photography, in Class 41.
Owner: Education Management LLC (as assignee of Education Management Corporation)								
AI THE ART INSTITUTE OF TORONTO (Stylized)	Canada	Pending / Published	7/13/2005	1,264,736				
Our Ref 05662 0185 00 0013 1 ***Class*** 41								***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.
Owner: Education Management LLC (as assignee of Education Management Corporation)								
AI THE ART INSTITUTE OF VANCOUVER (Stylized)	Canada	Pending / Published	7/13/2005	1,264,731				
Our Ref 05662 0186 00 0013 1 ***Class*** 41								***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.
Owner: Education Management LLC (as assignee of Education Management Corporation)								
AI THE ART INSTITUTES INTERNATIONAL	United States	Registered	10/9/1997	75/371,697	2,262,221	7/20/1999	7/20/2009	Renewal due
Our Ref 05662 0035 00 0000 0 ***Class*** 41								***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.
Owner: Education Management LLC (as assignee of Education Management Corporation)								

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
		Pending	8/30/2005	78/703,333				
AMERICA' S LEADER IN CREATIVE EDUCATION	United States							
Our Ref 05662 0224 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
AMERICA' S LEADER IN CREATIVE EDUCATION	United States	Registered	10/13/1999	75/822,277	2,495,162	10/2/2001	10/2/2007	Section 8 & 15 Affidavit due
Our Ref 05662 0089 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level in the fields of design, media arts, culinary arts and fashion.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
AMERICAN EDUCATION CENTERS	United States	Registered	8/19/1998	75/539,195	2,334,702	3/28/2000	3/28/2006	Section 8 & 15 Affidavit due
Our Ref 05662 0211 00 0000 0	***Class***	41	***Goods/Services:*** Providing vocational and career educational services to post-secondary students, namely, training courses, seminars and diploma programs in the fields of business and business administration, healthcare, medicine, law, computer technology and real estate. In Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
ARGOSY UNIVERSITY	United States	Registered	6/25/2002	76/425,388	2,719,073	5/27/2003	5/27/2009	Section 8 & 15 Affidavit

Our Ref 05662 0113 00 0000 0 ***Class*** 41

Goods/Services: Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

ARGOSY UNIVERSITY LOGO	China	Registered			3451813	6/21/2004	6/21/2014	Renewal due

Our Ref 05662 0114 0013 9 ***Class*** 41

Goods/Services: Schools (education); correspondence courses; physical education; instruction; training; education; instruction; educational information; educational assessments (educational or training consulting); arranging or organizing educational discussions; arranging or organizing meetings; arranging or organizing conferences; organizing cultural or educational exhibits; organizing or arranging seminars; book publications (excluding advertising materials); textbook publication (excluding advertising materials); publication of manuals; publication of on-line books; printing on on-line; providing on-line electronic publications (excluding what can be downloaded) (commercial products suspended), in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

ARGOSY UNIVERSITY LOGO	China	Registered			3451818	08/28/2004	08/28/2014	Renewal Due

Our Ref 05662 0114 0013 9 ***Class*** 14

Goods/Services: Necktie clips; awards/prizes; decorative pins; headgear ornaments (made of rare metals); brooches (jewelry); necktie clips (necktie decorative pins); necktie pins; key chains (small ornaments, short decorative chains) (commercial products suspended), in Class 14.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
ARGOSY UNIVERSITY LOGO	China	Registered			3451815	12/14/2004	12/14/2014	Renewal due

Our Ref 05662 0114 0013 9 ***Class*** 21

Goods/Services: Daily-use dinnerware (cups, plates, kettles, jugs); daily-use chinaware (basins, bowls, plates, kettles, cutlery, jugs, pitchers), daily-use ceramic ware (basins, bowls, plates, jugs, pitchers, hot pots, kettles, ceramic eating utensils); glass cups (containers) (commercial production suspended), in Class 21.

Owner: Education Management LLC (as assignee of Education Management Corporation)

ARGOSY UNIVERSITY LOGO	China	Registered			3451814	1/14/2005	1/14/2015	Renewal due

Our Ref 05662 0114 0013 9 ***Class*** 25

Goods/Services: Clothing; overcoats; shirts; sport shirts; T-shirts; hats (visors), in Class 25.

Owner: Education Management LLC (as assignee of Education Management Corporation)

ARGOSY UNIVERSITY LOGO	China	Registered			3451816	1/28/2005	1/28/2015	Renewal due

Our Ref 05662 0114 0013 9 ***Class*** 18

Goods/Services: Student book bags; book bags; backpacks; tote bags; handbags; briefcases; special fabric backpacks; key cases (leather); folders (leather) (commercial products suspended), in Class 18.

Owner: Education Management LLC (as assignee of Education Management Corporation)

ARGOSY UNIVERSITY LOGO (w/flame design)	United States	Registered	6/25/2002	76/425,389	2,719,074	5/27/2003	5/27/2009	Section 8 & 15 Affidavit

Our Ref 05662 0114 00 0000 0 ***Class*** 41

Goods/Services: Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
ART INSTITUTE OF ATLANTA	United States	Registered	9/15/1989	73/825,593	1,604,098	6/26/1990	6/26/2010	Renewal due

Our Ref 05662 0038 00 0000 0 ***Class*** 41 ***Goods/Services:*** Education services, namely post secondary instruction in the fields of visual communication arts and design; interior and landscape design; fashion illustration and marketing; music and video business; and photography, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
ART INSTITUTE OF FORT LAUDERDALE	United States	Registered	9/15/1989	73/825,620	1,601,475	6/12/1990	6/12/2010	Renewal due

Our Ref 05662 0037 00 0000 0 ***Class*** 41 **Goods/Services:** Educational services, namely post secondary instruction in the fields of visual communication arts and design, interior design; fashion design; illustration and marketing; music and video business; photography; and travel and tourism, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
ART INSTITUTE OF HOUSTON	United States	Registered	9/15/1989	73/825,669	1,602,967	6/19/1990	6/19/2010	Renewal due

Our Ref 05662 0040 00 0000 0 ***Class*** 41 **Goods/Services:** Education services, namely post secondary instruction in the fields of visual communication arts and design; interior design; fashion marketing; and photography, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
ART INSTITUTE OF PHILADELPHIA	United States	Registered	9/15/1989	73/825,667	1,605,991	7/10/1990	7/10/2010	Renewal due

Our Ref 05662 0041 00 0000 0 ***Class*** 41 ***Goods/Services:*** Education services, namely post secondary instruction in the fields of visual communication arts and design; interior design; fashion marketing; and photography, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
ART INSTITUTE OF SEATTLE	United States	Registered	9/15/1989	73/825,672	1,604,099	6/26/1990	6/26/2010	Renewal due

Our Ref 05662 0042 00 0000 0
Class 41

Goods/Services: Educational services, namely post secondary instruction in the fields of visual communication arts and design; interior and industrial design; fashion design and marketing; travel and tourism; music and video business; and photography, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
ASSIGNMENTS RESTAURANT	United States	Registered	7/9/2003	76/528,594	2,859,720	7/6/2004	7/6/2010	Section 8 & 15 Affidavit due

Our Ref 05662 0136 00 0000 0
Class 41, 43

Goods/Services: Educational services, namely, offering courses of instruction at the post secondary level, in Class 41; restaurant and catering services, in Class 43.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
BEST TEEN CHEF	Canada	Pending	8/3/2004	1,225,669			7/27/2006	Response to 2nd Office Action due.

Goods/Services: Conducting culinary competitions, in Class 41.

Our Ref 05662 0142 00 0013 1
Class 41

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
BEST TEEN CHEF	United States	Registered	2/4/2004	76/573,845	2,926,054	2/8/2005	2/8/2011	Section 8 & 15 Affidavit due

Goods/Services: Conducting culinary competitions, in Class 41.

Our Ref 05662 0142 00 0000 0
Class 41

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
BEST TEEN CHEF IN AMERICA	United States	Registered	8/5/2002	76/438,098	2,772,749	10/7/2003	10/7/2009	Section 8 & 15 Affidavit due

Our Ref 05662 0121 00 0000 0 ***Class*** 41

Goods/Services: Conducting culinary competitions, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
BROWN MACKIE COLLEGE	United States	Registered	6/22/2004	76/598,532	2,975,531	7/26/2005	7/26/2011	Section 8 & 15 Affidavit due

Our Ref 05662 0154 00 0000 0 ***Class*** 41

Goods/Services: Educational services, namely, providing courses of instruction at the post secondary level, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
BROWN MACKIE College Logo (Fleur-de-lis)	United States	Pending/ Published	12/3/2004	78/526,563				

Our Ref 05662 0192 00 0000 0 ***Class*** 41

Goods/Services: Educational services, namely, conducting courses of instruction at the postsecondary level, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
CI (Stylized)	Canada	Pending	11/17/2004	1,237,578			7/9/2006	Response Due

Our Ref 05662 0152 00 0013 1 ***Class*** 41

Goods/Services: Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
CI (Stylized)	United States	Registered	5/27/2004	76/594,525	3,043,639	1/17/2006	1/17/2012	Section 8 & 15 Affidavit due
Our Ref 05662 0152 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely providing courses of instruction at the postsecondary level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
CI THE CULINARY INSTITUTE OF VANCOUVER & Design	Canada	Pending	4/13/2005	1,254,000			5/11/2006	Response Due
Our Ref 05662 0174 00 0013 1	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
EDMC EDUCATION FOUNDATION	United States	Registered	10/24/2002	76/461,907	2,769,060	9/30/2003	9/30/2009	Section 8 & 15 Affidavit due
Our Ref 05662 0118 00 0000 0	***Class***	36	***Goods/Services:*** Educational fund raising services; financial management, namely, management and distribution of scholarship funds, in Class 36.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
MIAMI INTERNATIONAL UNIVERSITY OF ART AND DESIGN	United States	Registered	1/6/2003	76/480,568	2,902,717	11/16/2004	11/16/2010	Section 8 & 15 Affidavit due
Our Ref 05662 0129 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the post secondary level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							

Mark	*Country*	*Status*	*Appl. Date*	*Appl. No.*	*Reg. No.*	*Reg. Date*	*Next Deadline*	*Comments*
NCPT	United States	Registered	2/2/2000	75/908,483	2,412,620	12/12/2000	6/12/2007	Grace Period Declaration of Use due
Our Ref 05662 0050 00 0000 0 41	***Class***		***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
NORTH AMERICA' S LEADER IN CREATIVE EDUCATION	Canada	Pending/ Opposed	8/4/2004	1,225,920				
Our Ref 05662 0177 00 0013 1 41	***Class***		***Goods/Services:*** Educational services, namely, providing courses of instruction at the college level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
PERSONAL ATTENTION, PROFESSIONAL GROWTH	United States	Pending / Published	10/15/2004	78/500,541				
Our Ref 05662 0188 00 0000 0 41	***Class***		***Goods/Services:*** Educational services, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
SOCRATES DISTANCE LEARNING TECHNOLOGIES GROUP	United States	Registered	4/6/2001	76/241,688	2,655,861	12/3/2002	12/3/2008	Section 8 & 15 Affidavit due
Our Ref 05662 0080 00 0000 0 41	***Class***		***Goods/Services:*** Educational services, namely, developing and providing online courses of instruction for others in the field of distance education and e-learning, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
TALK-ON!	Canada	Pending	12/3/2004	1,239,599				
Our Ref 05662 0147 00 0013 1	***Class***	38	***Goods/Services:*** Providing an online forum for the transmission of messages among computer users concerning education, career topics, and other topics of interest of students, in Class 38.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
TALK-ON!	United States	Registered	6/3/2004	76/595,258	2,964,856	7/5/2005	7/5/2011	Section 8 & 15 Affidavit
Our Ref 05662 0147 00 0000 0	***Class***	38	***Goods/Services:*** Providing an online forum for the transmission of messages among computer users concerning education, career topics, and other topics of interest to students, in Class 38.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
THE ART INSTITUTE OF CALIFORNIA	United States	Pending / Published	3/17/2005	78/589,089				
Our Ref 05662 0102 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
THE ART INSTITUTE OF CHARLESTON	United States	Pending	4/26/2004	78/408,017				
Our Ref 05662 0150 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
THE ART INSTITUTE OF CHARLOTTE	United States	Pending / Published	3/15/2005	78/587,530			4/4/2006	Response due
Our Ref 05662 0205 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
THE ART INSTITUTE OF CHARLOTTE	United States	Registered	4/13/1999	75/682,285	2,411,522	12/5/2000	12/5/2006	Section 8 & 15 Affidavit due
Our Ref 05662 0087 00 0000 0	***Class***	41	***Goods/Services:*** Education services primarily for post high school services, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
THE ART INSTITUTE OF COLORADO	United States	Pending	9/9/2005	78/709,853				
Our Ref 05662 0225 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
THE ART INSTITUTE OF COLORADO	United States	Registered	7/13/1999	75/751,856	2,378,294	8/15/2000	8/15/2006	Section 8 & 15 Affidavit due
Our Ref 05662 0096 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the post-secondary level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
THE ART INSTITUTE OF DALLAS	United States	Registered	2/12/1990	74/028,475	1,621,670	11/6/1990	11/6/2010	Renewal due
Our Ref 05662 0043 00 0000 0	***Class***	41	***Goods/Services:*** Educational services - namely post-secondary instruction in the fields of visual communication arts and design, fashion merchandising, music and video business, interior design, and photography, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
THE ART INSTITUTE OF INDIANAPOLIS	United States	Pending	11/1/2004	78/508,949			7/17/2006	Response Due
Our Ref 05662 0195 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
THE ART INSTITUTE OF JACKSONVILLE	United States	Pending	11/1/2004	78/508,936			7/17/2006	Response Due
Our Ref 05662 0199 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
THE ART INSTITUTE OF LAS VEGAS	United States	Registered	1/17/2001	76/195,048	2,555,535	4/2/2002	4/2/2008	Section 8 & 15 Affidavit due
Our Ref 05662 0107 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
		Pending	3/12/2004	78/383,019			5/29/2006	Response due
THE ART INSTITUTE OF MICHIGAN	United States							
Our Ref 05662 0144 00 0000 0 41	***Class***	***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.						
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
THE ART INSTITUTE OF NEW YORK CITY	United States	Registered	11/28/2000	76/171,802	2,664,210	12/17/2002	12/17/2008	Section 8 & 15 Affidavit due
Our Ref 05662 0023 02 0200 0 41	***Class***	***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level in the fields of design, media arts, culinary arts, and fashion, in Class 41.						
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
THE ART INSTITUTE OF OHIO	United States	Registered	5/26/2004	78/425,639	2,984,379	8/9/2005	4/1/2009	Opening of period to update mark to Principal Register
Our Ref 05662 0139 00 0000 0 41	***Class***	***Goods/Services***: Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.						
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
THE ART INSTITUTE OF ORLANDO	United States	Pending	9/2/2004	78/477,828			5/9/2006	Response Due
Our Ref 05662 0187 00 0000 0 41	***Class***	***Goods/Services:*** Education services, namely, providing courses of instruction at the post secondary level, in Class 41.						
Owner:	Education Management LLC (as assignee of Education Management Corporation)							

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
THE ART INSTITUTE OF PENNSYLVANIA	United States	Pending/ Published	12/9/ 2003	76/ 564,127			9/13/2006	Statement of Use due

Our Ref 05662 0140 00 0000 0 ***Class*** 41

Goods/Services: Educational services, namely, offering courses of instruction at the postsecondary level, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

THE ART INSTITUTE OF PHOENIX	United States	Registered	10/31/ 2003	76/ 555,890	2,903,000	11/16/ 2004	11/16/2010	Section 8 & 15 Affidavit

Our Ref 05662 0138 00 0000 0 ***Class*** 41

Goods/Services: Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

THE ART INSTITUTE OF PITTSBURGH	United States	Registered	9/18/ 1989	73/ 825,945	1,602,968	6/19/ 1990	6/19/2010	Renewal due

Our Ref 05662 0036 00 0000 0 ***Class*** 41

Goods/Services: Education services, namely post secondary instruction in the fields of visual communication arts and design; interior design; fashion illustration and marketing; music and video business; and photography, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

THE ART INSTITUTE OF PORTLAND	United States	Pending / Published	3/15/ 2005	78/ 587,638			4/4/2006	Response due

Our Ref 05662 0210 00 0000 0 ***Class*** 41

Goods/Services: Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
THE ART INSTITUTE OF PORTLAND	United States	Registered	7/13/1999	75/751,855	2,381,997	8/29/2000	8/29/2006	Section 8 & 15 Affidavit due

Our Ref 05662 0060 00 0000 0 ***Class*** 41

Goods/Services: Educational services, namely, providing courses of instruction at the post-secondary level, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
THE ART INSTITUTE OF RALEIGH	United States	Pending	11/1/2004	78/508,945			7/3/2006	Response Due

Our Ref 05662 0197 00 0000 0 ***Class*** 41

Goods/Services: Educational services, namely, providing courses of instruction at the postsecondary level Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
THE ART INSTITUTE OF ST. LOUIS	United States	Pending	11/3/2004	78/510,485			6/13/2006	Response to Second Office Action due

Our Ref 05662 0126 00 0000 0 ***Class*** 41

Goods/Services: Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
THE ART INSTITUTE OF TAMPA	United States	Registered	9/11/2002	76/449,231	2,955,815	5/24/2005	5/24/2011	Section 8 & 15 Affidavit due

Our Ref 05662 0025 02 0200 0 ***Class*** 41

Goods/Services: Educational services, namely, offering courses of instruction at the post secondary level, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
THE ART INSTITUTE OF TENNESSEE	United States	Pending	5/21/2004	78/423,203			8/7/2006	Response due

Our Ref 05662 0151 00 0000 0 ***Class*** 41

Goods/Services: Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
THE ART INSTITUTE OF WASHINGTON	United States	Published	3/15/2005	78/587,607				

Our Ref 05662 0206 00 0000 0 ***Class*** 41

Goods/Services: Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
THE ART INSTITUTE OF WASHINGTON	United States	Registered	8/11/1999	75/773,202	2,382,003	8/29/2000	8/29/2006	Section 8 & 15 Affidavit due

Our Ref 05662 0090 00 0000 0 ***Class*** 41

Goods/Services: Educational services, namely, providing courses of instruction at the post-secondary level, in Class 41.

Owner: Education Management LLC (as assignee of Education Management Corporation)

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
THE ART INSTITUTE ONLINE	United States	Registered	12/9/2002	76/476,773	2,880,785	9/7/2004	9/7/2010	Section 8 & 15 Affidavit due
Our Ref 05662 0095 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the post secondary level in the fields of design and media arts, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
THE CULINARY INSTITUTE OF LAS VEGAS	United States	Registered	5/21/2004	78/423,155	2,974,940	7/19/2005	7/18/2009	Update mark to Principal Register
Our Ref 05662 0145 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
THE ILLINOIS INSTITUTE OF ART	United States	Pending	9/15/2005	78/713,494				
Our Ref 05662 0226 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
THE ILLINOIS INSTITUTE OF ART	United States	Registered	1/24/2000	75/902,046	2,409,652	11/28/2000	11/28/2006	Section 8 & 15 Affidavit due
Our Ref 05662 0048 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							

Mark	Country	Status	Appl. Date	Appl. No.	Reg. No.	Reg. Date	Next Deadline	Comments
THE NATIONAL CENTER FOR PARALEGAL TRAINING	United States	Registered	2/2/2000	75/ 908,482	2,447,724	5/1/2001	5/1/2007	Section 8 & 15 Affidavit due
Our Ref 05662 0049 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
THE NEW ENGLAND INSTITUTE OF ART	United States	Registered	4/25/ 2001	76/ 246,053	2,568,701	5/7/2002	5/7/2008	Section 8 & 15 Affidavit due
Our Ref 05662 0106 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
THE NEW YORK RESTAURANT SCHOOL	United States	Registered	6/5/2000	76/ 062,954	2,473,465	7/31/ 2001	7/31/2007	Section 8 & 15 Affidavit due
Our Ref 05662 0046 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, namely, providing courses of instruction at the postsecondary level, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
WE' RE OUT THERE	Canada	Pending	11/4/ 2005	1,278,567				
Our Ref 05622 0212 00 0013 1	***Class***	41	***Goods/Services:*** Educational services, in Class 41.					
Owner:	Education Management LLC (as assignee of Education Management Corporation)							
WE' RE OUT THERE	United States	Pending	5/9/2005	78/ 625,670				
Our Ref 05622 0212 00 0000 0	***Class***	41	***Goods/Services:*** Educational services, in Class 41.					

Owner: Education Management LLC (as assignee of Education Management Corporation)

SUBSCRIPTION AGREEMENT

This SUBSCRIPTION AGREEMENT (this "Agreement") is made as of June 1, 2006 by and among EM Acquisition Corporation, a Pennsylvania corporation ("Merger Co" or the "Company"), and each of the undersigned purchasers (each, a "Purchaser" and, collectively, the "Purchasers") who are subscribing hereby to purchase shares of Common Stock, par value $0.01 per share, of Merger Co (the "Common Stock").

WHEREAS, the Company and the Purchasers desire to enter into an agreement pursuant to which the Purchasers will purchase from the Company, and the Company will issue to the Purchasers, the number of shares of Common Stock as set forth on Schedule I hereto;

WHEREAS, Merger Co and Education Management Corporation, a Pennsylvania corporation ("EMC"), entered into an Agreement and Plan of Merger, dated as of March 3, 2006 (as such agreement may be amended, supplemented or otherwise modified from time to time, the "Merger Agreement"), pursuant to which Merger Co will merge with and into EMC (the "Merger"), with EMC continuing as the surviving corporation (in that capacity, the "Surviving Corporation") and succeeding to and assuming all the rights and obligations of the Company hereunder (and, from and after the Merger, all references herein to the Company shall be deemed to be references to EMC in its capacity as the Surviving Corporation); and

WHEREAS, pursuant to the Merger, each outstanding share of Common Stock will be converted into one share of the common stock, par value $0.01 per share, of the Surviving Corporation (the "Surviving Corporation Common Stock").

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and obligations hereinafter set forth, the parties hereto hereby agree as follows:

1. Purchase and Sale of Common Stock. Subject to the terms and conditions set forth in this Agreement, immediately prior to the consummation of the Merger, each of the Purchasers shall purchase, and the Company shall sell to each Purchaser (the "Subscription"), at a purchase price of $50.00 per share (the "Per Share Purchase Price"), the number of shares of Common Stock set forth next to such Purchaser' s name on Schedule I to this Agreement.

2. Contribution. At the closing of the transactions contemplated hereunder (the "Closing"), GS Capital Partners V Fund, L.P, a Delaware limited partnership ("GSCP"), and Providence Equity Partners V L.P., a Delaware limited partnership ("Providence", and collectively with GSCP, the "Original Purchasers"), shall contribute to the Company the shares of Common Stock (the "Original Shares") purchased by the Original Purchasers pursuant to subscription agreements, each dated March 3, 2006, by and between the Company and each of GSCP and Providence (the "Original Subscription Agreements"), in exchange for the purchase price paid for such shares (the "Original Purchase Price"). Upon such contribution of the Original Shares by the Original Purchasers, the Original Subscription Agreements shall be hereby terminated and of no further force and effect.

3. Actions at the Closing. Simultaneously with, or prior to, the Closing, the following actions shall occur:

(a) The Company shall deliver to each Purchaser or to such Purchaser' s designated custodian a certificate or certificates representing the shares of Common Stock purchased by such Purchaser, registered in the name of such Purchaser or its nominee, against receipt at the Closing by the Company from the Purchasers of the product of the Per Share Purchase Price and such number of shares of Common Stock set forth opposite such Purchaser' s name on Schedule I, which shall be paid by wire transfer to an account designated by the Company;

(b) A shareholders' agreement, dated as of the date hereof (the "Shareholders' Agreement"), among Merger Co, GSCP, GS Capital Partners V Offshore Fund, L.P., a Cayman Islands exempted limited partnership ("GSCP Offshore"), GS Capital Partners V GmbH & Co. KG, a limited partnership formed under the laws of the Federal Republic of Germany ("GSCP Germany"), GS Capital Partners V Institutional, L.P., a Delaware limited partnership ("GSCP Institutional", collectively with GSCP, GSCP Offshore and GSCP Germany, the "GSCP Parties"), Providence, Providence Equity Partners V-A L.P., a Delaware limited partnership ("Providence-A"), Providence Equity Partners IV L.P., a Delaware limited partnership ("Providence-IV"), Providence Equity Operating Partners IV L.P., a Delaware limited partnership ("Providence Operating-IV", collectively with Providence, Providence-A, Providence-IV, the "Providence Parties") and the other Purchasers shall be duly executed and delivered by the parties thereto;

(c) A registration rights agreement, dated as of the date hereof (the "Registration Rights Agreement"), among Merger Co and each of the Purchasers shall be duly executed and delivered by the parties thereto;

(d) A management rights letter agreement, dated as of the date hereof (the "Management Rights Letter Agreement"), intended to provide to the Purchasers who are parties thereto and who are "venture capital operating companies" (within the meaning of the Department of Labor' s plan asset regulation) (the "Management Rights Investors") with "contractual management rights" (within the meaning of the Department of Labor' s plan asset regulation), with respect to the Company and its direct and indirect subsidiaries, shall be duly executed and delivered by the parties thereto; and

(e) The Original Purchasers shall deliver certificates representing the Original Shares against payment by the Company of the Original Purchase Price.

4. Conditions to Closing. The obligation of the parties to consummate the Subscription shall be subject to the concurrent consummation of the Merger contemplated by the Merger Agreement, the execution in full and delivery of the Shareholders' Agreement, the Registration Rights Agreement and a Management Rights Letter Agreement, as applicable, and the completion of the transactions contemplated in Section 2 hereof.

5. Representations and Warranties of the Purchasers. Each Purchaser hereby represents and warrants to the Company as follows:

(a) Such Purchaser is acquiring the Common Stock for such Purchaser' s own account as principal for investment and not with a view to resale, distribution or fractionalization in whole or in part, and has no present agreement, understanding or arrangement to subdivide, sell, assign or otherwise dispose of all or any part of the Common Stock or the Surviving Corporation Common Stock and understands that there is no established market for the Common Stock or the Surviving Corporation Common Stock and no public market for the Common Stock or the Surviving Corporation Common Stock is likely to develop; provided, however, that AlpInvest Partners Later Stage Co-Investments Custodian IIA B.V. is acquiring the Common Stock in its capacity as custodian for AlpInvest Partners Later Stage Co-Investments IIA C.V.

(b) Such Purchaser acknowledges that the offering and sale of Common Stock is subject to the execution and delivery of the Shareholders' Agreement and the Registration Rights Agreement and that the shares of Common Stock it is acquiring will be converted into shares of Surviving Corporation Common Stock upon the consummation of the Merger contemplated by the Merger Agreement.

(c) Such Purchaser acknowledges that the offering and sale of Common Stock is intended to be exempt from registration under the Securities Act of 1933, as amended (the "Securities Act"), and that the Common Stock and the Surviving Corporation Common Stock cannot be sold or otherwise disposed of (the commission of any such act, or any such similar act in relation to a person' s beneficial interest in the Company being referred to as a "Transfer") unless the Transfer is registered under the Securities Act or an exemption from such registration is available. Such Purchaser also understands that the Transfer of the Common Stock and Surviving Corporation Common Stock will be restricted by the provisions of state securities laws and the terms of the Shareholders' Agreement.

(d) Such Purchaser represents that it is an "accredited investor," as such term is defined in Rule 501 of Regulation D, promulgated under the Securities Act.

(e) If such Purchaser is an entity, such Purchaser is duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization and has all requisite power and authority to carry on its business as presently conducted and proposed to be conducted.

(f) Such Purchaser has full power and authority to execute, deliver and perform its obligations under this Agreement, the Shareholders' Agreement, the Registration Rights Agreement and the Management Rights Letter Agreement, as applicable. This Agreement, the Shareholders' Agreement, the Registration Rights Agreement and the Management Rights Letter Agreement, as applicable, have been duly and validly authorized, executed and delivered by such Purchaser.

(g) This Agreement, the Shareholders' Agreement, the Registration Rights Agreement the Management Rights Letter Agreement, as applicable, constitute a valid and binding obligation of such Purchaser, enforceable against such Purchaser in accordance with their terms, except as the enforceability of such agreement may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally.

(h) The execution, delivery and performance by such Purchaser of this Agreement, the Shareholders' Agreement, the Registration Rights Agreement and the Management Rights Letter Agreement, as applicable, do not and will not (i) require such Purchaser to obtain any consent, approval, authorization or other order of, or to make any filing, registration or qualification with any court, regulatory body, administrative agency or other governmental body (except such as may have previously been obtained or is permitted to be, and will be, filed or made promptly following the date hereof), or (ii) if such Purchaser is an entity, conflict with or constitute a violation of any provision of the certificate of incorporation or bylaws (or similar organizational documents) of such Purchaser, (iii) violate, conflict with or constitute a breach or default under, or result in the imposition of a lien or encumbrance on any material properties of such Purchaser pursuant to any bond, debenture, note or other evidence of indebtedness of such Purchaser or any indenture or other material agreement to which such Purchaser is a party or by which it is bound or to which any material property of such Purchaser may be subject or (iv) violate, conflict with or constitute a breach of any law, regulation, order, arbitration award, judgment or decree.

6. Representations and Warranties of the Original Purchasers. In addition to the representations and warranties in Section 5 above, each Original Purchaser hereby also represents and warrants to the Company as follows:

(a) Such Original Purchaser is the beneficial owner of and has good and valid title to the Original Shares to be delivered to the Company pursuant to this Agreement. All such Original Shares are validly issued, fully paid and nonassessable, and are owned by such Original Purchaser free and clear of any Liens. Upon consummation of the transactions contemplated by this Agreement, such Original Purchaser will convey to the Company good and valid title to the Original Shares, free and clear of any Liens.

7. Representations and Warranties of the Company. The Company represents and warrants to the Purchasers as follows:

(a) The Company is duly organized and is validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and has all requisite corporate power and authority to carry on its business as presently conducted and proposed to be conducted. A true and complete copy of the bylaws of the Company which shall be the bylaws of the Surviving Corporation have been delivered to each Purchaser.

(b) The Company has full power and authority to execute, deliver and perform its obligations under this Agreement, the Shareholders' Agreement, the Registration Rights Agreement and the Management Rights Letter Agreements. This Agreement, the Shareholders' Agreement, the Registration Rights Agreement and the Management Rights Letter Agreements have been duly and validly authorized, executed and delivered by the Company.

(c) This Agreement, the Shareholders' Agreement, the Registration Rights Agreement and the Management Rights Letter Agreements constitute a valid and binding obligation of the Company, enforceable against the Company in accordance with their terms, except as the enforceability of such agreement may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally.

(d) The authorized capital stock of the Company consists of 40,000,000 shares of Common Stock. The only shares of Common Stock outstanding immediately prior to the Closing are the Original Shares. Immediately prior to the Closing, there are no outstanding options, warrants or other rights to subscribe for, purchase or otherwise acquire any securities of the Company. The number of such shares which will be issued and outstanding after giving effect to the transactions contemplated by this Agreement and the number of shares of Surviving Corporation Common Stock which will be issued and outstanding immediately after giving effect to the consummation of the Merger are set forth on Schedule I.

(e) Upon consummation of the transactions contemplated by this Agreement, the shares of Common Stock conveyed to such Purchaser set forth next to such Purchaser' s name will be duly authorized, validly issued, fully paid and nonassesable.

(f) The execution, delivery and performance by the Company of this Agreement, including the issuance and delivery of the shares of Common Stock to the Purchasers hereunder, the Shareholders' Agreement, the Registration Rights Agreement and the Management Rights Letter Agreements will not (i) require the Company to obtain any consent, approval, authorization or other order of, or to make any filing, registration or qualification with any court, regulatory body, administrative agency or other governmental body (except such as may have previously been obtained or is permitted to be, and will be, filed or made promptly following the date hereof), (ii) conflict with or constitute a violation of any provision of the certificate of incorporation or bylaws of the Company, (iii) violate, conflict with or constitute a breach or default under, or result in the imposition of a lien or encumbrance on any material properties of the Company pursuant to any bond, debenture, note or other evidence of indebtedness of the Company or any indenture or other material agreement to which the Company is a party or by which it is bound or to which any material property of the Company may be subject or (iv) violate, conflict with or constitute a breach of any law, regulation, order, arbitration award, judgment or decree.

(g) The Company has not conducted any material business, entered into any material transactions or incurred material liability from the date of purchase of the Original Shares until the Closing hereunder other than in connection with the Merger and the financing thereof.

8. Indemnification. The Company agrees to indemnify and hold harmless each of the Purchasers, their respective directors, members, managers and officers and their affiliates (the Purchasers, and the respective directors, officers, partners, members, managers, affiliates and controlling persons thereof, each, a "Purchaser Indemnitee") from and against any and all liability, including, without limitation, all obligations, costs, fines, claims, actions, injuries, demands, suits, judgments, proceedings, investigations, arbitrations (including shareholder claims, actions, injuries, demands, suits, judgments, proceedings, investigations or arbitrations) and reasonable expenses, including reasonable accountant' s and reasonable attorney' s fees and expenses (together, the "Losses"), incurred by such Purchaser Indemnitee before or after the date of this Agreement and arising out of, resulting from, or relating to (a) such Purchaser Indemnitee' s purchase and/or ownership of the shares of Common Stock or the Surviving Corporation Common Stock; (b) the transactions contemplated by the Merger Agreement (including the agreements described therein), and any other purchase agreements

pursuant to which any Purchaser Indemnitee purchased securities of the Company and all agreements contemplated thereby; or (c) any litigation to which any Purchaser Indemnitee is made a party in its capacity as a shareholder or owner of securities (or a partner, director, officer, member, manager, affiliate or controlling person of any Purchaser Indemnitee) of the Company or the Surviving Corporation, including any litigation arising out of the sale or merger of the Company or the Surviving Corporation; provided that the foregoing indemnification rights in this Section 8 shall not be available to the extent that (i) any such Losses are incurred as a result of such Purchaser Indemnitee' s willful misconduct or gross negligence; (ii) any such Losses are incurred as a result of non-compliance by such Purchaser Indemnitee with any laws or regulations applicable to any of them; (iii) any such Losses are incurred as a result of non-compliance by such Purchaser Indemnitee with its obligations under any of the agreements or instruments referenced above or any other agreements or instruments with respect to the Company to which such Purchaser Indemnitee is or becomes a party or otherwise becomes bound or such Purchaser Indemnitee' s breach of this Agreement; or (iv) subject to the rights of contribution provided for below, to the extent indemnification for any Losses would violate any applicable law, regulation or public policy. For purposes of this Section 8, none of the circumstances described in the limitations contained in the proviso in the immediately preceding sentence shall be deemed to apply absent a final non-appealable judgment of a court of competent jurisdiction to such effect, in which case to the extent any such limitation is so determined to apply to any Purchaser Indemnitee as to any previously advanced indemnity payments made by the Company under this Section 8, then such payments shall be promptly repaid by such Purchaser Indemnitee to the Company. The rights of any Purchaser Indemnitee to indemnification hereunder will be in addition to any other rights any such party may have under the Shareholders' Agreement, the Registration Rights Agreement, the Management Rights Letter Agreement, as applicable, or any other agreement or instrument referenced above or any other agreement or instrument to which such Purchaser Indemnitee is or becomes a party or is or otherwise becomes a beneficiary or under law or regulation. In the event of any payment of indemnification pursuant to this Section 8, so long as any Purchaser Indemnitee is fully indemnified for all Losses, the Company will be subrogated to the extent of such payment to all of the related rights of recovery of the Purchaser Indemnitee to which such payment is made against all other persons. Such Purchaser Indemnitee shall execute all papers reasonably required to evidence such rights. The Company will be entitled at its election to participate in the defense of any third party claim upon which indemnification is due pursuant to this Section 8 or to assume the defense thereof, with counsel reasonably satisfactory to such Purchaser Indemnitee unless, in the reasonable judgment of the Purchaser Indemnitee, a conflict of interest between the Company and such Purchaser Indemnitee may exist, in which case such Purchaser Indemnitee shall have the right to assume its own defense and the Company shall be liable for all reasonable expenses therefor. Except as set forth above, should the Company assume such defense all further defense costs of the Purchaser Indemnitee in respect of such third party claim shall be for the sole account of such party and not subject to indemnification hereunder. The Company will not without the prior written consent of the Purchaser Indemnitee effect any settlement of any threatened or pending third party claim in which such Purchaser Indemnitee is or could have been a party and be entitled to indemnification hereunder unless such settlement solely involves the payment of money and includes an unconditional release of such Purchaser Indemnitee from all liability and claims that are the subject matter of such claim. If the indemnification provided for above is unavailable in respect of any Losses, then the Company, in

lieu of indemnifying a Purchaser Indemnitee, shall contribute to the amount paid or payable by such Purchaser Indemnitee in such proportion as is appropriate to reflect the relative fault of the Company and such Purchaser Indemnitee in connection with the actions which resulted in such Losses, as well as any other equitable considerations.

9. Notices. All notices, requests, consents and other communications hereunder to any party shall be deemed to be sufficient if contained in a written instrument delivered in person or by telecopy (with a confirmatory copy sent by different means within three business days of such notice), nationally-recognized overnight courier or first class registered or certified mail, return receipt requested, postage prepaid, addressed to such party at the address set forth below or at such address or to the attention of such other person as may hereafter be designated in writing by such party to the other parties:

(i) if to the Company, to:

Education Management Corporation
210 Sixth Avenue
Pittsburgh, Pennsylvania 15222
Telephone: (412) 562-0900
Telecopy: (412) 562-0598
Attention: John R. McKernan, Jr.

with a copy to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Telephone: (212) 455-2000
Telecopy: (212) 455-2502
Attention: Gary I. Horowitz, Esq.

(ii) if to a Purchaser, to:

the address of such Purchaser as set forth on Schedule I.

All such notices, requests, consents and other communications will be deemed to have been given hereunder when received.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, provided that the provisions set forth herein that are required to be governed by the Pennsylvania Business Corporation Law of 1988, as amended, shall be governed by the Pennsylvania Business Corporation Law of 1988, as amended.

11. Transfer and Assignment. This Agreement shall be binding upon and inure to the benefit of the Purchasers and the Company. None of the Purchasers shall have the

right to assign all or any part of its rights and obligations except in accordance with the Shareholders' Agreement.

12. Survival of Representations and Warranties. The representations, warranties and covenants in this Agreement shall survive the execution and delivery of this Agreement, any investigation, the Closing hereunder and the closing under the Merger Agreement.

13. Entire Agreement. This Agreement and the other writings referred to herein or delivered pursuant hereto which form a part hereof contain the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

14. Descriptive Headings. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

15. Counterparts. This Agreement may be executed in separate counterparts each of which shall be an original and all of which taken together shall constitute one and the same agreement.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, the parties hereto have executed this Subscription Agreement as of the day and year first above written.

EM ACQUISITION CORPORATION

By: _____

Name:

Title:

[Signature Page to Subscription Agreement]

GS CAPITAL PARTNERS V FUND, L.P.

By: GSCP V Advisors, L.L.C.,
its general partner

By: _____
Name:
Title:

GS CAPITAL PARTNERS V OFFSHORE FUND, L.P.

By: GSCP V Offshore Advisors, L.L.C.,
its general partner

By: _____
Name:
Title:

GS CAPITAL PARTNERS V GmbH & Co. KG

By: GS Advisors V, L.L.C.,
its managing limited partner

By: _____
Name:
Title:

GS CAPITAL PARTNERS V INSTITUTIONAL, L.P.

By: GS Advisors V, L.L.C.,
its general partner

By: _____
Name:
Title:

[Signature Page to Subscription Agreement]

PROVIDENCE EQUITY PARTNERS V L.P.

By: Providence Equity Partners GP V L.P.,
its general partner

By: Providence Equity Partners V LLC,
its general partner

By: _____
Name:
Title:

PROVIDENCE EQUITY PARTNERS V-A L.P.

By: Providence Equity Partners GP V L.P.,
its general partner

By: Providence Equity Partners V LLC,
its general partner

By: _____
Name:
Title:

[Signature Page to Subscription Agreement]

PROVIDENCE EQUITY PARTNERS IV L.P.

By: Providence Equity GP IV LP,
its general partner

By: Providence Equity Partners IV L.L.C.,
its general partner

By: _____
Name:
Title:

PROVIDENCE EQUITY OPERATING PARTNERS IV L.P.

By: Providence Equity GP IV LP,
its general partner

By: Providence Equity Partners IV L.L.C.,
its general partner

By: _____
Name:
Title:

[Signature Page to Subscription Agreement]

GS PRIVATE EQUITY PARTNERS 2000, L.P.

By: GS PEP 2000 Advisors, L.L.C.,
its general partner

By: GSAM Gen-Par, L.L.C.,
its Managing Member

By: _____
Name:
Title:

GS PRIVATE EQUITY PARTNERS 2000 OFFSHORE HOLDINGS, L.P.

By: GS PEP 2000 Offshore Holdings Advisors, Inc.,
its general partner

By: _____
Name:
Title:

GS PRIVATE EQUITY PARTNERS 2000 – DIRECT INVESTMENT FUND, L.P.

By: GS PEP 2000 Direct Investment Advisors, L.L.C.,
its general partner

By: GSAM Gen-Par, L.L.C.,
its Managing Member

By: _____
Name:
Title:

[Signature Page to Subscription Agreement]

GS PRIVATE EQUITY PARTNERS 2002, L.P.

By: GS PEP 2002 Advisors, L.L.C.,
its general partner

By: GSAM Gen-Par, L.L.C.,
its Managing Member

By: _____
Name:
Title:

GS PRIVATE EQUITY PARTNERS 2002 OFFSHORE HOLDINGS, L.P.

By: GS PEP 2002 Offshore Holdings Advisors, Inc.,
its general partner

By: GSAM Gen-Par, L.L.C.,
its director

By: _____
Name:
Title:

GS PRIVATE EQUITY PARTNERS 2002 – DIRECT INVESTMENT FUND, L.P.

By: GS PEP 2002 Direct Investment Advisors, L.L.C.,
its general partner

By: GSAM Gen-Par, L.L.C.,
its Managing Member

By: _____
Name:
Title:

GS PRIVATE EQUITY PARTNERS 2002
EMPLOYEE FUND, L.P.

By: GS PEP 2002 Employee Funds GP, L.L.C.,
its general partner

By: _____
Name:
Title:

GOLDMAN SACHS PRIVATE EQUITY PARTNERS
2004, L.P.

By: Goldman Sachs PEP 2004 Advisors, L.L.C.,
its general partner

By: GSAM Gen-Par, L.L.C.,
its Managing Member

By: _____
Name:
Title:

GOLDMAN SACHS PRIVATE EQUITY PARTNERS
2004 OFFSHORE HOLDINGS, L.P.

By: Goldman Sachs PEP 2004 Offshore Holdings
Advisors, Inc.,
its general partner

By: _____
Name:
Title:

[Signature Page to Subscription Agreement]

GOLDMAN SACHS PRIVATE EQUITY PARTNERS 2004 – DIRECT INVESTMENT FUND, L.P.

By: Goldman Sachs PEP 2004 Direct Investment Advisors, L.L.C.,
its general partner

By: GSAM Gen-Par, L.L.C.,
its Managing Member

By: _____
Name:
Title:

GOLDMAN SACHS PRIVATE EQUITY PARTNERS 2004 EMPLOYEE FUND, L.P.

By: Goldman Sachs PEP 2004 Employee Funds GP, L.L.C.,
its general partner

By: _____
Name:
Title:

MULTI-STRATEGY HOLDINGS, L.P.

By: Multi-Strategy Holdings Offshore Advisors, Inc.,
its general partner

By: _____
Name:
Title: Authorized Signatory

GOLDMAN SACHS EDMC INVESTORS, L.P.

By: GS EDMC Advisors, L.L.C.,
its general partner

By: _____
Name:
Title:

[Signature Page to Subscription Agreement]

FISHER LYNCH CO-INVESTMENT PARTNERSHIP, L.P.

By: Fisher Lynch GP, L.P.,
its general partner

By: FLC G.P., Inc.,
its general partner

By: _____
Name: Leon Kuan
Title: Authorized Officer

ONTARIO TEACHERS' PENSION PLAN BOARD

By: _____
Name: Michele Buchignani
Title: Portfolio Manager

GENERAL ELECTRIC PENSION TRUST

By: GE Asset Management Incorporated,
its Investment Manager

By: _____
Name: Andreas T. Hildebrand
Title: Vice President

CGI PRIVATE EQUITY LP, LLC

By: _____
Name:
Title: Attorney-In-Fact

[Signature Page to Subscription Agreement]

CREDIT SUISSE/ CFIG EMDC SPV, LLC

By: DLJ MB Advisors, Inc.,
its Sole Member

By: _____
Name:
Title:

ALPINVEST PARTNERS CS INVESTMENTS 2006 C.V.

By: _____
Name:
Title:

By: _____
Name:
Title:

ALPINVEST PARTNERS LATER STAGE CO-INVESTMENTS CUSTODIAN IIA B.V., (as custodian for ALPINVEST PARTNERS LATER STAGE CO-INVESTMENTS IIA C.V.)

By: _____
Name:
Title:

By: _____
Name:
Title:

[Signature Page to Subscription Agreement]

Issuance of Common Stock

Name of Purchaser and Purchaser' s Address		Number of Shares of Merger Co Common Stock Purchased	Purchase Price of Merger Co Common Stock	Number of Shar Surviving Corpor Common Stoc Immediately Afte Merger
GS Capital Partners V Fund, L.P. Goldman Sachs Capital Partner c/o Goldman, Sachs & Co. 85 Broad Street New York, New York 10004 Telephone: (212) 902-0353 Telecopy: (212) 357-5505 Attention: John Bowman	with a copy to: Fried, Frank, Harris, Shriver & Jacobson LLP One New York Plaza New York, New York 10004 Telephone: (212) 859-8000 Telecopy: (212) 859-4000 Attention: Robert C. Schwenkel, Esq. Philip Richter, Esq.	5,265,601.00	$263,280,050	5,265,601.00
GS Capital Partners V Offshore Fund, L.P. Goldman Sachs Capital Partner c/o Goldman, Sachs & Co. 85 Broad Street New York, New York 10004 Telephone: (212) 902-0353 Telecopy: (212) 357-5505 Attention: John Bowman	with a copy to: Fried, Frank, Harris, Shriver & Jacobson LLP One New York Plaza New York, New York 10004 Telephone: (212) 859-8000 Telecopy: (212) 859-4000 Attention: Robert C. Schwenkel, Esq. Philip Richter, Esq.	2,719,989.00	$135,999,450	2,719,989.00
GS Capital Partners V GmbH & Co. KG Goldman Sachs Capital Partner c/o Goldman, Sachs & Co. 85 Broad Street New York, New York 10004 Telephone: (212) 902-0353 Telecopy: (212) 357-5505 Attention: John Bowman	with a copy to: Fried, Frank, Harris, Shriver & Jacobson LLP One New York Plaza New York, New York 10004 Telephone: (212) 859-8000 Telecopy: (212) 859-4000 Attention: Robert C. Schwenkel, Esq. Philip Richter, Esq.	208,763.00	$10,438,150	208,763.00

Name of Purchaser and Purchaser' s Address		Number of Shares of Merger Co Common Stock Purchased	Purchase Price of Merger Co Common Stock	Number of Shares of Surviving Corporation Common Stock Immediately After the Merger
GS Capital Partners V Institutional, L.P. Goldman Sachs Capital Partner c/o Goldman, Sachs & Co. 85 Broad Street New York, New York 10004 Telephone: (212) 902-0353 Telecopy: (212) 357-5505 Attention: John Bowman	with a copy to: Fried, Frank, Harris, Shriver & Jacobson LLP One New York Plaza New York, New York 10004 Telephone: (212) 859-8000 Telecopy: (212) 859-4000 Attention: Robert C. Schwenkel, Esq. Philip Richter, Esq.	1,805,647.00	$90,282,350	1,805,647.00
Providence Equity Partners V L.P. Providence Equity Partners 50 Kennedy Plaza, 18th Floor Providence, Rhode Island 02903 Telecopy: (401) 751-1790 Attention: Paul J. Salem	with a copy to: Weil, Gotshal & Manges LLP 50 Kennedy Plaza Providence, Rhode Island 02903 Telephone: (401) 278-4700 Telecopy: (401) 278-4701 Attention: David K. Duffell, Esq.	8,117,764.80	$405,888,240	8,117,764.80
Providence Equity Partners V-A L.P. Providence Equity Partners 50 Kennedy Plaza, 18th Floor Providence, Rhode Island 02903 Telecopy: (401) 751-1790 Attention: Paul J. Salem	with a copy to: Weil, Gotshal & Manges LLP 50 Kennedy Plaza Providence, Rhode Island 02903 Telephone: (401) 278-4700 Telecopy: (401) 278-4701 Attention: David K. Duffell, Esq.	1,282,235.20	$64,111,760	1,282,235.20

Name of Purchaser and Purchaser' s Address		Number of Shares of Merger Co Common Stock Purchased	Purchase Price of Merger Co Common Stock	Number of Shares of Surviving Corporation Common Stock Immediately After the Merger
Providence Equity Partners IV L.P. Providence Equity Partners 50 Kennedy Plaza, 18th Floor Providence, Rhode Island 02903 Telecopy: (401) 751-1790 Attention: Paul J. Salem	with a copy to: Weil, Gotshal & Manges LLP 50 Kennedy Plaza Providence, Rhode Island 02903 Telephone: (401) 278-4700 Telecopy: (401) 278-4701 Attention: David K. Duffell, Esq.	598,071.00	$29,903,550	598,071.00
Providence Equity Operating Partners IV L.P. Providence Equity Partners 50 Kennedy Plaza, 18th Floor Providence, Rhode Island 02903 Telecopy: (401) 751-1790 Attention: Paul J. Salem	with a copy to: Weil, Gotshal & Manges LLP 50 Kennedy Plaza Providence, Rhode Island 02903 Telephone: (401) 278-4700 Telecopy: (401) 278-4701 Attention: David K. Duffell, Esq.	1,929.00	$96,450	1,929.00
GS Private Equity Partners 2000, L.P. Goldman, Sachs & Co. One New York Plaza, 37th Floor New York, New York 10004 Telephone: (212) 357-3448 Telecopy: (212) 428-4677 Attention: Brandon T. Press Vice President & Assistant General Counsel	with a copy to: Goldman, Sachs & Co. 32 Old Slip, 9th Floor New York, New York 10005 Telephone: (212) 902-9839 Telecopy: (212) 493-0187 Attention: Jennifer Barbetta Vice President	427,925.60	$21,396,280	427,925.60

Name of Purchaser and Purchaser' s Address		Number of Shares of Merger Co Common Stock Purchased	Purchase Price of Merger Co Common Stock	Number of Shares of Surviving Corporation Common Stock Immediately After the Merger
GS Private Equity Partners 2000 Offshore Holdings, L.P. Goldman, Sachs & Co. One New York Plaza, 37th Floor New York, New York 10004 Telephone: (212) 357-3448 Telecopy: (212) 428-4677 Attention: Brandon T. Press Vice President & Assistant General Counsel	with a copy to: Goldman, Sachs & Co. 32 Old Slip, 9th Floor New York, New York 10005 Telephone: (212) 902-9839 Telecopy: (212) 493-0187 Attention: Jennifer Barbetta Vice President	150,625.60	$ 7,531,280	150,625.60
GS Private Equity Partners 2000 – Direct Investment Fund, L.P. Goldman, Sachs & Co. One New York Plaza, 37th Floor New York, New York 10004 Telephone: (212) 357-3448 Telecopy: (212) 428-4677 Attention: Brandon T. Press Vice President & Assistant General Counsel	with a copy to: Goldman, Sachs & Co. 32 Old Slip, 9th Floor New York, New York 10005 Telephone: (212) 902-9839 Telecopy: (212) 493-0187 Attention: Jennifer Barbetta Vice President	166,192.00	$ 8,309,600	166,192.00
GS Private Equity Partners 2002, L.P. Goldman, Sachs & Co. One New York Plaza, 37th Floor New York, New York 10004 Telephone: (212) 357-3448 Telecopy: (212) 428-4677 Attention: Brandon T. Press Vice President & Assistant General Counsel	with a copy to: Goldman, Sachs & Co. 32 Old Slip, 9th Floor New York, New York 10005 Telephone: (212) 902-9839 Telecopy: (212) 493-0187 Attention: Jennifer Barbetta Vice President	59,656.16	$ 2,982,808	59,656.16

Name of Purchaser and Purchaser' s Address		Number of Shares of Merger Co Common Stock Purchased	Purchase Price of Merger Co Common Stock	Number of Shares of Surviving Corporation Common Stock Immediately After the Merger
GS Private Equity Partners 2002 Offshore Holdings, L.P. Goldman, Sachs & Co. One New York Plaza, 37th Floor New York, New York 10004 Telephone: (212) 357-3448 Telecopy: (212) 428-4677 Attention: Brandon T. Press Vice President & Assistant General Counsel	with a copy to: Goldman, Sachs & Co. 32 Old Slip, 9th Floor New York, New York 10005 Telephone: (212) 902-9839 Telecopy: (212) 493-0187 Attention: Jennifer Barbetta Vice President	229,773.60	$11,488,680	229,773.60
GS Private Equity Partners 2002 – Direct Investment Fund, L.P. Goldman, Sachs & Co. One New York Plaza, 37th Floor New York, New York 10004 Telephone: (212) 357-3448 Telecopy: (212) 428-4677 Attention: Brandon T. Press Vice President & Assistant General Counsel	with a copy to: Goldman, Sachs & Co. 32 Old Slip, 9th Floor New York, New York 10005 Telephone: (212) 902-9839 Telecopy: (212) 493-0187 Attention: Jennifer Barbetta Vice President	51,850.40	$2,592,520	51,850.40
GS Private Equity Partners 2002 Employee Fund, L.P. Goldman, Sachs & Co. One New York Plaza, 37th Floor New York, New York 10004 Telephone: (212) 357-3448 Telecopy: (212) 428-4677 Attention: Brandon T. Press Vice President & Assistant General Counsel	with a copy to: Goldman, Sachs & Co. 32 Old Slip, 9th Floor New York, New York 10005 Telephone: (212) 902-9839 Telecopy: (212) 493-0187 Attention: Jennifer Barbetta Vice President	26,379.64	$1,318,982	26,379.64

Name of Purchaser and Purchaser' s Address		Number of Shares of Merger Co Common Stock Purchased	Purchase Price of Merger Co Common Stock	Number of Shares of Surviving Corporation Common Stock Immediately After the Merger
GS Private Equity Partners 2004, L.P. Goldman, Sachs & Co. One New York Plaza, 37th Floor New York, New York 10004 Telephone: (212) 357-3448 Telecopy: (212) 428-4677 Attention: Brandon T. Press Vice President & Assistant General Counsel	with a copy to: Goldman, Sachs & Co. 32 Old Slip, 9th Floor New York, New York 10005 Telephone: (212) 902-9839 Telecopy: (212) 493-0187 Attention: Jennifer Barbetta Vice President	18,553.96	$ 927,698	18,553.96
GS Private Equity Partners 2004 Offshore Holdings, L.P. Goldman, Sachs & Co. One New York Plaza, 37th Floor New York, New York 10004 Telephone: (212) 357-3448 Telecopy: (212) 428-4677 Attention: Brandon T. Press Vice President & Assistant General Counsel	with a copy to: Goldman, Sachs & Co. 32 Old Slip, 9th Floor New York, New York 10005 Telephone: (212) 902-9839 Telecopy: (212) 493-0187 Attention: Jennifer Barbetta Vice President	120,705.08	$ 6,035,254	120,705.08
GS Private Equity Partners 2004 – Direct Investment Fund, L.P. Goldman, Sachs & Co. One New York Plaza, 37th Floor New York, New York 10004 Telephone: (212) 357-3448 Telecopy: (212) 428-4677 Attention: Brandon T. Press Vice President & Assistant General Counsel	with a copy to: Goldman, Sachs & Co. 32 Old Slip, 9th Floor New York, New York 10005 Telephone: (212) 902-9839 Telecopy: (212) 493-0187 Attention: Jennifer Barbetta Vice President	83,372.54	$ 4,168,627	83,372.54

Name of Purchaser and Purchaser's Address		Number of Shares of Merger Co Common Stock Purchased	Purchase Price of Merger Co Common Stock	Number of Shares of Surviving Corporation Common Stock Immediately After the Merger
GS Private Equity Partners 2004 Employee Fund, L.P. Goldman, Sachs & Co. One New York Plaza, 37th Floor New York, New York 10004 Telephone: (212) 357-3448 Telecopy: (212) 428-4677 Attention: Brandon T. Press Vice President & Assistant General Counsel	with a copy to: Goldman, Sachs & Co. 32 Old Slip, 9th Floor New York, New York 10005 Telephone: (212) 902-9839 Telecopy: (212) 493-0187 Attention: Jennifer Barbetta Vice President	30,369.34	$1,518,467	30,369.34
Multi-Strategy Holdings, L.P. Goldman, Sachs & Co. One New York Plaza, 37th Floor New York, New York 10004 Telephone: (212) 357-3448 Telecopy: (212) 428-4677 Attention: Brandon T. Press Vice President & Assistant General Counsel	with a copy to: Goldman, Sachs & Co. 32 Old Slip, 9th Floor New York, New York 10005 Telephone: (212) 902-9839 Telecopy: (212) 493-0187 Attention: Jennifer Barbetta Vice President	34,596.08	$1,729,804	34,596.08
Goldman Sachs EDMC Investors, L.P. Goldman, Sachs & Co. One New York Plaza, 37th Floor New York, New York 10004 Telephone: (212) 357-3448 Telecopy: (212) 428-4677 Attention: Brandon T. Press Vice President & Assistant General Counsel		1,600,000.00	$80,000,000	1,600,000.00

Name of Purchaser and Purchaser' s Address		Number of Shares of Merger Co Common Stock Purchased	Purchase Price of Merger Co Common Stock	Number of Shares of Surviving Corporatio Common Stock Immediately After the Merger
Fisher Lynch Co-Investment Partnership, L.P. Fisher Lynch Capital 2929 Campus Drive, Suite 410 San Mateo, California 94403 Telephone: (650) 233-8016 Telecopy: (650) 240-0277 Attention: Leon Kuan	with a copy to: Proskauer Rose LLP One International Place Boston, Massachusetts 02110-2600 Telephone: (617) 526-9754 Telecopy: (617) 526-9899 Attention: Howard J. Beber, Esq.	400,000.00	$20,000,000	400,000.00
Ontario Teachers' Pension Plan Board 5650 Yonge Street Toronto, Ontario Canada M2M 4H5 Telephone: (416) 730-5321 Telecopy: (416) 730-3771 Attention: Michael Padfield, Senior Legal Counsel – Investments Lee Sienna, Vice President – Private Capital	with a copy to: Goodwin Procter LLP 53 State Street Boston, Massachusetts 02109 Telephone: (617) 570-1304 Telecopy: (617) 523-1231 Attention: Kathy A. Fields, Esq.	1,000,000.00	$50,000,000	1,000,000.00
General Electric Pension Trust c/o GE Asset Management Incorporated 3001 Summer Street, P.O. Box 7900 Stamford, Connecticut 06904-7900 Telephone: (203) 326-2306 Telecopy: (203) 326-4073 Attention: Daniel L. Furman	with a copy to: Dewey Ballantine LLP 1301 Avenue of the Americas New York, New York 10019-6092 Telephone: (212) 259-6570 Telecopy: (212) 259-6333 Attention: Linda E. Ransom	400,000.00	$20,000,000	400,000.00

Name of Purchaser and Purchaser' s Address		Number of Shares of Merger Co Common Stock Purchased	Purchase Price of Merger Co Common Stock	Number of Shares of Surviving Corporatio Common Stock Immediately After the Merger
CGI Private Equity LP, LLC c/o Citigroup Private Equity 388 Greenwich Street, 32nd Floor New York, New York 10013 Telephone: (212) 816-2151 Telecopy: (212) 816-0221 Attention: Todd Benson	with a copy to: Citigroup Private Equity 731 Lexington Avenue, 23rd Floor New York, New York 10022 Telephone: (212) 559-7885 Telecopy: (646) 291-3063 Attention: Ranesh Ramanathan, Esq.	400,000.00	$20,000,000	400,000.00
Credit Suisse/CFIG EMDC SPV, LLC Credit Suisse 11 Madison Avenue, 16th Floor New York, New York 10010 Telephone: (212) 538-3423 Telecopy: (212) 538-0424 Attention: Nadim Barakat		300,000.00	$15,000,000	300,000.00
AlpInvest Partners CS Investments 2006 C.V. c/o AlpInvest Partners N.V. Jachthavenweg 118 1081 KJ Amsterdam The Netherlands Telephone: +31 20 540 7575 Telecopy: +31 20 540 7500 Attention: Patrick de van der Schueren	with a copy to: AlpInvest Partners Inc. 630 Fifth Avenue, 28th Floor New York, New York 10111 Telephone: (212) 332-6240 Telecopy: (212) 332-6241 Attention: Iain Leigh Ropes & Gray LLP 45 Rockefeller Plaza New York, New York 10111 Telephone: (212) 841-0600 Telecopy: (212) 841-5725 Attention: Daniel C. Kolb, Esq.	494,550.00	$24,727,500	494,550.00

Name of Purchaser and Purchaser' s Address		Number of Shares of Merger Co Common Stock Purchased	Purchase Price of Merger Co Common Stock	Number of Shares of Surviving Corporation Common Stock Immediately After the Merger
AlpInvest Partners Later Stage Co-Investments Custodian IIA B.V. (as custodian for AlpInvest Partners Later Stage Co-Investments IIA C.V.) c/o AlpInvest Partners N.V. Jachthavenweg 118 1081 KJ Amsterdam The Netherlands Telephone: +31 20 540 7575 Telecopy: +31 20 540 7500 Attention: Patrick de van der Schueren	with a copy to: AlpInvest Partners Inc. 630 Fifth Avenue, 28th Floor New York, New York 10111 Telephone: (212) 332-6240 Telecopy: (212) 332-6241 Attention: Iain Leigh Ropes & Gray LLP 45 Rockefeller Plaza New York, New York 10111 Telephone: (212) 841-0600 Telecopy: (212) 841-5725 Attention: Daniel C. Kolb, Esq.	5,450.00	$272,500	5,450.00
TOTAL:		26,000,000.00	$1,300,000,000	26,000,000.00

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT is entered into as of June 1, 2006 (this "**Agreement**"), by and among EM Acquisition Corporation, a Pennsylvania corporation ("**Merger Co**"), Education Management LLC, a Delaware limited liability company and indirect wholly owned subsidiary of Merger Co ("**EM LLC**") (EM LLC, together with Merger Co, the "**Company**"), Goldman, Sachs & Co. ("**GS**") and Providence Equity Partners Inc. ("**Providence**") (each of GS and Providence, together with any other entity that may become an advisor to the Company hereunder in accordance with the terms hereof, an "Advisor" and collectively, "**Advisors**").

RECITALS

WHEREAS, Merger Co and Education Management Corporation, a Pennsylvania corporation ("**EMC**"), entered into an Agreement and Plan of Merger, dated as of March 3, 2006 (as such agreement may be amended, supplemented or otherwise modified from time to time, the "**Merger Agreement**"), pursuant to which Merger Co will merge with and into EMC (the "**Merger**"), with EMC continuing as the surviving corporation (in that capacity, the "**Surviving Corporation**") and succeeding to and assuming all the rights and obligations of the Company hereunder (and, from and after the Merger, all references herein to the Company shall be deemed to be references to EMC in its capacity as the Surviving Corporation);

WHEREAS, simultaneously with the execution and delivery of this Agreement, Merger Co is issuing to Affiliates (as defined in the Shareholders' Agreement referred to below) of GS and Providence, and such Affiliates of GS and Providence are purchasing from the Company shares of common stock, par value $0.01 per share, of Merger Co ("**Merger Co Common Stock**"), pursuant to Subscription Agreements (as defined in the Shareholders' Agreement) dated as of the date of this Agreement;

WHEREAS, pursuant to the Merger, each outstanding share of Merger Co Common Stock, including the shares of Merger Co Common Stock held by Affiliates of GS and Providence will be converted into one share of common stock, par value $0.01 per share, of EMC ("**EMC Common Stock**");

WHEREAS, simultaneously with the execution and delivery of this Agreement, the Company, Affiliates of GS and Providence and certain other investors are entering into a Shareholders' Agreement, dated as of the date of this Agreement (the "**Shareholders' Agreement**");

WHEREAS, the Advisors have expertise in the areas of finance, strategy, investment, acquisitions and other matters relevant to the Company and its business;

WHEREAS, the Advisors have used their expertise to provide substantial financial and structural analysis, due diligence investigations, corporate strategy, and other advice and assistance in connection with certain future transactions the Company may consider and may engage in; and

WHEREAS, the Company desires to avail itself and its subsidiaries of the Advisors' expertise in providing financial and structural analysis, due diligence investigations, corporate strategy, and other advice and assistance, which the Company believes will be beneficial to it and its subsidiaries, and the Advisors wish to provide the services to the Company as set forth in this Agreement in consideration of the payment of the fees described below.

NOW, THEREFORE, in consideration of the premises and agreements contained herein and of other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

SECTION 1. Transaction Fees.

In consideration of the Services (as defined below) provided by the Advisors or their Advisor Designees (as defined below) in connection with the Merger, on the Closing Date (as defined in the Merger Agreement), the Company will pay transaction fees of $20.1 million to GS and $20.1 million to Providence. All amounts paid by the Company to the Advisors pursuant to this Section 1 shall be made by wire transfer in same-day funds to the respective bank accounts designated by the Advisors, and shall not be refundable under any circumstances.

SECTION 2. Appointment.

The Company hereby engages the Advisors to provide the services described in Section 3 on the terms and subject to the conditions of this Agreement.

SECTION 3. Services.

(a) The Advisors agree to be prepared and available to provide to the Company, to the extent appropriate and reasonably requested by the Company, by and through itself, its Affiliates and/or such respective officers, employees, representatives and third parties (collectively hereinafter referred to as the "**Advisor Designees**") as the Advisors in their sole discretion may designate from time to time, financial and strategic advisory services (the "**Services**") in relation to actual and potential future transactions, including, without limitation, (i) financial and structural analysis, due diligence investigations, corporate strategy, and other advice and assistance, (ii) advice regarding the structure, terms, conditions and other provisions, distribution and timing of debt and equity offerings and advice regarding relationships with the Company' s and its subsidiaries' lenders and bankers, (iii) advice regarding the Company' s acquisition strategy, and (iv) such other advice directly related or ancillary to the above financial advisory services as may be reasonably requested by the Company.

(b) In the event that Leeds Equity Partners IV, L.P. ("**Leeds**") acquires shares of EMC Common Stock pursuant to the exercise of the Leeds Option (as defined in the Shareholders' Agreement), GS and Providence shall have the right to jointly designate Leeds to be an Advisor hereunder. To become an Advisor hereunder, Leeds shall execute and deliver to the Company and the Advisors an agreement pursuant to which Leeds agrees to be bound by the terms of this Agreement as an Advisor.

(c) It is expressly agreed that the Services to be performed under this Agreement will not include any investment banking or other financial advisory services which may be provided by the Advisors or any of their Affiliates or Advisor Designees in connection with any actual or potential acquisition, divestiture, financing, refinancing, recapitalization or other transaction involving the Company or any of its subsidiaries. The Advisors or their Advisor Designees shall be entitled to receive compensation, in addition to any fees paid under this Agreement, for providing services of the type specified in the preceding sentence by mutual agreement of the Company or such subsidiary, on the one hand, and one or more of the Advisors or their relevant Affiliates or Advisor Designees, on the other hand.

SECTION 4. Monitoring Fee.

(a) In consideration for the Services, the Company will pay to the Advisors an annual monitoring fee in respect of each calendar year from and including calendar year 2006 (for which a pro rated amount shall be paid as described below) (the "**Monitoring Fee**"). The Monitoring Fee shall be equal to $5 million per annum (the "**Annual Amount**").

(b) On the Closing Date, the Company shall pay to each of GS and Providence, in respect of the Services to be performed by each of them during the period from and including the Closing Date through December 31, 2006, an amount equal to (x) the Advisor Percentage (as defined below) of GS or Providence, as applicable, as of such date, multiplied by (y) the Closing Pro Rata Portion of the Annual Amount. The "**Closing Pro Rata Portion of the Annual Amount**" shall be equal to the Annual Amount multiplied by a fraction, the numerator of which is the number of days in the period from and including the Closing Date through December 31, 2006 and the denominator of which is 365.

For purposes of this Agreement, "**Advisor Percentage**" shall mean, as of any date, (x) with respect to GS, 50%, (y) with respect to Providence, 50%, and (z) in the event that Leeds becomes an Advisor hereunder, with respect to Leeds, a percentage determined by dividing the number of shares of EMC Common Stock owned by Leeds as of such date by the number of shares of EMC Common Stock outstanding at such date (the "**Leeds Percentage**"); provided that, as of any date upon which Leeds is an Advisor hereunder, the Advisor Percentage of GS and the Advisor Percentage of Providence shall each be equal to (i) 50% of (ii) one hundred percent less the Leeds Percentage at such time.

(c) On each January 1 (beginning on January 1, 2007), the Company shall pay to each Advisor, in respect of the Services to be performed by it during the calendar year beginning on such January 1, an amount equal to (x) the Advisor Percentage of such Advisor as of such date, multiplied by (y) the Annual Amount. In the event that an Advisor receives a payment pursuant to this Section 4(c) and such Advisor' s obligation to provide Services terminates within the calendar year in respect of which such payment was made (other than in connection with an assignment of such obligation pursuant to Section 11(f)), such Advisor shall promptly (no later than 15 days after any such termination) turn over to the other Advisors (pro rata in accordance with their respective Advisor Percentages after giving effect to such termination) an amount equal to (i) the payment received by such Advisor pursuant to this Section 4(c) in respect of such year, multiplied by (ii) a fraction, the numerator of which is the

number of days in the period from and including the date of termination through December 31, 2006 and the denominator of which is 365.

(d) All amounts paid by the Company or an Advisor to the Advisors pursuant to this Section 4 shall be made by wire transfer in same-day funds to the respective bank accounts designated by the Advisors, and shall not be refundable except as expressly provided in Section 4(c).

(e) Upon the occurrence of a Triggering Event (as defined below), the Company shall pay to the Advisors the Lump Sum Payment (as defined below), such amount to be paid on the date on which the Triggering Event occurs. The "**Lump Sum Payment**" shall be a single lump sum cash payment equal to the sum of the then present values of all Monitoring Fees that would thereafter be payable under this Agreement assuming the Termination Date (as defined in Section 9 hereto) to be the tenth anniversary hereof (using a discount rate equal to the yield to maturity as of the close of business of the date prior to the date on which the Triggering Event occurs of the class of outstanding U.S. treasury securities having a final maturity closest to the tenth anniversary of the date hereof). Each Advisor will be paid an amount equal to (x) its Advisor Percentage as of the date of the Triggering Event, multiplied by (y) the amount of the Lump Sum Payment. Upon the occurrence of the Triggering Event, the obligation of the Advisors to provide the Services hereunder, and the corresponding obligations of the Company to pay Monitoring Fees, shall be terminated, but all other provisions of this Agreement shall continue unaffected. Notwithstanding the foregoing, GS and Providence, acting jointly, may waive the rights of all Advisors to receive the Lump Sum Payment hereunder in connection with any Triggering Event.

(f) For the purposes of this Agreement, (i)"**Triggering Event**" means (x) a Qualified IPO (as defined in the Shareholders' Agreement), (y) a Change of Control (as defined below) or (z) a sale of all or substantially all of the Company' s businesses or assets; (ii) "**Change of Control**" means, in respect of the Company, the acquisition of ownership, directly or indirectly, legally or beneficially, by any Third Party (as defined below), in any transaction or series of related transactions, of any interest or interests in the Company representing 50% or more of the aggregate ordinary voting power of the Company; (iii) "**Third Party**" means any person or entity, or persons or entities acting together or in concert with respect to the transaction or transactions giving rise to the applicable Change of Control.

SECTION 5. Reimbursements.

In addition to the fees payable pursuant to this Agreement, from time to time as proper invoices are presented, the Company will pay directly or reimburse the Advisors and each of their Advisor Designees for their respective Out-of-Pocket Expenses. For the purposes of this Agreement, the term "**Out-of-Pocket Expenses**" means the out-of-pocket costs and expenses incurred by an Advisor or its Advisor Designees with the approval of the Board of Directors of the Company in connection with the Services provided under this Agreement, including, without limitation, (a) fees and disbursements of any independent professionals and organizations, including independent accountants, financial advisors, outside legal counsel, advisors or consultants, retained by the Advisor or any of its Advisor Designees, (b) costs of any outside services or independent contractors such as couriers, business publications, on-line financial

services or similar services, retained or used by the Advisor or any of its Advisor Designees, and (c) transportation, per diem costs, word processing expenses or any similar expense not associated with the Advisor' s or its Advisor Designees' ordinary operations. All payments or reimbursements for Out-of-Pocket Expenses will be made by wire transfer in same-day funds to the bank accounts designated by the Advisor or its Advisor Designee (if such Out-of-Pocket Expenses were incurred by the Advisor or its Advisor Designees) promptly upon or as soon as practicable following request for payment or reimbursement in accordance with this Agreement, or at the Advisor' s election to the account indicated to the Company by the relevant payee.

SECTION 6. Indemnification.

(a) The Company will indemnify and hold harmless, to the full extent permitted by law, each of the Advisors, their Advisor Designees and their respective partners (both general and limited), members (both managing and otherwise), stockholders, officers, directors, advisory directors, managing directors, employees, agents, representatives and Affiliates (as the term is defined in Rule 12b-2 promulgated under the Securities Exchange Act of 1934, as in effect on the date hereof) (other than the Company and its subsidiaries) (and partners (both general and limited), members (both managing and otherwise), stockholders, officers, directors, advisory directors, managing directors, employees, agents, representatives and controlling persons thereof) (each such person being an "**Indemnified Party**") against any and all losses, claims, damages and liabilities, including in connection with seeking indemnification, whether joint or several (the "**Liabilities**"), related to, arising out of or in connection with the Services under this Agreement or the engagement of the Advisors or their Advisor Designees pursuant to and the performance by the Advisors and their Advisor Designees of the Services under this Agreement, whether or not pending or threatened, whether or not an Indemnified Party is a party, whether or not resulting in any liability and whether or not such action, claim, suit, investigation or proceeding is initiated or brought by the Company. The Company will reimburse any Indemnified Party for all reasonable costs and expenses (including without limitation reasonable attorneys' fees and any and all expenses incurred investigating, preparing or defending against any litigation, commenced or threatened, or any claim, and any and all amounts paid in any settlement of any such claim or litigation) as they are incurred in connection with investigating, preparing, pursuing, defending or assisting in the defense of any action, claim, suit, investigation or proceeding for which the Indemnified Party would be entitled to indemnification under the terms of the previous sentence, or any action or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto. The Company will not be liable under the foregoing indemnification provision with respect to any particular loss, claim, damage, liability, cost or expense of an Indemnified Party to the extent that such is determined by a court, in a final judgment from which no further appeal may be taken, to have resulted primarily from the gross negligence or willful misconduct of such Indemnified Party. The attorneys' fees and other expenses of an Indemnified Party shall be paid by the Company as they are incurred upon receipt, in each case, of an undertaking by or on behalf of the Indemnified Party to repay such amounts if it is finally judicially determined that the Liabilities in question resulted primarily from the gross negligence or willful misconduct of such Indemnified Party. Such indemnification obligation shall be in addition to any liability that the Company may otherwise have to any other such Indemnified Party. The provisions of this Section 6 are intended to be for the benefit of, and shall be enforceable by, each Indemnified Party and its respective successors, heirs and representatives.

(b) If such indemnification is for any reason not available or insufficient to hold an Indemnified Party harmless, the Company agrees to contribute to the Liabilities involved in such proportion as is appropriate to reflect the relative benefits received (or anticipated to be received) by the Company, on the one hand, and by the Advisor or Advisor Designee, on the other hand, with respect to the Services or, if such allocation is determined by a court or arbitral tribunal to be unavailable, in such proportion as is appropriate to reflect other equitable considerations such as the relative fault of the Company, on the one hand, and of the Advisors or Advisor Designees, on the other hand; provided, however, that to the extent permitted by applicable law, the Indemnified Parties shall not be responsible for amounts which in the aggregate are in excess of the amount of all fees actually received by the Advisor and Advisor Designees from the Company with respect to the Services. Relative benefits to the Company, on the one hand, and to the Advisors and Advisor Designees, on the other hand, with respect to the Services shall be deemed to be in the same proportion as (i) the total value received or proposed to be received by the Company in connection with the Services or any transactions to which the Services relate bears to (ii) all fees actually received by the Advisors and Advisor Designees in connection with the Services. Relative fault shall be determined, in the case of Liabilities arising out of or based on any untrue statement or any alleged untrue statement of a material fact or omission or alleged omission to state a material fact, by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company to the Advisors and Advisor Designees and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act of 1933, as amended) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(c) Upon receipt by an Indemnified Party of actual notice of any pending or threatened action, claim, suit, investigation or proceeding (an "**Action**") against such Indemnified Party with respect to which indemnity may be sought under this Agreement, such Indemnified Party shall promptly notify the Company in writing; provided that failure to so notify the Company shall not relieve the Company from any liability which the Company may have on account of the indemnity provision under this Agreement or otherwise, except to the extent the Company shall have been materially prejudiced by such failure. The Company shall have the right to assume the defense of any such Action including the employment of counsel reasonably satisfactory to such Indemnified Party. Any Indemnified Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, unless: (i) the Company has failed to assume the defense and employ counsel promptly or (ii) the named parties to any such Action (including any impleaded parties) include such Indemnified Party and the Company, and such Indemnified Party shall have been advised by counsel that there may be one or more legal defenses available to it which are different from or in addition to those available to the Company; provided that the Company shall not in such event be responsible hereunder for the fees and expenses of more than one firm of separate counsel in connection with any Action in the same jurisdiction, in addition to any local counsel. The Company will not, without the Advisors' prior written consent, settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any Action in respect of which indemnification may be sought hereunder (whether or not any Indemnified Party is a party therein) unless the

Company has given the Advisors reasonable prior written notice thereof and such settlement, compromise, consent or termination includes an unconditional release of each Indemnified Party from any liabilities arising out of such Action. The Company will not permit any such settlement, compromise, consent or termination to include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an Indemnified Party, without such Indemnified Party' s prior written consent. No Indemnified Party seeking indemnification, reimbursement or contribution under this Agreement will, without the Company' s prior written consent, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any Action referred to herein.

(d) Prior to entering into any agreement or arrangement with respect to, or effecting, any merger, statutory exchange or other business combination or proposed sale or exchange, dividend or other distribution or liquidation of all or a significant portion of its assets in one or a series of transactions or any significant recapitalization or reclassification of its outstanding securities that does not directly or indirectly provide for the assumption of the obligations of the Company set forth herein, the Company will promptly notify the Advisors in writing thereof and, if requested by the Advisors, shall arrange in connection therewith alternative means of providing for the obligations of the Company set forth herein, including the assumption of such obligations by another party, insurance, surety bonds or the creation of an escrow, in each case in an amount and on terms and conditions satisfactory to the Advisors.

(e) The Company' s obligations hereunder shall be in addition to any rights that any Indemnified Party may have at common law or otherwise. The Company acknowledges that in connection with the Services, the Advisors and Advisor Designees are acting as independent contractors and not in any other capacity with duties owing solely to the Company.

(f) The provisions of this Section 6 and any modification thereof shall apply to the Services provided to the Company by the Advisors or their Advisor Designees (including related activities prior to the date hereof) and shall remain in full force and effect regardless of the completion or termination of this Agreement. If any term, provision, covenant or restriction herein is held by a court of competent jurisdiction to be invalid, void or unenforceable or against public policy, the remainder of the terms, provisions and restrictions contained herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 7. Accuracy of Information.

The Company shall furnish or cause to be furnished to the Advisors such information as the Advisors or their Advisor Designees believe reasonably appropriate to their Services hereunder and to comply with the Securities and Exchange Commission or other legal requirements relating to the beneficial ownership by the holders of Equity Securities (as defined in the Shareholders' Agreement) of the Company (all such information so furnished, the "**Information**"). The Company recognizes and confirms that the Advisors (i) have and will use and rely primarily on the Information and on information available from generally recognized public sources in performing the Services contemplated by this Agreement without having independently verified the same, (ii) do not assume responsibility for the accuracy or completeness of the Information and such other information and (iii) are entitled to rely upon the Information without independent verification.

SECTION 8. Effective Date.

This Agreement will become effective as of the date hereof.

SECTION 9. Term.

This Agreement shall terminate upon the Termination Date (as defined below); provided that the Company' s obligations pursuant to Sections 4, 5, and 6, and its obligation to pay any unpaid amounts that have otherwise become due and payable hereunder, shall survive any such termination. "**Termination Date**" means the earlier of (x) the date the Lump Sum Payment becomes payable hereunder and (y) such earlier date as the Company, GS and Providence may mutually agree upon.

SECTION 10. Permissible Activities.

Nothing herein will in any way preclude the Advisors or their Advisor Designees (other than the Company or its subsidiaries and their respective employees) or their respective partners (both general and limited), members (both managing and otherwise), officers, directors, employees, Affiliates, agents or representatives from engaging in or investing in any business activities or from performing services for its or their own account or for the account of others, including for companies that may be or are in competition with the Company or any of its subsidiaries in any business conducted by the Company or its subsidiaries.

SECTION 11. Miscellaneous.

(a) Notice. Any notices, demands, requests, waivers, or other communications required or permitted under this Agreement shall be in writing and shall be addressed as follows:

To the Company:	Education Management Corporation 210 Sixth Avenue Pittsburgh, Pennsylvania 15222 Facsimile: (412) 562-0598 Attention: John R. McKernan, Jr.
With a copy to:	Simpson Thacher & Bartlett LLP 425 Lexington Avenue New York, New York 10017 Telephone: (212) 455-2000 Telecopy: (212) 455-2502 Attention: Gary I. Horowitz, Esq.
To GS:	Goldman, Sachs & Co. 85 Broad Street New York, New York 10004 Facsimile: (212) 357-5505 Attention: John Bowman

With a copy to:	Fried, Frank, Harris, Shriver & Jacobson LLP One New York Plaza New York, New York 10004 Facsimile: (212) 859-4000 Attention: Robert C. Schwenkel, Esq. Philip Richter, Esq.
To Providence:	Providence Equity Partners V L.P. 50 Kennedy Plaza, 18th Floor Providence, Rhode Island 02903 Facsimile: (401) 751-1790 Attention: Paul J. Salem
With a copy to:	Weil, Gotshal & Manges LLP 50 Kennedy Plaza Providence, Rhode Island 02903 Telecopy: (401) 278-4701 Attention: David K. Duffell, Esq.

Unless otherwise specified herein, such notices or other communications will be deemed received (i) on the date delivered, if delivered personally, and (ii) one business day after being sent by overnight courier.

(b) Entire Agreement. This Agreement sets forth the entire understanding and agreement of the parties hereto with respect to the subject matter hereof, and will supersede all previous oral and written (and all contemporaneous oral) negotiations, commitments, agreements and understandings relating hereto.

(c) Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to the principles of conflicts of law.

(d) Consent to Jurisdiction. Each of the parties hereto hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of New York and of the United States of America, in each case located in the County of New York, for any action, proceeding or investigation in any court or before any governmental authority ("**Litigation**") arising out of or relating to this Agreement (and agrees not to commence any Litigation relating thereto except in such courts), and further agrees that service of any process, summons, notice or document by U.S. registered mail to its respective address set forth in this Agreement shall be effective service of process for any Litigation brought against it in any such court. Each of the parties hereto hereby irrevocably and unconditionally waives any objection to the laying of venue of any Litigation arising out of this Agreement or the transactions contemplated hereby in the courts of the State of New York or the United States of America, in each case located in the County of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Litigation brought in any such court has been brought in an inconvenient forum.

(e) Waiver to Jury Trial. Each of the parties irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any and all rights to trial by jury in connection with any Litigation arising out of or relating to this Agreement or the transactions contemplated hereby.

(f) Assignment, etc. The provisions of this Agreement are binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. No person other than the parties hereto and their respective successors and permitted assigns is intended to be a beneficiary of this Agreement. The parties acknowledge and agree that the Advisor Designees and the respective partners (both general and limited), members (both managing and otherwise), stockholders, officers, directors, advisory directors, managing directors, employees, agents, representatives and Affiliates of the Advisors and their Advisor Designees are third-party beneficiaries under Section 6 of this Agreement. No party hereto may assign this Agreement to any person or entity, except that (i) each Advisor shall have the right to assign this Agreement to any of its Affiliates (provided that such Affiliate executes and delivers to the Company and each of the Advisors an agreement pursuant to which such Affiliate agrees to be bound by the terms of this Agreement) and upon any such assignment, such assignee shall have and be able to exercise and enforce all rights, and shall be subject to the duties, of the assigning Advisor, and (ii) each of GS and Providence shall have the right to assign this Agreement to any person or entity who will become a GSCP Governance Rights Assignee or Providence Governance Rights Assignee, as applicable, in connection with such assignment (provided that such assignee executes and delivers to the Company and each of the Advisors an agreement pursuant to which such assignee agrees to be bound by the terms of this Agreement) and upon any such assignment, such assignee shall have and be able to exercise and enforce all rights, and shall be subject to the duties, of GS or Providence, as applicable). To the extent this Agreement is assigned in connection with the foregoing, any reference to the assigning Advisor shall be treated as a reference to the assignee.

(g) Confidentiality. The parties hereto agree that the terms of this Agreement shall remain strictly confidential as between them and that disclosure of this Agreement or any terms herein shall not be made by either party or its respective members, partners, directors, officers, advisors, financing sources (including potential financing sources), Affiliates and employees to any other person or entity, except to the attorneys, accountants, advisors, successors and assigns of the parties, without first obtaining the written consent of the other party; provided, however, that the Company and the Advisors may disclose the terms of this Agreement to the extent required by law and the Advisors may disclose the terms of this Agreement in connection with any assignment permitted under Section 11(f) hereof.

(h) Severability. If in any judicial or arbitral proceedings a court or arbitrator shall refuse to enforce any provision of this Agreement, then such unenforceable provision shall be deemed eliminated from this Agreement for the purpose of such proceedings to the extent necessary to permit the remaining provisions to be enforced. To the full extent, however, that the provisions of any applicable law may be waived, they are hereby waived to the end that this Agreement be, deemed to be a valid and binding agreement enforceable in accordance with its terms, and in the event that any provision hereof shall be found to be invalid or unenforceable, such provision shall be construed by limiting it so as to be valid and enforceable to the maximum extent consistent with and possible under applicable law.

(i) Counterparts. This Agreement may be executed by one or more parties to this Agreement on any number of separate counterparts (including by facsimile), and all of said counterparts taken together will be deemed to constitute one and the same instrument.

(j) Headings. All descriptive headings in this Agreement are inserted for convenience only and shall be disregarded in construing or applying any provision of this Agreement.

(k) Amendment and Waiver. Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Agreement shall be effective against the Company or any Advisor unless such modification, amendment or waiver is approved in writing by (i) the Company, (ii) GS for so long as the GSCP Parties (or a GSCP Governance Rights Assignee, as applicable) (as both are defined in the Shareholders' Agreement) and their Affiliates hold a number of shares of EMC Common Stock that is no less than 25% of the number of shares of EMC Common Stock held by the GSCP Parties immediately following the Merger, (iii) Providence for so long as the Providence Parties (or a Providence Governance Rights Assignee, as applicable) (as both are defined in the Shareholders' Agreement) and their Affiliates hold a number of shares of Common Stock that is no less than 25% of the number of shares of Common Stock held by the Providence Parties immediately following the Merger, and (iv) the Advisors whose Advisor Percentages exceeds 50%, in the aggregate; provided that in the event of any modification, amendment or waiver of any provision of this Agreement which (A) affects only the rights of the Company or GS and/or Providence or (B) does not adversely affect the rights of any party hereto other than GS or Providence, then such modification, amendment or waiver of any provision of this Agreement shall only require the written consent of (1) the Company and (2) to the extent GS' or Providence' s rights are affected by such modification, amendment or waiver, GS or Providence, as applicable. Notwithstanding the foregoing, no modification, amendment or waiver shall be made or granted in a manner that materially and adversely affects an Advisor' s rights hereunder without the approval of such Advisor, unless such modification, amendment or waiver adversely affects all Advisors in the same manner proportionate to their respective Advisor Percentages. The failure of any party to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of such party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

(l) Prevailing Party. If any legal action or other proceedings is brought for a breach of this Agreement or any of the warranties herein, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in bringing such action or proceeding, in addition to any other relief to which such party may be entitled.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, the undersigned have executed, or have caused to be executed, this Agreement on the date first written above.

EM ACQUISITION CORPORATION

By: _____

Name:

Title:

[Signature Page to Management Agreement]

EDUCATION MANAGEMENT LLC

By: _____

Name:

Title:

[Signature Page to Management Agreement]

GOLDMAN, SACHS & CO.

By: _____

Name:

Title:

[Signature Page to Management Agreement]

PROVIDENCE EQUITY PARTNERS INC.

By: _____

Name:

Title:

[Signature Page to Management Agreement]

Exhibit 10.7

AMENDED AND RESTATED SHAREHOLDERS' AGREEMENT

by and among

EDUCATION MANAGEMENT CORPORATION,

GS CAPITAL PARTNERS V FUND, L.P.,

GS CAPITAL PARTNERS V OFFSHORE FUND, L.P.,

GS CAPITAL PARTNERS V GmbH & Co. KG,

GS CAPITAL PARTNERS V INSTITUTIONAL, L.P.,

PROVIDENCE EQUITY PARTNERS V L.P.,

PROVIDENCE EQUITY PARTNERS V-A L.P.,

PROVIDENCE EQUITY PARTNERS IV L.P.,

PROVIDENCE EQUITY OPERATING PARTNERS IV L.P.

and

THE OTHER SHAREHOLDERS THAT ARE SIGNATORIES HERETO

Dated as of October 30, 2006

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AMENDED AND RESTATED SHAREHOLDERS' AGREEMENT

This AMENDED AND RESTATED SHAREHOLDERS' AGREEMENT (this "Agreement") is made as of October 30, 2006 by and among Education Management Corporation, a Pennsylvania corporation (the "Company"), GS Capital Partners V Fund, L.P., a Delaware limited partnership ("GSCP"), GS Capital Partners V Offshore Fund, L.P., a Cayman Islands exempted limited partnership ("GSCP Offshore"), GS Capital Partners V GmbH & Co. KG, a limited partnership formed under the laws of the Federal Republic of Germany ("GSCP Germany"), GS Capital Partners V Institutional, L.P., a Delaware limited partnership ("GSCP Institutional", collectively with GSCP, GSCP Offshore and GSCP Germany, the "GSCP Parties"), Providence Equity Partners V L.P., a Delaware limited partnership ("Providence"), Providence Equity Partners V-A L.P., a Delaware limited partnership ("Providence-A"), Providence Equity Partners IV L.P., a Delaware limited partnership ("Providence-IV"), Providence Equity Operating Partners IV L.P., a Delaware limited partnership ("Providence Operating-IV", collectively with Providence, Providence-A, Providence-IV, the "Providence Parties"), Leeds Equity Partners IV, L.P. ("Leeds"), the Persons listed as Other Investors on the signature pages hereto, the Persons listed as Management Holders on the signature pages hereto and the Persons listed as Employee Holders on the signature pages hereto.

W I T N E S S E T H :

WHEREAS, EM Acquisition Corporation, formerly a Pennsylvania corporation ("Merger Co"), and the Company entered into an Agreement and Plan of Merger, dated as of March 3, 2006 (as such agreement may be amended, supplemented or otherwise modified from time to time, the "Merger Agreement"), pursuant to which Merger Co merged with and into the Company (the "Merger"), with the Company continuing as the surviving corporation;

WHEREAS, on June 1, 2006, Merger Co issued to the GSCP Parties, the Providence Parties and the Other Investors (other than GE Equity), and the GSCP Parties, the Providence Parties and the Other Investors (other than GE Equity) purchased from Merger Co, shares of common stock, par value $0.01 per share, of Merger Co ("Merger Co Common Stock"), pursuant to that certain subscription agreement, dated as of June 1, 2006 (the "Original Subscription Agreement");

WHEREAS, the GSCP Parties, the Providence Parties and the Other Investors (other than GE Equity) entered into that certain shareholders' agreement, dated as of June 1, 2006 (the "Original Shareholders' Agreement"), among Merger Co, the GSCP Parties, the Providence Parties and the Other Investors (other than GE Equity);

WHEREAS, pursuant to the Merger, each outstanding share of Merger Co Common Stock was converted into one share of Common Stock (as defined below);

WHEREAS, pursuant to that certain letter agreement, dated July 6, 2006, among GSCP, Providence and Leeds, Leeds exercised its option to purchase (i) 1,000,000 shares of Common Stock from GSCP and (ii) 1,000,000 shares of Common Stock from Providence in accordance with that certain letter agreement, dated February 28, 2006 (the "Leeds Option Agreement"), among GSCP, Providence and Leeds;

WHEREAS, on October 30, 2006, the Company issued to GE Equity, and GE Equity purchased from the Company, shares of Common Stock, pursuant to that certain subscription agreement, dated as of October 30, 2006 (the "GE Subscription Agreement");

WHEREAS, the Company is issuing to the Employee Holders shares of Common Stock pursuant to subscription agreements entered into between the Company and the Employee Holders, the forms of which are attached hereto as Exhibits A and B (the "Employee Subscription Agreements", and collectively with the Original Subscription Agreement and the GE Subscription Agreement, the "Subscription Agreements"); and

WHEREAS, the parties hereto desire to amend and restate the Original Shareholders' Agreement in its entirety as provided herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and obligations hereinafter set forth, the parties hereto hereby agree as follows:

Section 1. Definitions. As used herein, the following terms shall have the following meanings:

"Acceptance Notice" has the meaning ascribed to such term in Section 13(a).

"Accepted Shares" has the meaning ascribed to such term in Section 13(a).

"Additional First Offer Acceptance Period" has the meaning ascribed to such term in Section 5(b).

"Affiliate" means (i) with respect to any Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person or (ii) with respect to any individual, the spouse, parent, sibling, child, step-child, grandchild, niece or nephew of such Person, or the spouse thereof and any trust, limited liability company, limited partnership, private foundation or other estate planning vehicle for such Person or for the benefit of any of the foregoing or other Persons pursuant to the laws of descent and distribution; provided, however, that, for purposes hereof, (A) each GSCP Party shall be deemed to be an Affiliate of every other GSCP Party, (B) each Providence Party shall be deemed to be an Affiliate of every other Providence Party, (C) neither the Company nor any Person controlled by the Company shall be deemed to be an Affiliate of any Shareholder, (D) (1) none of the GS PEP Funds or Goldman Sachs EDMC Investors, L.P. shall be deemed to be an Affiliate of any of the Providence Parties and (2) except for purposes of Section 17(a) and except as expressly provided, none of the GS PEP Funds or Goldman Sachs EDMC Investors, L.P. shall be deemed to be an Affiliate of any of the GSCP Parties, (E) none of Leeds, Fisher Lynch Co-Investment Partnership, L.P., Ontario Teachers' Pension Plan Board, General Electric Pension Trust, GE Equity, CGI Private Equity LP, LLC, Credit Suisse/CFIG EMDC SPV, LLC, AlpInvest Partners CS Investments 2006 C.V. or AlpInvest Partners Later Stage Co-Investments Custodian IIA B.V. (as custodian for AlpInvest Partners Later Stage Co-Investments IIA C.V.) shall be deemed to be an Affiliate of any of the GSCP Parties, the GS PEP Funds, Goldman Sachs EDMC Investors, L.P. or the Providence Parties and (F) no Person shall be deemed to be an Affiliate of General Electric Pension Trust other than any successor trust or trustee of General Electric Pension Trust and any entity that is wholly-owned by General Electric Pension Trust or such successor trust or trustee.

"Agreement" means this Amended and Restated Shareholders' Agreement, as this agreement may be amended, modified, supplemented or restated from time to time after the date hereof.

"Ancillary Documents" means, collectively, the Subscription Agreements, the Registration Rights Agreement, the Management Agreement, the GSCP Institutional Letter Agreement and the Providence Letter Agreement.

"Board" means the board of directors of the Company.

"Bring-Along Election" has the meaning ascribed to such term in Section 7(a).

"Bring-Along Notice" has the meaning ascribed to such term in Section 7(b).

"Bring-Along Sale" has the meaning ascribed to such term in Section 7(a).

"Bring-Along Transferee" has the meaning ascribed to such term in Section 7(a).

"Call Equity Securities" has the meaning ascribed to such term in Section 8(a).

"Call Notice" has the meaning ascribed to such term in Section 8(b).

"Call Period" has the meaning ascribed to such term in Section 8(b).

"Cause" has the meaning ascribed to such term in Section 8(c).

"Co-Invest Shares" means (i) shares of Common Stock acquired by a Management Holder pursuant to each of those certain letter agreements, dated June 1, 2006, among GSCP, Providence and such Management Holder and (ii) shares of Common Stock acquired by an Employee Holder pursuant to the Company' s Voluntary Executive Common Stock Purchase Plan.

"Common Stock" means the common stock, par value $0.01 per share, of the Company and any and all securities of any kind whatsoever which may be issued after the date hereof in respect of, or in exchange for, such shares of common stock of the Company pursuant to a merger, consolidation, stock split, stock dividend or recapitalization of the Company or otherwise.

"Common Stock Equivalents" means, with respect to any Person, securities convertible into, or exchangeable or exercisable for, shares of capital stock or other equity securities of such Person (including, without limitation, any option, warrant, or other right to subscribe for, purchase or otherwise acquire, or any note or debt security convertible into or exchangeable for, shares of capital stock or other Equity Securities of such Person).

"Company" has the meaning ascribed to such term in the Preamble.

"Company Buyer" has the meaning ascribed to such term in Section 9(a).

"Competing Business" means any Person engaged in any material respect in the post-secondary, for-profit education business in the United States or which is otherwise in competition, directly or indirectly, in any material respect, with the Company or any of its Subsidiaries; provided that a Person shall not be deemed engaged in a Competing Business solely by virtue of such Person' s ownership of a passive investment of 5% or less of the outstanding equity or debt securities of a publicly-traded entity that may be engaged in a Competing Business.

"Competitive Opportunity" means an investment or business opportunity or prospective economic or competitive advantage in which the Company or any of its Subsidiaries could have an interest or expectancy.

"Designating Party" means (i) with respect to any GSCP Director, the GSCP Parties or any GSCP Governance Rights Assignee, if applicable and (ii) with respect to any Providence Director, the Providence Parties or any Providence Governance Rights Assignee, if applicable.

"Employee Holder" means any officer or employee of the Company or any of its Subsidiaries who is a Shareholder (other than a Management Holder and other than such an officer or employee who is also an employee of a GSCP Party, a GSCP Governance Rights Assignee, a Providence Party, a Providence Governance Rights Assignee, Leeds or an Affiliate of any of the foregoing).

"Employee Subscription Agreements" has the meaning ascribed to such term in the Recitals to this Agreement, as amended from time to time.

"Employer" has the meaning ascribed to such term in Section 8(c).

"Equity Call Option" has the meaning ascribed to such term in Section 8(a).

"Equity Call Purchase Price" has the meaning ascribed to such term in Section 8(c).

"Equity Securities" means, with respect to any Person, any capital stock or other equity security of such Person including, without limitation, any Common Stock Equivalents of such Person and any option, warrant or other right to subscribe for, purchase or otherwise acquire any capital stock or other equity security of such Person.

"ERISA" means the Employee Retirement Income Security Act of 1974 (and any sections of the Internal Revenue Code of 1986 amended by it) and all regulations promulgated thereunder, as amended.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC issued under such Act, as they may from time to time be in effect.

"Excluded Securities" means (i) options issued by the Company pursuant to its 2006 Stock Option Plan or any other stock option or similar plan (and any shares of capital stock issuable upon exercise thereof or thereunder) (such options being referred to as "Plan Options") and any shares of capital stock issued by the Company to any employee of the Company or any of its Subsidiaries or member of the Board pursuant to its Voluntary Executive Common Stock Purchase Plan or any other stock purchase plan, in each case as approved by the Board in connection with, or after, the consummation of the Merger; (ii) any shares of capital stock or any Common Stock Equivalent of the Company or any of its Subsidiaries (and any shares of capital stock issuable thereunder) issued by the Company in connection with any transaction determined by the Board to be a strategic transaction, provided that none of the GSCP Parties (or a GSCP Governance Rights Assignee, if applicable) or the Providence Parties (or a Providence Governance Rights Assignee, if applicable) is acquiring such shares of capital stock or such Common Stock Equivalent of the Company or any of its Subsidiaries in any such transaction; (iii) shares of Common Stock issued in connection with a Qualified IPO; and (iv) shares of Common Stock issued pursuant to the Original Subscription Agreement.

"Exit Notice" has the meaning ascribed to such term in Section 9(b).

"Exit Sale" has the meaning ascribed to such term in Section 9(a).

"Fair Market Value" means, with respect to any securities on any date, the average of the high and low sales prices of such securities on such date on the principal securities exchange on which such securities are listed or admitted to trading, or if such securities are not so listed or admitted to trading, the arithmetic mean of the per security closing bid price and per security closing asked price on such date as quoted on the Nasdaq or such other market in which such prices are regularly quoted, or, if there have been no published bid or asked quotations with respect to such securities on such date, the "Fair Market Value" shall be the value determined in good faith by the Board.

"First Offer" has the meaning ascribed to such term in Section 5(a).

"First Offer Offeree" has the meaning ascribed to such term in Section 5(a).

"First Offer Notice" has the meaning ascribed to such term in Section 5(a).

"First Offer Stock" has the meaning ascribed to such term in Section 5(b).

"GE Equity" means GE Capital Investments, Inc.

"GE Parties" means the General Electric Pension Trust and GE Equity.

"Group" means two or more Persons who agree to act together for the purpose of acquiring, holding, voting or disposing of Stock.

"GSCP" has the meaning ascribed to such term in the Preamble.

"GSCP Directors" has the meaning ascribed to such term in Section 3.1(b).

"GSCP Germany" has the meaning ascribed to such term in the Preamble.

"GSCP Governance Rights Assignee" means any Person (i) to which the GSCP Parties, a GSCP Governance Rights Assignee and/or the other Shareholders Sell shares of Common Stock such that, after giving effect to such Sale, such Person and its Affiliates will hold a number of shares of Common Stock equal to at least 25% of the number of shares of Common Stock held by the GSCP Parties immediately following the Merger and (ii) to which the GSCP Parties or a GSCP Governance Rights Assignee, as applicable, expressly assigns its rights under Sections 3, 7, 9, 11 and 21 of this Agreement.

"GSCP Institutional" has the meaning ascribed to such term in the Preamble.

"GSCP Institutional Letter Agreement" has the meaning ascribed to such term in Section 3.1(e).

"GSCP Offshore" has the meaning ascribed to such term in the Preamble.

"GSCP Parties" has the meaning ascribed to such term in the Preamble.

"GS PEP Funds" means GS Private Equity Partners 2000, L.P., GS Private Equity Partners 2000 Offshore Holdings, L.P., GS Private Equity Partners 2000 – Direct Investment Fund, L.P., GS Private Equity Partners 2002, L.P., GS Private Equity Partners 2002 Offshore Holdings, L.P., GS Private Equity Partners 2002 – Direct Investment Fund, L.P., GS Private Equity Partners 2002 Employee Fund, L.P., GS Private Equity Partners 2004, L.P., GS Private Equity Partners 2004 Offshore Holdings, L.P., GS Private Equity Partners 2004 – Direct Investment Fund, L.P., GS Private Equity Partners 2004 Employee Fund, L.P. and Multi-Strategy Holdings, L.P.

"HSR Act" has the meaning ascribed to such term in Section 5(c).

"Initial First Offer Acceptance Period" has the meaning ascribed to such term in Section 5(a).

"IPO" means the initial bona fide underwritten public offering of Common Stock pursuant to an effective registration statement filed under the Securities Act.

"Issuance Period" has the meaning ascribed to such term in Section 13(b).

"Issuance Stock" has the meaning ascribed to such term in Section 13(a).

"Joint Proxy Holders" has the meaning ascribed to such term in Section 7(f).

"Leeds" has the meaning ascribed to such term in the Preamble.

"Leeds Director" has the meaning ascribed to such term in Section 3.1(b).

"Leeds Letter Agreement" has the meaning ascribed to such term in Section 3.1(e).

"Leeds Option" means the option of Leeds to purchase from the GSCP Parties and the Providence Parties up to $100.0 million of Stock ($50.0 million of Stock from each of (i) the GSCP Parties and (ii) the Providence Parties) following the Merger, which option was granted pursuant to the Leeds Option Agreement.

"Leeds Option Agreement" has the meaning ascribed to such term in the Recitals.

"Litigation" has the meaning ascribed to such term in Section 27.

"Management Agreement" means the Management Agreement, dated as of June 1, 2006, among the Company, Goldman, Sachs & Co. and Providence, as amended from time to time.

"Management Holder" means each of John R. McKernan, Jr., Edward H. West and Leo F. Mullin.

"Maximum Tag-Along Sale Number" has the meaning ascribed to such term in Section 6(a).

"Merger" has the meaning ascribed to such term in the Recitals.

"Merger Agreement" has the meaning ascribed to such term in the Recitals.

"Merger Co" has the meaning ascribed to such term in the Recitals.

"Merger Co Common Stock" has the meaning ascribed to such term in the Recitals.

"Original Shareholders' Agreement" has the meaning ascribed to such term in the Recitals.

"Original Subscription Agreement" has the meaning ascribed to such term in the Recitals.

"Other Investor" means any Shareholder other than a GSCP Party, a GSCP Governance Rights Assignee, a Providence Party, a Providence Governance Rights Assignee, Leeds, a Management Holder and an Employee Holder.

"Other Shareholders" means, with respect to any Selling Shareholder(s) for purposes of Section 5, 6, 7 or 9, as applicable, all Shareholders other than such Selling Shareholder(s).

"Oversubscribed Shareholder" has the meaning ascribed to such term in Section 5(b).

"Permitted Sale" means any Sale of Stock (i) in the case of a Shareholder (other than an Employee Holder), between such Shareholder and any of its Affiliates, provided that, as a condition of such Sale, the transferee agrees (a) not to Sell such Stock other than to Affiliates

of such Shareholder, as otherwise permitted or contemplated hereunder or in a Public Sale, (b) to Sell such Stock to such Shareholder or an Affiliate of such Shareholder as designated by such Shareholder at such time as the transferee ceases to be an Affiliate of such Shareholder, and (c) to be bound by this Agreement to the same extent as such Shareholder and shall thereafter have the rights of the transferor that are assigned to the transferee (except the rights under Sections 3, 9 and 11, unless such rights are specifically assigned to such transferee and after giving effect to such Sale, such transferee will be a GSCP Governance Rights Assignee or Providence Governance Rights Assignee, as applicable), (ii) by a Shareholder pursuant to a Bring-Along Sale in accordance with the terms and conditions of Section 7 or pursuant to an Exit Sale in accordance with the terms and conditions of Section 9, (iii) by any Shareholder to the Company in accordance with the terms and conditions of Section 8, (iv) by any Shareholder that is a trust established under an employee benefit plan or the trustee of any such trust to a successor trust or successor trustee or (v) by any GSCP Party or any Providence Party to any other Person on or prior to November 27, 2006, so long as such Person and the amount of Stock proposed to be Sold pursuant to this clause (v) is reasonably acceptable to the GSCP Parties and the Providence Parties (it being understood that for purposes hereof, each of the GS PEP Funds, Goldman Sachs EDMC Investors, L.P., Fisher Lynch Co-Investment Partnership, L.P., Ontario Teachers' Pension Plan Board, General Electric Pension Trust, CGI Private Equity LP, LLC, Credit Suisse/CFIG EMDC SPV, LLC, AlpInvest Partners CS Investments 2006 C.V., AlpInvest Partners Later Stage Co-Investments Custodian IIA B.V. (as custodian for AlpInvest Partners Later Stage Co-Investments IIA C.V.), and any officer or employee of the Company or any of its Subsidiaries shall be deemed to be "reasonably acceptable" to the GSCP Parties and the Providence Parties).

"Person" means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivisions thereof.

"Preemptive Acceptance Period" has the meaning ascribed to such term in Section 13(a).

"Preemptive Offer" has the meaning ascribed to such term in Section 13(a).

"Preemptive Offer Notice" has the meaning ascribed to such term in Section 13(a).

"Preemptive Percentage" means, as to each Shareholder, the quotient obtained (expressed as a percentage) by dividing (i) the number of shares of Stock owned by the Shareholder on the date of the Preemptive Offer (as defined in Section 13(a) below) (assuming for this purpose that all Common Stock Equivalents then owned by such Person are fully exercised, converted or exchanged for shares of Common Stock, but excluding any Unvested Stock owned by such Person) by (ii) the total number of shares of Stock issued and outstanding on the date of the Preemptive Offer (assuming for this purpose that all Common Stock Equivalents then outstanding are fully exercised, converted or exchanged for shares of Common Stock, and including any Unvested Stock). For purposes of calculating the Preemptive Percentage of any Shareholder, no Person shall be treated as owning the shares of Common Stock held by Affiliates of such Person but rather such Affiliates shall be treated as owning such shares of Common Stock.

"Preemptive Shareholders" has the meaning ascribed to such term in Section 13(a).

"Proportionate Percentage" means, as to each First Offer Offeree, the quotient obtained (expressed as a percentage) by dividing (i) the number of shares of Common Stock owned by such First Offer Offeree on the first day of the Additional First Offer Acceptance Period (as defined in Section 5(b) below) by (ii) the aggregate number of shares of Common Stock owned on the first day of the Additional First Offer Acceptance Period by all First Offer Offerees who exercise their option to purchase Refused Stock (as defined in Section 5(b) below). For purposes of calculating the Proportionate Percentage of any First Offer Offeree, no Person shall be treated as owning the shares of Common Stock held by Affiliates of such Person but rather such Affiliates shall be treated as owning such shares of Common Stock.

"Providence" has the meaning ascribed to such term in the Preamble.

"Providence-A" has the meaning ascribed to such term in the Preamble.

"Providence-IV" has the meaning ascribed to such term in the Preamble.

"Providence Operating-IV" has the meaning ascribed to such term in the Preamble.

"Providence Directors" has the meaning ascribed to such term in Section 3.1(b).

"Providence Governance Rights Assignee" means any Person (i) to which the Providence Parties, a Providence Governance Rights Assignee and/or the other Shareholders Sell shares of Common Stock such that, after giving effect to such Sale, such Person and its Affiliates will hold a number of shares of Common Stock equal to at least 25% of the number of shares of Common Stock held by the Providence Parties immediately following the Merger and (ii) to which the Providence Parties or a Providence Governance Rights Assignee, as applicable, expressly assigns its rights under Sections 3, 7, 9, 11 and 21 of this Agreement.

"Providence Letter Agreement" has the meaning ascribed to such term in Section 3.1(e).

"Providence Parties" has the meaning ascribed to such term in the Preamble.

"Public Float" means all shares of Stock (other than shares of Unvested Stock) held by Persons not Shareholders under this Agreement.

"Public Sale" means a Sale of Stock pursuant to a bona fide underwritten public offering pursuant to an effective registration statement filed under the Securities Act or pursuant to Rule 144 under the Securities Act (other than in a privately negotiated Sale).

"Qualified IPO" means (i) any bona fide underwritten public offering of Common Stock pursuant to an effective registration statement filed under the Securities Act which results in at least 20% of the then issued and outstanding shares of Stock other than shares of Unvested Stock (such 20% number calculated as if all outstanding shares of Stock constituting Common Stock Equivalents have been exercised, converted or exchanged for or into shares of Common Stock) being in the Public Float or (ii) any bona fide underwritten public offering of Common Stock pursuant to an effective registration statement filed under the Securities Act deemed by the Board to be a "Qualified IPO."

"Refused Stock" has the meaning ascribed to such term in Section 5(b).

"Registration Rights Agreement" means the registration rights agreement, dated as of June 1, 2006, among the Company and each of the parties thereto, as amended from time to time.

"Remaining Stock" has the meaning ascribed to such term in Section 5(b).

"Retirement" means the termination of an Employee Holder' s employment with the Company and its Subsidiaries due to retirement (i) at or after attaining age 65 or (ii) at or after attaining age 55 with at least five years of service with the Company and its Subsidiaries.

"Sale Period" has the meaning ascribed to such term in Section 5(c).

"SEC" means the Securities and Exchange Commission or such other federal agency which at such time administers the Securities Act.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC issued under such Act, as they may from time to time be in effect.

"Sell" means (i) for purposes of this Agreement other than Sections 13 and 14, to sell, or in any other way directly or indirectly, whether by merger, sale, consolidation or otherwise, transfer, assign, distribute, pledge, encumber or otherwise dispose of, either voluntarily or involuntarily, and (ii) for purposes of Sections 13 and 14 of this Agreement only, to issue or in any other way directly or indirectly sell or exchange, or agree to issue, sell or exchange; and the terms "Sale" and "Sold" shall have meanings correlative to the foregoing.

"Selling Shareholder(s)" has the meaning ascribed to such term in Sections 6(a), 7(a) and 9(a).

"Shareholders" means the parties to this Agreement (other than the Company) and any other subsequent holder of Stock who agrees to be bound by the terms of this Agreement.

"Stock" (including references to "shares of Stock") means (i) any shares of Common Stock and (ii) any Common Stock Equivalents of the Company, in each case, whether owned on the date hereof or acquired hereafter.

"Subject Affiliates" has the meaning ascribed to such term in Section 17(b).

"Subject Shareholder" has the meaning ascribed to such term in Section 17(b).

"Subject Stock" has the meaning ascribed to such term in Section 5(a).

"Subscription Agreements" has the meaning ascribed to such term in the Recitals to this Agreement, as amended from time to time.

"Subsidiary" means, with respect to any Person, (i) any corporation, limited liability company, partnership or other entity of which shares of capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other similar managing body of such corporation, limited liability company, partnership or other entity are at the time owned or controlled by such Person, or (ii) the management of which is otherwise controlled, directly or indirectly, through one or more intermediaries by such Person.

"Tag-Along Notice" has the meaning ascribed to such term in Section 6(a).

"Tag-Along Offer" has the meaning ascribed to such term in Section 6(a).

"Tag-Along Offeree" has the meaning ascribed to such term in Section 6(a).

"Tag-Along Offeror" has the meaning ascribed to such term in Section 6(a).

"Tag-Along Per Share Price" has the meaning ascribed to such term in Section 6(b).

"Tag-Along Period" has the meaning ascribed to such term in Section 6(a).

"Tag-Along Purchase Price" has the meaning ascribed to such term in Section 6(b).

"Tag-Along Sale Number" has the meaning ascribed to such term in Section 6(a).

"Termination Date" has the meaning ascribed to such term in Section 8(a).

"Total Tag-Along Shares" has the meaning ascribed to such term in Section 6(a).

"Unvested Stock" means Stock which is not vested and with respect to Common Stock Equivalents, includes those that are either not vested or are not exercisable or both.

"Voting Shares" means any securities of the Company, the holders of which are generally entitled to vote for members of the Board (including, without limitation, all outstanding shares of Common Stock).

Section 2. Methodology for Calculations. For all purposes of this Agreement, the proposed Sale or the Sale of a Common Stock Equivalent shall be treated as the proposed Sale or the Sale of the shares of Common Stock into which such Common Stock Equivalent can be converted, exchanged or exercised. Except as otherwise expressly provided in this Agreement, for purposes of calculating (a) the amount of outstanding shares of Common Stock as of any date and (b) the amount of shares of Common Stock owned by a Person hereunder (and

the percentage of the outstanding shares of Common Stock owned by a Person), no Common Stock Equivalents of the Company shall be treated as having been converted, exchanged or exercised. In the event of any stock split, stock dividend, reverse stock split, any combination of the shares of Common Stock or any similar event, with respect to all references in this Agreement to a Shareholder or Shareholders holding a number of shares of Common Stock, the applicable number shall be appropriately adjusted to give effect to such stock split, stock dividend, reverse stock split, any combination of the shares of Common Stock or similar event).

Section 3. Corporate Governance.

3.1. Board of Directors.

(a) The Board shall be comprised of five directors (or, if Leeds becomes entitled to designate a director of the Company pursuant to the terms of, and subject to the conditions set forth in, the Leeds Option Agreement, six directors) or such greater number of directors as may from time to time be determined by the Board and approved in accordance with Section 11.

(b) Prior to a Qualified IPO, (i) for so long as the GSCP Parties and their Affiliates or a GSCP Governance Rights Assignee and its Affiliates, as applicable, hold a number of shares of Common Stock that is no less than 50% of the number of shares of Common Stock held by the GSCP Parties immediately following the Merger, the GSCP Parties or such GSCP Governance Rights Assignee, as applicable, shall have the right to designate two members of the Board and at such time at which the GSCP Parties and their Affiliates or any GSCP Governance Rights Assignee and its Affiliates, as applicable, hold a number of shares of Common Stock that is less than 50% and more than 25% of the number of shares of Common Stock held by the GSCP Parties immediately following the Merger, the GSCP Parties or such GSCP Governance Rights Assignee, as applicable, shall have the right to designate one member of the Board (the persons from time to time designated by the GSCP Parties or a GSCP Governance Rights Assignee, if applicable, in accordance with the foregoing being referred to herein as the "GSCP Directors"), (ii) for so long as the Providence Parties and their Affiliates or a Providence Governance Rights Assignee and its Affiliates, as applicable, hold a number of shares of Common Stock that is no less than 50% of the number of shares of Common Stock held by the Providence Parties immediately following the Merger, the Providence Parties or such Providence Governance Rights Assignee, as applicable, shall have the right to designate two members of the Board and at such time at which the Providence Parties and their Affiliates or any Providence Governance Rights Assignee and its Affiliates, as applicable, hold a number of shares of Common Stock that is less than 50% and more than 25% of the number of shares of Common Stock held by the Providence Parties immediately following the Merger, the Providence Parties or such Providence Governance Rights Assignee, as applicable, shall have the right to designate one member of the Board (the persons from time to time designated by the Providence Parties or a Providence Governance Rights Assignee, if applicable, in accordance with the foregoing being referred to herein as the "Providence Directors"), (iii) (A) for so long as John R. McKernan, Jr. is entitled to be a director of the Company under the terms of his employment agreement with the Company, Mr. McKernan shall be designated a member of the Board and (B) at such time as Mr. McKernan shall no longer serve as Chief Executive Officer of the Company, any subsequent Chief Executive Officer of the Company shall, at the discretion of

the remaining members of the Board, be designated to serve as a member of the Board, and (iv) if Leeds becomes entitled to designate a director of the Company pursuant to the terms of, and subject to the conditions set forth in, the Leeds Option Agreement, for so long as Leeds holds a number of shares of Common Stock that is no less than 50% of the number of shares of Common Stock held by Leeds immediately following the closing of the exercise of the Leeds Option, Leeds shall have the right to designate one member of the Board (the person from time to time designated by Leeds in accordance with the foregoing being referred to herein as the "Leeds Director"). For so long as the GSCP Parties are entitled to designate two GSCP Directors, one of such directors shall be designated by GSCP and one of such directors shall be designated by GSCP Institutional. For so long as the GSCP Parties are entitled to designate one GSCP Director, such director shall be designated by GSCP Institutional.

(c) Prior to a Qualified IPO, at any regular or special meeting of shareholders of the Company called for the purpose of electing members to serve on the Board, or, to the extent permitted by the articles of incorporation of the Company, in any written consent electing members to serve on the Board executed in lieu of such a meeting, each of the Shareholders agrees to vote all Voting Shares held by him, and to take all other necessary action, to cause the persons designated in accordance with Section 3.1(b) to be directors of the Company, but subject to Sections 3.3(b), 3.3(c) and 3.3(d).

(d) Except as required by applicable law and subject to Section 11, the business and affairs of the Company shall be managed by or under the direction of the Board. At all meetings of the Board, a quorum shall consist of not less than a majority of the members of the Board, provided that such majority shall include at least one GSCP Director and one Providence Director. All actions of the Board shall require the affirmative vote of at least a majority of the members of the Board present at a meeting at which a quorum is present, provided that such majority shall include the affirmative vote of at least one GSCP Director and one Providence Director, unless otherwise specified herein or as required by applicable law. Subject to applicable law, any action that may be taken at a meeting of the Board may also be taken by written consent of all of the members of the Board in lieu of a meeting.

(e) If, at any time, GSCP Institutional owns any Stock, GSCP Institutional shall have such other rights as are set forth in a letter agreement entered into on June 1, 2006 between the Company and GSCP Institutional (as amended from time to time, the "GSCP Institutional Letter Agreement"). If, at any time, Providence owns any Stock, Providence shall have such other rights as are set forth in a letter agreement entered into on June 1, 2006 between the Company and Providence (as amended from time to time, the "Providence Letter Agreement"). If, at any time, Leeds owns any Stock, Leeds shall have such other rights as are set forth in a letter agreement entered into on July 10, 2006 between the Company and Leeds (as amended from time to time, the "Leeds Letter Agreement").

3.2. Committees; Subsidiaries.

(a) The Board shall appoint and maintain an executive committee, an audit committee, a compensation committee and such other committees as may be approved by the Board.

(b) At the request of any Designating Party, the Company shall take all actions necessary to cause an equal number of GSCP Directors and Providence Directors to be appointed to any committee of the Board or to any committee of the board of directors or other similar managing body of any Subsidiary of the Company, in each case on which such Designating Party requests that such appointment be made.

(c) If requested by any Designating Party, the Company shall cause each member of the Board to be appointed to the board of directors or other similar managing body of any Subsidiary of the Company on which such Designating Party requests that such appointment be made.

3.3. Vacancies; Resignation; Removal.

(a) Subject to Sections 3.3(b), 3.3(c) and 3.3(d), each director shall hold his office until his death or until his successor shall have been duly elected and qualified. If any GSCP Director, Providence Director or Leeds Director shall cease for any reason to serve as a director of the Company for any reason, the vacancy resulting thereby shall be filled by another Person selected by his Designating Party (or, in the case of the Leeds Director, Leeds) if his Designating Party (or, in the case of the Leeds Director, Leeds) is then entitled to designate a GSCP Director, Providence Director or Leeds Director, as the case may be, to replace such director. If any GSCP Director or Providence Director serving on any committee of the Board or on any board of directors or other similar managing body (and any committee thereof) of any Subsidiary of the Company shall cease for any reason to serve as a member of any such committee, board of directors, or other similar managing body, as the case may be, he shall be succeeded by another GSCP Director or Providence Director selected by his Designating Party, if his Designating Party is then entitled to designate a GSCP Director or Providence Director to replace such director.

(b) In the event that any of the GSCP Parties (or a GSCP Governance Rights Assignee), the Providence Parties (or a Providence Governance Rights Assignee) or Leeds loses its right to designate a director or directors pursuant to Section 3.1(b) as a result of ceasing to hold the requisite percentage ownership of shares of Common Stock or, in the case the GSCP Parties (or a GSCP Governance Rights Assignee) or the Providence Parties (or a Providence Governance Rights Assignee), by reason of an assignment of its rights under Section 3 to a GSCP Governance Rights Assignee or a Providence Governance Rights Assignee, the Designating Party that loses such right agrees that (if requested by a majority of the remaining members of the Board), such Designating Party shall cause one or more of such party' s designees to resign from the Board and from any board of directors or other similar managing body (and any committee thereof) of any Subsidiary of the Company (it being understood and agreed that if such event only results in the loss of either the GSCP Parties' (or a GSCP Governance Rights Assignee' s) or the Providence Parties' (or a Providence Governance Rights Assignee' s) right to designate one director and such party retains the right to designate another director pursuant to Section 3.1(b), then such party shall have the right to select which of its designees shall resign pursuant to this Section 3.3(b) and which of its designees will continue to serve on the Board).

(c) Subject to Section 3.3(b), the removal from the Board of any GSCP Director, Providence Director or Leeds Director shall be only at the written request of his Designating Party (or, in the case of the Leeds Director, Leeds). Upon receipt of any such written request, the Board and the Shareholders shall promptly take all such action necessary or desirable to cause the removal of such director from office.

(d) For so long as Leeds (i) is not entitled to designate a Leeds Director pursuant to the terms of the Leeds Option Agreement and (ii) holds a number of shares of Common Stock that is no less than 50% of the number of shares of Common Stock held by Leeds immediately following the closing of the exercise of the Leeds Option, Leeds shall be entitled to have one observer (a "Leeds Observer") selected by Leeds to be present at all meetings of the Board and such observer shall be notified of any meeting of the Board, including such meeting' s time and place, in the same manner as directors of the Company. Notwithstanding the foregoing, (i) each Leeds Observer shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information provided to him pursuant hereto and (ii) the Company shall have the right to withhold any information and to exclude such observer from any meeting or portion thereof at the request of the Board if doing so is, in the Board' s reasonable discretion, advisable or necessary to protect the attorney-client privilege between the Company and its counsel, to prevent disclosure of trade secrets or other proprietary information to such Leeds Observer, or if such Leeds Observer is a Competing Business.

3.4. Representative. In the event that, after receiving proper notice of a meeting of the Board (or any committee thereof) or a meeting of any board of directors or similar managing body (or any committee thereof) of any of the Company' s Subsidiaries in accordance with such entity' s bylaws, any GSCP Director, Providence Director or Leeds Director determines that he is unable to attend such meeting for any reason, then the Designating Party of such GSCP Director or Providence Director (or, in the case of the Leeds Director, Leeds) shall have the right to designate a representative to attend and observe such meeting on behalf of such GSCP Director, Providence Director or Leeds Director, who shall be entitled to fully participate (other than the right to vote) in such meeting as if he were a member of the Board (or any committee thereof) or a member of the board of directors or similar managing body (or any committee thereof) of the relevant Subsidiary of the Company, as the case may be. Notwithstanding the foregoing, (i) each Designating Party designating a representative shall cause such representative appointed hereunder to hold in confidence and trust and to act in a fiduciary manner with respect to all information provided to him pursuant hereto and (ii) the Company shall have the right to withhold any information and to exclude such representative from any meeting or portion thereof at the request of the Board if doing so is, in the Board' s reasonable discretion, advisable or necessary for any reason, including but not limited to, if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel, would result in disclosure of trade secrets to such representative, or if such representative is a Competing Business.

3.5. Expenses. The Company shall pay the reasonable out-of-pocket expenses incurred by each member of the Board in connection with performing his duties as a member of the Board, including without limitation the reasonable out-of-pocket expenses incurred by such person for attending meetings of the Board or any committee thereof or meetings of any board of directors or other similar managing body (and any committee thereof) of any Subsidiary of the Company.

3.6. Telephonic Board Meetings. The Company shall take or cause to be taken all necessary actions, including, without limitation, causing the applicable bylaws of the Company to be duly amended, to allow any member of the Board to telephonically attend (a) any meeting of the Board (and any committee thereof) and (b) any meeting of any board of directors or any similar managing body (and any committee thereof) of any Subsidiary of the Company of which he is a member.

3.7. Directors' Indemnification.

(a) The Company shall obtain and cause to be maintained in effect, with financially sound insurers, a policy of directors' and officers' liability insurance covering each of the members of the Board in an amount of $5,000,000 or more and upon such terms as shall be determined by the Board.

(b) The articles of incorporation, bylaws and other organizational documents of the Company and each of its Subsidiaries shall at all times, to the fullest extent permitted by law, provide for indemnification of, advancement of expenses to, and limitation of the personal liability of, the members of the Board and the members of the boards of directors or other similar managing bodies of each of the Company' s Subsidiaries and such other persons, if any, who, pursuant to a provision of such articles of incorporation, bylaws or other organizational documents, exercise or perform any of the powers or duties otherwise conferred or imposed upon members of the Board or the boards of directors or other similar managing bodies of each of the Company' s Subsidiaries. Such provisions may not be amended, repealed or otherwise modified in any manner adverse to any member of the Board or any member of the boards of directors or other similar managing bodies of any of the Company' s Subsidiaries, until at least six years following the later of (i) the date that neither the GSCP Parties (or a GSCP Governance Rights Assignee, if applicable) nor the Providence Parties (or a Providence Governance Rights Assignee, if applicable) is entitled to designate or nominate any director and (ii) the date that Mr. McKernan ceases to be a member of the Board or a member of the board of directors or other similar managing body of any of the Company' s Subsidiaries.

(c) Each member of the Board is intended to be a third-party beneficiary of the obligations of the Company pursuant to this Section 3.7, and the obligations of the Company pursuant to this Section 3.7 shall be enforceable by each member of the Board.

3.8. Cooperation. Each Shareholder shall vote all of its Voting Shares and shall take all other necessary or desirable actions within its control (including, without limitation, attending all meetings in person or by proxy for purposes of obtaining a quorum and/or executing all written consents in lieu of meetings, as applicable), and the Company shall take all necessary and desirable actions within its control (including, without limitation, providing therefor in its organizational documents and/or calling special Board and shareholder meetings), to effectuate the provisions of this Section 3.

3.9. Irrevocable Proxies.

(a) In order to secure each Shareholder' s obligation to vote its Voting Shares in accordance with the provisions of Section 3 of this Agreement, each Shareholder, revoking all prior proxies, hereby appoints GSCP (or any GSCP Governance Rights Assignee, as applicable) as its true and lawful proxy and attorney-in-fact, with the powers the Shareholder would possess if personally present and with full power of substitution, to vote all of its Voting Shares of the Company as is necessary to enforce the rights of the GSCP Parties (or any GSCP Governance Rights Assignee, as applicable) under Section 3 of this Agreement whether action is taken with or without the formality of a meeting. GSCP (or any GSCP Governance Rights Assignee, as applicable) may exercise the irrevocable proxy granted to it hereunder at any time any Shareholder fails to comply with any provision of Section 3 of this Agreement granting the GSCP Parties (or any GSCP Governance Rights Assignee, as applicable) rights hereunder. The proxies and powers granted by each Shareholder pursuant to this Section 3.9(a) are coupled with an interest and irrevocable for the period during which such Shareholder has obligations under Section 3 of this Agreement and are given to secure the performance of the Shareholder' s obligations to the GSCP Parties (or any GSCP Governance Rights Assignee, as applicable) under Section 3 of this Agreement. Such proxies and powers will be effective until a Qualified IPO, at which time such proxies and powers shall terminate. Such proxies and powers shall survive the death, incompetency and disability of each Shareholder.

(b) In order to secure each Shareholder' s obligation to vote its Voting Shares in accordance with the provisions of Section 3 of this Agreement, each Shareholder, revoking all prior proxies, hereby appoints Providence (or any Providence Governance Rights Assignee, as applicable) as its true and lawful proxy and attorney-in-fact, with the powers the Shareholder would possess if personally present and with full power of substitution, to vote all of its Voting Shares of the Company as is necessary to enforce the rights of the Providence Parties (or any Providence Governance Rights Assignee, as applicable) under Section 3 of this Agreement whether action is taken with or without the formality of a meeting. Providence (or any Providence Governance Rights Assignee, as applicable) may exercise the irrevocable proxy granted to it hereunder at any time any Shareholder fails to comply with any provision of Section 3 of this Agreement granting the Providence Parties (or any Providence Governance Rights Assignee, as applicable) rights hereunder. The proxies and powers granted by each Shareholder pursuant to this Section 3.9(b) are coupled with an interest and irrevocable for the period during which such Shareholder has obligations under Section 3 of this Agreement and are given to secure the performance of the Shareholder' s obligations to the Providence Parties (or any Providence Governance Rights Assignee, as applicable) under Section 3 of this Agreement. Such proxies and powers will be effective until a Qualified IPO, at which time such proxies and powers shall terminate. Such proxies and powers shall survive the death, incompetency and disability of each Shareholder.

3.10. Management Rights. The Company acknowledges that the provisions of Section 3 of this Agreement, including the GSCP Institutional Letter Agreement, the Providence Letter Agreement and the Leeds Letter Agreement, are intended to provide the GSCP Parties (or a GSCP Governance Rights Assignee, if applicable), the Providence Parties (or a Providence Governance Rights Assignee, if applicable) and Leeds with "contractual management rights" within the meaning of ERISA and the regulations promulgated thereunder.

Section 4. Restrictions on Sales of Stock by Shareholders.

(a) Subject to the remaining subsections of this Section 4 and prior to a Qualified IPO, except in a Permitted Sale,

(i) a Shareholder (other than an Employee Holder) shall not Sell any Stock without (A) the approval of the Board and (B) complying with the provisions of Section 5 hereof and then, if applicable, the provisions of Section 6 hereof; and

(ii) an Employee Holder shall not Sell any Stock, except (x) to any Person pursuant to the laws of descent and distribution or (y) with the prior written consent of the Chief Executive Officer of the Company (which consent may withheld for any or no reason), to the spouse, parent, sibling, child, step-child, grandchild, niece or nephew of such Employee Holder, or the spouse thereof and to any trust, limited liability company, limited partnership, private foundation or other estate planning vehicle for such Employee Holder or for the benefit of any of the foregoing.

Notwithstanding the foregoing, other than in a Bring-Along Sale pursuant to Section 7 or an Exit Sale pursuant to Section 9, no Shareholder shall Sell any Stock to any Competing Business.

(b) Notwithstanding anything contained herein to the contrary, except in connection with a Public Sale, any transferee of Stock who is not a Shareholder (other than the Company) shall upon the consummation of, and as a condition to, such Sale execute and deliver to the Company (which the Company shall then deliver to all Shareholders) an agreement (or a counterpart to this Agreement) pursuant to which such transferee agrees to be bound by the terms of this Agreement to the same extent as the transferor of such Stock and such transferee shall thereafter be deemed to be a Shareholder for purposes of this Agreement, with the rights of the transferor that are assigned to the transferee (except the rights under Sections 3, 9 and 11, unless such rights are specifically assigned to such transferee and after giving effect to such Sale, such transferee will be a GSCP Governance Rights Assignee or Providence Governance Rights Assignee, as applicable and except that, pursuant to the Leeds Option Agreement, Leeds shall have the rights expressly provided to Leeds hereunder); provided, however, that if such transferee would, after such Sale, be a Management Holder or an Employee Holder, such transferee shall upon the consummation of, and as a condition to, such Sale execute and deliver to the Company (which the Company shall then deliver to all Shareholders) an agreement (or a counterpart to this Agreement) pursuant to which such transferee agrees to be bound by the terms of this Agreement as a Management Holder or an Employee Holder, as applicable.

(c) Any Sale or attempted Sale of Stock in violation of any provision of this Agreement shall be void, and the Company shall not record such Sale on its books or treat any purported transferee of such Stock as the owner of such Stock for any purpose.

Section 5. Rights of First Offer. Prior to a Qualified IPO, and except as set forth in Section 5(f) below, any proposed Sale of Stock by a Shareholder (other than an

Employee Holder) (such Shareholder being referred to in this Section 5 as a "Selling Shareholder") shall be consummated only in accordance with the following procedures:

(a) The Selling Shareholder shall first deliver to the Company and the Other Shareholders (other than an Employee Holder) (a "First Offer Offeree") a written notice (a "First Offer Notice"), which shall (i) state the Selling Shareholder' s intention to sell Stock to one or more Persons, the amount and type of Stock to be sold (the "Subject Stock"), the purchase price therefor and a summary of the other material terms of the proposed Sale and (ii) offer the Company and the First Offer Offerees the option to acquire all or a portion of such Subject Stock upon the terms and subject to the conditions of the proposed Sale as set forth in the First Offer Notice (the "First Offer"). The First Offer shall remain open and irrevocable for the periods set forth below (and, to the extent the First Offer is accepted during such periods, until the consummation of the Sale contemplated by the First Offer). The Company shall have the right and option, for a period of 20 days after delivery of the First Offer Notice (the "Initial First Offer Acceptance Period"), to accept the First Offer for all or any part of the Subject Stock at the purchase price and on the terms stated in the First Offer Notice. Such acceptance shall be made by delivering a written notice to the Selling Shareholder and each of the First Offer Offerees within the Initial First Offer Acceptance Period.

(b) If the Company shall fail to accept all of the Subject Stock offered for Sale pursuant to, or shall reject in writing, the First Offer (the Company being required to notify in writing the Selling Shareholder and each of the First Offer Offerees of its rejection or failure to accept in the event of the same), then, upon the earlier of the expiration of the Initial First Offer Acceptance Period or the giving of such written notice of rejection or failure to accept such offer by the Company, each First Offer Offeree shall have the right and option, for a period of 20 days thereafter (the "Additional First Offer Acceptance Period"), to accept the First Offer for all or any part of the Subject Stock so offered and not accepted by the Company (the "Refused Stock") at the purchase price and on the terms stated in the First Offer Notice. Such acceptance shall be made by delivering a written notice to the Company and the Selling Shareholder within the Additional First Offer Acceptance Period specifying the maximum number of shares such First Offer Offeree will purchase (with respect to each First Offer Offeree electing to purchase Refused Stock, the "First Offer Stock"). If, upon the expiration of the Additional First Offer Acceptance Period, the aggregate amount of First Offer Stock exceeds the amount of Refused Stock, the Refused Stock shall be allocated among the First Offer Offerees as follows: (i) first, each First Offer Offeree shall be entitled to purchase no more than its Proportionate Percentage of the Refused Stock; (ii) second, if an amount of Refused Stock has not been allocated for purchase pursuant to (i) above (the "Remaining Stock"), each First Offer Offeree (an "Oversubscribed Shareholder") which had offered to purchase an amount of Refused Stock in excess of the amount of stock allocated for purchase to him in accordance with clause (i) above, shall be entitled to purchase an amount of Remaining Stock equal to no more than its Proportionate Percentage (treating only Oversubscribed Shareholders as First Offer Offerees for these purposes) of the Remaining Stock; and (iii) third, the process set forth in (ii) above shall be repeated with respect to any amounts of Refused Stock not yet allocated for purchase until the Refused Stock is allocated for purchase in its entirety.

(c) If effective acceptance shall not be received pursuant to Sections 5(a) and/or 5(b) above with respect to all of the Subject Stock offered for Sale pursuant to the First

Offer Notice, then the Selling Shareholder may Sell all or that portion of the Stock so offered for Sale and not so accepted, to any Person or Persons at a price not less than the price, and on terms not more favorable to the purchaser thereof than the terms, stated in the First Offer Notice at any time within 60 days (plus a sufficient number of days to allow the expiration or termination of all waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") or receipt of other regulatory approvals applicable to such Sale) after the expiration of the Additional First Offer Acceptance Period (the "Sale Period"). In the event that all of the Stock is not Sold by the Selling Shareholder during the Sale Period, the right of the Selling Shareholder to Sell such Stock which is not Sold shall expire and the obligations of Section 4 and this Section 5 shall be reinstated; provided, however, in the event that the Selling Shareholder determines, at any time during the Sale Period, that the Sale of all of the Stock on the terms set forth in the First Offer Notice is impractical, the Selling Shareholder may terminate the offer and the procedures provided in Section 4 and this Section 5 shall be reinstated; provided further that, during the period from a Selling Shareholder' s delivery of a First Offer Notice until 180 days following the expiration of the related Sale Period (whether or not the Selling Shareholder Sold Stock during such Sale Period) or termination of an offer set forth in a First Offer Notice, as applicable, the Selling Shareholder may not deliver another First Offer Notice for a Sale of Stock subject to this Section 5.

(d) All Sales of Subject Stock to the Company and/or the First Offer Offerees subject to any First Offer Notice shall be consummated contemporaneously at the offices of the Company on the later of (i) a mutually satisfactory business day within 15 days after the expiration of the Initial First Offer Acceptance Period, or the Additional First Offer Acceptance Period, as applicable, and (ii) the fifth business day following the expiration or termination of any waiting periods under the HSR Act or receipt of other regulatory approvals applicable to such Sales, or at such other time and/or place as the parties to such Sales may agree. The delivery of certificates or other instruments evidencing such Subject Stock duly endorsed for transfer shall be made on such date against payment of the purchase price for such Subject Stock.

(e) Notwithstanding anything contained herein to the contrary, prior to any Sale of Stock by a Selling Shareholder pursuant to this Section 5, the Selling Shareholder shall, after complying with the provisions of this Section 5, comply with the provisions of Section 6 hereof, if applicable.

(f) The requirements of this Section 5 shall not apply to (i) any Permitted Sale, (ii) any Sale of Stock by any Tag-Along Offeree to a Tag-Along Offeror pursuant to Section 6, (iii) any sale of Stock by an Employee Shareholder pursuant to Section 4(a)(ii), or (iv) any Sale of Stock to the Company. The requirements of this Section 5 are in addition to, and not in limitation of, any other restrictions on Sales of Stock contained in this Agreement.

Section 6. Tag-Along Rights.

(a) Prior to a Qualified IPO and except as set forth in Section 6(d) below, in the event that any Shareholder (other than an Employee Holder), whether alone or in concert with any other Shareholders (other than an Employee Holder) that are its Affiliates (such Shareholder(s) being referred to in this Section 6 as the "Selling Shareholder(s)"), proposes to Sell to one or more Persons, in one transaction or a series of related transactions, shares of Stock

which in the aggregate represent more than 10% of the shares of Stock held by such Shareholder and its Affiliates, prior to effecting such a Sale of Stock, the Selling Shareholder(s) shall give not less than 20 days' prior written notice (the "Tag-Along Notice") of such intended Sale to each Other Shareholder (other than a Employee Holder) (a "Tag-Along Offeree"), which shall specifically identify the identity of the proposed transferee or transferees (together, the "Tag-Along Offeror"), the number of shares of Stock as is proposed to be sold by the Selling Shareholder(s) to the Tag-Along Offeror (the "Tag-Along Sale Number"), the maximum number of shares of Stock that the Tag-Along Offeror is willing to purchase (the "Maximum Tag-Along Sale Number"), the purchase price therefor, and a summary of the other material terms and conditions of the proposed Sale, and shall contain an offer (the "Tag-Along Offer") by the Tag-Along Offeror to each Tag-Along Offeree that is not an Affiliate of the Selling Shareholder(s), which Tag-Along Offer shall be irrevocable for a period of 15 days after the later of delivery thereof and the expiration of the Additional First Offer Acceptance Period, to the extent applicable (the "Tag-Along Period"), to purchase from such Tag-Along Offeree at the Tag-Along Purchase Price (as defined below) and upon the other terms offered by the Tag-Along Offeror to the Selling Shareholder(s), which shall be set forth in the Tag-Along Notice, that number of shares of Stock (excluding Unvested Stock) of such Tag-Along Offeree as is equal to the product of (x) a fraction, the numerator of which is the Tag-Along Sale Number and the denominator of which is the aggregate number of shares of Stock (excluding Unvested Stock) owned as of the date of the Tag-Along Offer by the Selling Shareholder(s) and its (or their) Affiliates that are Shareholders hereunder and (y) the number of shares of Stock (excluding Unvested Stock) owned by such Tag-Along Offeree as of the date of the Tag-Along Offer; provided that the number of shares of Stock required to be purchased from such Tag-Along Offeree by the Tag-Along Offeror shall be subject to reduction in accordance with the last sentence hereof. A copy of the Tag-Along Notice shall promptly be sent to the Company. The Tag-Along Offer may be accepted in whole or in part at the option of each of the Tag-Along Offerees that is not an Affiliate of the Selling Shareholder(s). Notice of any Tag-Along Offeree' s intention to accept a Tag-Along Offer, in whole or in part, shall be evidenced by a writing signed by such Tag-Along Offeree and delivered to the Tag-Along Offeror and the Company prior to the end of the Tag-Along Period, setting forth the number of shares of Stock that such Tag-Along Offeree elects to Sell. Promptly upon receipt of such writing from any Tag-Along Offeree the Company shall provide a copy of such writing to each Tag-Along Offeree. In the event that the number of shares of Stock proposed to be sold by the Selling Shareholder(s) to the Tag-Along Offeror plus the aggregate number of shares of Stock all Tag-Along Offerees elect to Sell to a Tag-Along Offeror (the "Total Tag-Along Shares") is greater than the Maximum Tag-Along Sale Number, each Selling Shareholder and each Tag-Along Offeree shall be entitled to Sell to the Tag-Along Offeror only that number of shares of Stock that is equal to (A) the number of shares that it sought or elected, as applicable, to be Sold to such Tag-Along Offeror by such Selling Shareholder or Tag-Along Offeree, as applicable, multiplied by (B) a fraction the numerator of which is the number of the Maximum Tag-Along Sale Number and the denominator of which is equal to the Total Tag-Along Shares.

(b) For purposes of this Agreement, the following terms shall have the meanings set forth below:

"Tag-Along Per Share Price" means an amount equal to the quotient obtained by dividing (i) the sum of (A) the aggregate purchase price to be paid by the Tag-Along Offeror in

respect of the Stock proposed to be Sold by the Selling Shareholder(s) plus (B) the aggregate amount payable upon conversion, exchange or exercise of all Common Stock Equivalents of the Company proposed to be Sold by the Selling Shareholder(s), by (ii) the number of shares of Common Stock (including shares of Common Stock obtainable upon the conversion, exchange or exercise of Common Stock Equivalents of the Company) proposed to be Sold by the Selling Shareholder(s), all of which shall be set forth in the Tag-Along Notice.

"Tag-Along Purchase Price" means (i) with respect to a share of Common Stock, the Tag-Along Per Share Price and (ii) with respect to a Common Stock Equivalent of the Company, an amount equal to (A) the Tag-Along Per Share Price less the amount per share of the exercise or purchase price (if any) of such Common Stock Equivalent, multiplied by (B) the number of shares of Common Stock issuable upon the conversion, exchange or exercise of such Common Stock Equivalent.

(c) All Sales of Stock to the Tag-Along Offeror shall be consummated contemporaneously at the offices of the Company on the later of (i) a mutually satisfactory business day as soon as practicable, but in no event more than 15 days after the expiration of the Tag-Along Period, or (ii) the fifth business day following the expiration or termination of all waiting periods under the HSR Act or receipt of other regulatory approvals applicable to such Sales, or at such other time and/or place as the parties to such Sales may agree. The delivery of certificates or other instruments evidencing such Stock duly endorsed for transfer shall be made on such date against payment of the purchase price for such Stock.

(d) The requirements of this Section 6 shall not apply to (i) any Permitted Sale, (ii) any sale of Stock by an Employee Shareholder pursuant to Section 4(a)(ii), or (iii) any Sale of Stock to the Company by employees of the Company. The requirements of this Section 6 are in addition to, and not in limitation of, any other restrictions on Sales of Stock contained in this Agreement.

Section 7. Bring-Along Rights.

(a) If, prior to a Qualified IPO, any Shareholder, whether alone or in concert with any other Shareholders, owning an amount of Stock equal to 50% or more of the then outstanding Stock (such Shareholder(s) being referred to in this Section 7 as the "Selling Shareholder(s)") proposes to Sell to any Person or Group that is not an Affiliate of any of such Selling Shareholder(s) (collectively, a "Bring-Along Transferee") shares of Stock equal to 50% or more of the then outstanding Stock (a "Bring-Along Sale"), then the Selling Shareholder(s) may elect (a "Bring-Along Election") to require each (but not fewer than all) Other Shareholder that is not an Affiliate of such Selling Shareholder(s) to Sell as a part of the Bring-Along Sale to such Bring-Along Transferee, at the purchase price and upon the other terms and subject to the conditions of the Bring-Along Sale (including the kind and amount of consideration to be paid for such Stock), all of which shall be set forth in the Bring-Along Notice (as defined below), that number of shares of Stock (including for this purpose Common Stock Equivalents but which, at the election of the Selling Shareholders, may exclude Unvested Stock) as is equal to the product of (x) a fraction, the numerator of which is the number of shares of Stock as is proposed to be sold by the Selling Shareholder(s) and the denominator of which is the aggregate number of shares of Stock owned as of the date of the Bring-Along Notice by the Selling Shareholder(s)

and their Affiliates and (y) the number of shares of Stock (including for this purpose Common Stock Equivalents) owned by such Other Shareholder as of the date of the Bring-Along Notice; provided that the Selling Shareholders shall have the right to elect that the shares of Stock Sold by an Other Shareholder not include any Unvested Stock); provided further that the purchase price to be paid in such Bring-Along Sale for any Common Stock Equivalent shall equal the purchase price per share of Common Stock to be paid in such Bring-Along Sale less the amount per share of the exercise or purchase price (if any) of such Common Stock Equivalent. Notwithstanding the foregoing, no Bring-Along Election may be made (i) without the approval of the GSCP Parties (or a GSCP Governance Rights Assignee, as applicable) so long as the GSCP Parties (or a GSCP Governance Rights Assignee, as applicable) and their Affiliates hold a number of shares of Common Stock that is no less than 25% of the number of shares of Common Stock held by the GSCP Parties immediately following the Merger and (ii) without the approval of the Providence Parties (or a Providence Governance Rights Assignee, as applicable) so long as the Providence Parties (or a Providence Governance Rights Assignee, as applicable) and their Affiliates hold a number of shares of Common Stock that is no less than 25% of the number of shares of Common Stock held by the Providence Parties immediately following the Merger.

(b) The rights set forth in Section 7(a) shall be exercised by giving written notice (the "Bring-Along Notice") to each Other Shareholder that is not an Affiliate of any of the Selling Shareholder(s) and to the Company setting forth in detail the terms of the proposed Bring-Along Sale and the proposed closing date of the Bring-Along Sale. In connection with any Bring-Along Sale, all Other Shareholders shall be obligated, if applicable, to vote (or consent in writing, as the case may be) all Voting Shares held by them in favor of any Bring-Along Sale being effected by merger or consolidation and the Other Shareholders and the Company shall in all other respects support the transaction contemplated by the Bring-Along Sale and shall be obligated to cooperate in the consummation of the transaction contemplated thereby and shall execute all documents, including a sale, purchase or merger agreement, reasonably requested by the Company or the Selling Shareholder(s) containing the terms and conditions of the Bring-Along Sale; provided, however, that no Shareholder shall be required to make any representations or warranties in any agreement relating to a Bring-Along Sale other than representations and warranties relating to such Shareholder and the ownership of its Stock that are customary in similar transactions including, without limitation, representations and warranties relating to title, authorization and execution and delivery, nor shall any Shareholder be required to provide indemnification with respect to any representations or warranties made by any other Shareholder or in an amount exceeding the amount of the proceeds received by such Shareholder in the Bring-Along Sale. In addition, no Shareholders shall exercise any rights of appraisal or dissenters rights that such Shareholder may have (whether under applicable law or otherwise) or could potentially have or acquire in connection with any Bring-Along Sale or any proposal that is necessary or desirable to consummate the Bring-Along Sale.

(c) The Bring-Along Transferee and any Bring-Along Sale transaction pursuant to this Section 7 shall be selected pursuant to a sale process determined by the Selling Shareholder(s), which may include an auction process managed by an investment banking firm selected by the Selling Shareholder(s). All fees and expenses related to any Bring-Along Sale, including but not limited to, the fees of any such investment banking firm but not including the fees of counsel for any individual Shareholder, shall be paid by the Company.

(d) Upon delivery of a Bring-Along Notice to the Company, the Board will take such actions as are necessary to accomplish the Bring-Along Sale specified therein as soon as is reasonably practicable. Notwithstanding anything contained herein to the contrary, nothing in this Section 7 shall be deemed to compel any director to act in violation of his fiduciary duties.

(e) All Sales of Stock to the Bring-Along Transferee pursuant to this Section 7 shall be consummated contemporaneously at the offices of the Company on the later of (i) a business day not less than 15 or more than 60 days after the Bring-Along Notice is delivered to the Shareholders or (ii) the fifth business day following the expiration or termination of all waiting periods under the HSR Act or receipt of other regulatory approvals applicable to such Sales, or at such other time and/or place as the Selling Shareholders may otherwise determine. The delivery of certificates or other instruments evidencing such Stock duly endorsed for transfer shall be made on such date against payment of the purchase price for such Stock.

(f) In order to secure each Management Holder' s and each Employee Holder' s obligation to comply with the provisions of Section 7 of this Agreement, each Management Holder and each Employee Holder hereby appoints GSCP (or any GSCP Governance Rights Assignee, as applicable) and Providence (or any Providence Governance Rights Assignee, as applicable), acting jointly (the "Joint Proxy Holders"), as its true and lawful proxy and attorney-in-fact, with full power of substitution, to vote all of its Voting Shares of the Company and to take all such other actions and sign all documents to the extent necessary to carry out the provisions of this Section 7. The Joint Proxy Holders may exercise the irrevocable proxy granted to them hereunder at any time any Management Holder or Employee Holder, as applicable, fails to comply with any provision of Section 7 of this Agreement. The proxies and powers granted by each Management Holder and Employee Holder pursuant to this Section 7(f) are coupled with an interest and are given to secure the performance of the obligations of the Management Holder or Employee Holder, as applicable, to the GSCP Parties (or any GSCP Governance Rights Assignee, as applicable) and the Providence Parties (or any Providence Governance Rights Assignee, as applicable) under Section 7 of this Agreement. Such proxies and powers will be effective until a Qualified IPO, at which time such proxies and powers shall terminate. Such proxies and powers shall survive the death, incompetency and disability of each Management Holder and Employee Holder.

Section 8. Call Right.

(a) Except as otherwise agreed in writing by the Company, if (i) the employment of any Management Holder or Employee Holder with the Company or any of its Subsidiaries terminates for any reason (such time being referred to as the "Termination Date") or (ii) a Shareholder subject to the covenant contained in Section 17(b) of this Agreement shall continue to be in breach of such covenant 30 days after the receipt of a written notice of such breach from any party hereto, then the Company shall have the right, but not the obligation, to purchase, for cash, in one or more transactions, all or any portion of the Common Stock held by such Management Holder or Employee Holder, as applicable, (other than the Co-Invest Shares of such Management Holder or Employee Holder) or all or any portion of the Stock held by such Shareholder, as applicable (the "Equity Call Option" and such Stock subject to the Equity Call Option, the "Call Equity Securities") at the Equity Call Purchase Price.

(b) If the Company desires to exercise the Equity Call Option, it shall deliver written notice thereof (a "Call Notice"), (i) if to the Management Holder or Employee Holder, as applicable, pursuant to Section 8(a)(i), no later than the first anniversary of the Termination Date or, in the case of shares of Common Stock acquired upon the exercise of a Common Stock Equivalent (including stock options granted pursuant to the Company' s 2006 Stock Option Plan or any other equity compensation arrangement), if later, the 190th day after such Common Stock is acquired or (ii) if to the Shareholder pursuant to Section 8(a)(ii), at any time after the 30-day period referred to in Section 8(a) (whether or not the applicable breach is then continuing) (the "Call Period"), which notice shall set forth the number of, and identify which of, the Call Equity Securities of the Shareholder the Company desires to repurchase, the Equity Call Purchase Price for each such Call Equity Security, and the proposed closing date of the transaction.

(c) For purposes of this Agreement, the following terms shall have the meanings set forth below:

"Cause" means, with respect to the termination of employment of any Management Holder or Employee Holder by the Company or any of its Subsidiaries (each, an "Employer"): (i) if such Management Holder or Employee Holder is at the time of termination a party to an employment or retention agreement with an Employer thereof which defines such term, the meaning given therein, and (ii) in all other cases, that in the Board' s determination such termination is based on such Management Holder' s or Employee Holder' s: (A) continuing failure, for more than 10 days after the Employer' s notice to such Management Holder or Employee Holder thereof, by such Management Holder or Employee Holder to perform such duties as are reasonably requested by the Employer as documented in writing to such Management Holder or Employee Holder; (B) failure to observe material policies generally applicable to officers or employees of an Employer unless such failure is capable of being cured and is cured within 10 days of such Management Holder or Employee Holder receiving notice of such failure; (C) commission of any act of fraud, theft or financial dishonesty with respect to an Employer or any criminal act involving moral turpitude or any felony; (D) violation of the provisions of any employment, consulting, non-competition or confidentiality agreement with an Employer or any of its Affiliates unless such violation is capable of being cured and is cured within 10 days of such Management Holder or Employee Holder receiving notice of such violation; (E) chronic absenteeism; or (F) abuse of alcohol or another controlled substance.

"Equity Call Purchase Price" means (i) in the event (A) such termination of employment of a Management Holder or Employee Holder is by the Company with Cause, (B) such termination of employment of a Management Holder or Employee Holder is by the Management Holder or Employee Holder (other than in the case of an Employee Holder by reason of Retirement) or (C) a Shareholder subject to the covenant contained in Section 17(b) of this Agreement shall be in breach of such covenant, the lesser of (1) the Fair Market Value of the Call Equity Securities, determined as of the date of repurchase by the Company and (2) the price paid for the Call Equity Securities by such Shareholder or (ii) in the event such termination of employment of a Management Holder or Employee Holder is (X) by the Company without Cause, (Y) by reason of death or disability or (Z) by an Employee Holder by reason of Retirement, the Fair Market Value of the Call Equity Securities, determined as of the date of repurchase by the Company.

(d) All Sales of Call Equity Securities to the Company pursuant to this Section 8 shall be consummated contemporaneously at the offices of the Company at such time specified in the Call Notice, or at such other time and/or place as the Company may otherwise agree. The delivery of certificates or other instruments evidencing such Call Equity Securities duly endorsed for transfer shall be made on such date against payment of the purchase price for such Call Equity Securities.

(e) Notwithstanding anything contained herein to the contrary, the right of the Company provided in Section 8(a)(ii) is in addition to, and not in limitation of, any other right or remedy the Company may have against such Shareholder as provided by law, at equity or under this Agreement.

Section 9. Sale of the Company.

(a) At any time following the fourth anniversary of the consummation of the Merger, if a Qualified IPO has not been consummated prior thereto, each of the GSCP Parties (or a GSCP Governance Rights Assignee) or the Providence Parties (or a Providence Governance Rights Assignee) (such Shareholder(s) being referred to in this Section 9 as the "Selling Shareholder(s)") may elect to require that all outstanding shares of Stock (including for this purpose Common Stock Equivalents but which, at the election of the Selling Shareholders, may exclude Unvested Stock) be Sold to any Person or Group selected in accordance with Section 9(d) (such Person or Group, a "Company Buyer") (so long as no Company Buyer, including any member of a Company Buyer that is a Group, is an Affiliate of such Selling Shareholder) by means of a Sale of Stock, merger, consolidation or other transaction determined in accordance with Section 9(d) (any such transactions, an "Exit Sale"). In connection with any Exit Sale, all Other Shareholders shall be obligated to Sell to the Company Buyer all, but not less than all, of their Stock (including for this purpose Common Stock Equivalents; provided that, the Selling Shareholders shall have the right to elect that the shares of Stock Sold by an Other Shareholder not include any Unvested Stock), at the same consideration per share to be paid to, and upon the same terms and conditions as, the Selling Shareholder(s) (provided, that the purchase price to be paid in such Exit Sale for any Common Stock Equivalent shall equal the purchase price per share of Common Stock to be paid in such Exit Sale less the amount per share of the exercise or purchase price (if any) of such Common Stock Equivalent) and, if applicable, to vote (or consent in writing, as the case may be) all Voting Shares held by them in favor of any Exit Sale being effected by merger or consolidation and the Other Shareholders and the Company shall in all other respects support the transaction contemplated by the Exit Sale and shall be obligated to cooperate in the consummation of the transaction contemplated thereby and shall execute all documents, including a sale, purchase or merger agreement, reasonably requested by the Company or the Selling Shareholder(s) containing the terms and conditions of the Exit Sale; provided, however, that no Shareholder shall be required to make any representations or warranties in any agreement relating to an Exit Sale other than representations and warranties relating to such Shareholder and the ownership of its Stock that are customary in similar transactions including, without limitation, representations and warranties relating to title, authorization and execution and delivery, nor shall any Shareholder be required to provide indemnification with respect to any representations or warranties made by any other Shareholder or in an amount exceeding the amount of the proceeds received by such Shareholder in the Exit Sale. In addition, no Shareholders shall exercise any rights of appraisal or dissenters rights that

such Shareholder may have (whether under applicable law or otherwise) or could potentially have or acquire in connection with any Exit Sale or any proposal that is necessary or desirable to consummate the Exit Sale. Notwithstanding the foregoing, neither the GSCP Parties nor a GSCP Governance Rights Assignee shall have the right to require an Exit Sale under this Section 9 at any time at which such party and its Affiliates do not hold, in the aggregate, a number of shares of Common Stock equal to or greater than 50% of the number of shares of Common Stock held by the GSCP Parties immediately following the Merger, and neither the Providence Parties nor a Providence Governance Rights Assignee shall have the right to require an Exit Sale under this Section 9 at any time at which such party and its Affiliates do not hold, in the aggregate, a number of shares of Common Stock equal to or greater than 50% of the number of shares of Common Stock held by the Providence Parties immediately following the Merger.

(b) The rights set forth in Section 9(a) shall be exercised by giving written notice (the "Exit Notice") to each Other Shareholder setting forth in detail the terms of the proposed Exit Sale and the proposed closing date of the Exit Sale.

(c) All Sales of Stock to the Company Buyer pursuant to this Section 9 shall be consummated contemporaneously at the offices of the Company on the later of (i) a business day not less than 15 or more than 60 days after the Exit Notice is delivered to the Shareholders or (ii) the fifth business day following the expiration or termination of all waiting periods under the HSR Act or receipt of other regulatory approvals applicable to such Sales, or at such other time and/or place as the Selling Shareholders may otherwise determine. The delivery of certificates or other instruments evidencing such Stock duly endorsed for transfer shall be made on such date against payment of the purchase price for such Stock.

(d) The Company Buyer and any Exit Sale transaction pursuant to this Section 9 shall be selected pursuant to a sale process determined by the Selling Shareholder(s), which may include an auction process managed by an investment banking firm selected by the Selling Shareholder(s). All fees and expenses related to any Exit Sale, including but not limited to, the fees of any such investment banking firm but not including the fees of counsel for any individual Shareholder, shall be paid by the Company.

(e) Upon delivery of an Exit Notice to the Company, the Board will take such actions as is necessary to accomplish the Exit Sale specified therein as soon as is reasonably practicable. Notwithstanding anything contained herein to the contrary, nothing in this Section 9 shall be deemed to compel any director to act in violation of his fiduciary duties.

(f) In order to secure each Management Holder' s and each Employee Holder' s obligation to comply with the provisions of Section 9 of this Agreement, each Management Holder and each Employee Holder hereby appoints the Joint Proxy Holders, acting jointly, as its true and lawful proxy and attorney-in-fact, with full power of substitution, to vote all of its Voting Shares of the Company and to take all such other actions and sign all documents to the extent necessary to carry out the provisions of this Section 9. The Joint Proxy Holders may exercise the irrevocable proxy granted to them hereunder at any time any Management Holder or Employee Holder, as applicable, fails to comply with any provision of Section 9 of this Agreement. The proxies and powers granted by each Management Holder and Employee Holder pursuant to this Section 9(f) are coupled with an interest and are given to secure the performance

of the obligations of the Management Holder or Employee Holder, as applicable, to the GSCP Parties (or any GSCP Governance Rights Assignee, as applicable) and the Providence Parties (or any Providence Governance Rights Assignee, as applicable) under Section 9 of this Agreement. Such proxies and powers will be effective until a Qualified IPO, at which time such proxies and powers shall terminate. Such proxies and powers shall survive the death, incompetency and disability of each Management Holder and Employee Holder.

Section 10. Limitations on Sales or Distributions of Other Securities. Each Employee Holder agrees, to the extent requested in writing by a managing underwriter, if any, of any underwritten public offering of Stock, not to Sell, including any Sale pursuant to Rule 144 under the Securities Act, any Stock (other than as part of such underwritten public offering) during the time period reasonably requested by the managing underwriter, not to exceed 180 days or such shorter period as the Company or any executive officer or director of the Company shall agree to.

Section 11. Approval of Certain Matters. Prior to a Qualified IPO, the Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, take any of the following actions without the prior approval of the Board and the prior written approval of (a) the GSCP Parties (or any GSCP Governance Rights Assignee) for so long as the GSCP Parties and their Affiliates or a GSCP Governance Rights Assignee and its Affiliates, as applicable, hold a number of shares of Common Stock that is no less than 25% of the number of shares of Common Stock held by the GSCP Parties immediately following the Merger and (b) the Providence Parties (or any Providence Governance Rights Assignee) for so long as the Providence Parties and their Affiliates or a Providence Governance Rights Assignee and its Affiliates, as applicable, hold a number of shares of Common Stock that is no less than 25% of the number of shares of Common Stock held by the Providence Parties immediately following the Merger:

(i) except in accordance with Section 7 or 9, consolidate or merge with or into any Person, Sell all or a substantial portion of its assets to another Person, or enter into any similar business combination transaction or effect any transaction or series of related transactions in which more than 50% of its Voting Shares are Sold to another Person, except any such transaction or series of transactions, as the case may be, involving only wholly-owned Subsidiaries of the Company;

(ii) voluntarily liquidate, dissolve or wind-up;

(iii) commence any bankruptcy, insolvency or similar proceeding;

(iv) purchase, acquire or obtain any capital stock or other proprietary interest, directly or indirectly, in any other Person in any transaction or series of related transactions unless (x) such Person is, prior to such transaction, a wholly-owned Subsidiary of the Company or (y) the aggregate consideration (including assumed liabilities) paid by the Company in the transaction or series of related transactions does not exceed $5 million;

(v) purchase, acquire or obtain all or a substantial portion of the business or assets of another Person unless (x) such Person is, prior to such transaction, a wholly-owned Subsidiary of the Company or (y) the aggregate consideration (including assumed liabilities) paid by the Company in the transaction or series of related transactions does not exceed $5 million;

(vi) enter into or commit to enter into any joint ventures or partnerships or establish or acquire any non-wholly-owned Subsidiaries;

(vii) enter into the ownership, active management, development, construction or operation of any line of business not currently conducted by the Company or one of it Subsidiaries;

(viii) other than dispositions of obsolete equipment, sell, lease, transfer or otherwise dispose of any asset or group of assets to any Person or Persons in any transaction or series of related transactions unless (x) each such Person is, prior to such transaction, a wholly-owned Subsidiary of the Company or (y) the book value or fair market value of such assets or group of assets does not exceed $10 million, in the aggregate;

(ix) create, incur or assume any indebtedness for borrowed money (which shall include for purposes hereof capitalized lease obligations and purchase money indebtedness) in an aggregate amount (as to the Company and all of its Subsidiaries) in excess of (A) $10 million in any year or (B) $20 million in the aggregate;

(x) guarantee the obligations of any Person, other than the obligations of the Company or any of its wholly-owned Subsidiaries;

(xi) mortgage, encumber, create or incur liens on, any of its assets other than mortgages, encumbrances or liens securing indebtedness permitted pursuant to Section 11(ix);

(xii) create, designate, authorize, issue, sell or grant, or enter into any agreement providing for the issuance (contingent or otherwise) of, any of its capital stock or other Equity Securities (including, without limitation, any notes or debt securities containing equity features and any of its Equity Securities) except upon the conversion, exchange or exercise of any Plan Option or upon the conversion, exchange or exercise of any equity securities the creation, designation, authorization, issuance, sale or grant of which is approved pursuant to this Section 11(xii);

(xiii) except for dividends paid by any Subsidiary to another Subsidiary of the Company, pay, declare or set aside any sums for the payment of any dividends, or make any distributions, on any of its equity securities or pay, declare or set aside any sums for the payment of any dividends or make any payment on any of its debt securities, except for regularly scheduled payments of principal and interest under the terms of any indebtedness existing as of the date hereof or incurred in accordance with this Section 11;

(xiv) redeem, purchase or otherwise acquire any of its capital stock or other equity securities (including, without limitation, any of its Equity Securities) or redeem, purchase, acquire or make any payments with respect to any stock appreciation rights, phantom stock plans or similar rights or plans relating to the Company or its Subsidiaries, in each case except the acquisition of outstanding Common Stock Equivalents in connection with the conversion, exchange, exercise or forfeiture thereof in accordance with their respective terms;

(xv) redeem, purchase, refinance or otherwise acquire any indebtedness of the Company or any of its Subsidiaries (except to the extent that such indebtedness is due in accordance with its terms);

(xvi) enter into, amend or terminate any agreement involving payments in an aggregate amount (as to the Company and all of its Subsidiaries) in excess of (A) $1 million in any year or (B) $5 million in the aggregate;

(xvii) enter into, or amend the terms of any agreement with respect to any indebtedness for borrowed money;

(xviii) enter into, amend or terminate any lease or leases with any Person if (A) such leases involve annual payments in excess of $1 million, in the aggregate or (B) such leases involve payments in excess of $5 million, in the aggregate;

(xix) make or commit to make any capital expenditures in an aggregate amount (as to the Company and all of its Subsidiaries) of more than $2 million in excess of the amount set forth in the Company' s operating budget;

(xx) register any securities under the Securities Act;

(xxi) grant any registration rights;

(xxii) enter into any transactions (except as expressly contemplated by this Agreement or any of the Ancillary Documents) with any "affiliate" or "associate" (as such terms are defined under Rule 12b-2 of the Exchange Act);

(xxiii) amend or repeal any provision of its articles of incorporation, bylaws or other organizational documents;

(xxiv) change in the number of directors comprising its board of directors;

(xxv) change any accounting policy or its independent public accountants;

(xxvi) adopt or amend any stock option plan or other employee benefit plan, including, without limitation, employee equity programs, or issue any capital stock or other securities under any such plan other than capital stock or other securities which it is obligated to issue under the terms of any existing or approved option or any such existing or approved plan;

(xxvii) make any determination to exercise any of the Company' s rights under this Agreement or any Ancillary Document or make any determination to amend or waive any provision of this Agreement or any Ancillary Document, or become a party to any agreement which by its terms restricts or is inconsistent with its performance of its obligations under any of the foregoing agreements;

(xxviii) appoint any person to the position of, amend the terms of any existing employment agreement or compensation arrangement with its, enter into any new employment agreement with its, or remove its, Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer or any other officer (as such term is defined under Rule 16a-1 of the Exchange Act);

(xxix) appoint or remove any member of the board of directors of any Subsidiary of the Company other than in accordance with this Agreement;

(xxx) adopt or amend its annual operating budget;

(xxxi) enter into any long-term hedging arrangements with an aggregate face value in excess of $10 million;

(xxxii) commence, settle or compromise any material litigation, regulatory proceeding or other actions or proceedings;

(xxxiii) take any action that would cause an adverse regulatory impact on any of the GSCP Parties (or any GSCP Governance Rights Assignee) or the Providence Parties (or any Providence Governance Rights Assignee) or any of their respective portfolio companies; or

(xxxiv) agree or otherwise commit to take any actions set forth in the foregoing subparagraphs (i) through (xxxiii).

Section 12. Transactions with Affiliates. Except for transactions and agreements contemplated by this Agreement or any of the Ancillary Documents, the Company will not, nor will it permit any of its Subsidiaries to, directly or indirectly, enter into any transaction or agreement with one or more of the Company' s directors or officers or with any Person in which one or more of the Company' s directors or officers are directors or officers or have a financial or other interest, unless such transaction or agreement has been approved in accordance with the laws of the Commonwealth of Pennsylvania applicable to such transactions and agreements.

Section 13. Company Equity Issuances. Prior to a Qualified IPO, the Company shall not Sell any shares of capital stock or Common Stock Equivalents of the Company (other than Excluded Securities), except in accordance with the following procedures:

(a) The Company shall deliver to each of the Shareholders (other than the Employee Holders) (collectively, the "Preemptive Shareholders") a written notice (a "Preemptive Offer Notice") which shall (i) state the Company' s intention to Sell shares of capital stock or Common Stock Equivalents of the Company (other than Excluded Securities) to one or more Persons, the amount and type of capital stock or Common Stock Equivalents of the Company (other than Excluded Securities) to be Sold (the "Issuance Stock"), the purchase price therefor and a summary of the other material terms of the proposed Sale and (ii) offer each of the Preemptive Shareholders the option to acquire all or any part of the Issuance Stock (the "Preemptive Offer"); provided that the Company need not deliver a Preemptive Offer Notice or make a Preemptive Offer in connection with a Sale of Issuance Stock if each of the GSCP Parties (or any GSCP Governance Rights Assignee) and the Providence Parties (or any Providence Governance Rights Assignee) notifies the Company that it will not elect to purchase any portion of its Preemptive Percentage of the Issuance Stock pursuant to such Preemptive Offer. The Preemptive Offer shall remain open and irrevocable for the periods set forth below (and, to the extent the Preemptive Offer is accepted during such periods, until the consummation of the Sale contemplated by the Preemptive Offer). Each Preemptive Shareholder shall have the right and option, for a period of 20 days after delivery of the Preemptive Offer Notice (the "Preemptive Acceptance Period"), to elect to purchase from the Company all or any portion of its Preemptive Percentage of the Issuance Stock at the purchase price and on the terms stated in the Preemptive Offer Notice. Such acceptance shall be made by a Preemptive Shareholder by delivering a written notice (the "Acceptance Notice") to the Company within the Preemptive Acceptance Period specifying the maximum number of shares of the Issuance Stock such Preemptive Shareholder will purchase (the "Accepted Shares").

(b) If effective acceptance shall not be received pursuant to Section 13(a) above with respect to all of the Issuance Stock offered for Sale pursuant to the Preemptive Offer Notice, then the Company may Sell all or any portion of such Issuance Stock so offered for Sale and not so accepted, at a price not less than the price, and on terms not more favorable to the purchaser thereof than the terms, stated in the Preemptive Offer Notice at any time within 90 days after the expiration of the Preemptive Acceptance Period (the "Issuance Period") provided that, in connection with and as a condition to such Sale, each purchaser or recipient of such Issuance Stock who is not then a party to this Agreement shall execute and deliver to the Company (which the Company shall then deliver to all of the Shareholders) an agreement pursuant to which such purchaser or recipient of such Equity Securities agrees to be bound by the terms of this Agreement. In the event that all of the Issuance Stock is not so Sold by the Company during the Issuance Period, the right of the Company to Sell such unsold Issuance Stock shall expire and the obligations of this Section 13 shall be reinstated and such securities shall not be offered unless first reoffered to the Shareholders in accordance with this Section 13.

(c) All Sales of Issuance Stock to the Preemptive Shareholders subject to any Preemptive Offer Notice shall be consummated contemporaneously at the offices of the Company on the later of (i) a mutually satisfactory business day within 15 days after the expiration of the Preemptive Acceptance Period or (ii) the fifth business day following the

expiration or termination of all waiting periods under the HSR Act or receipt of other regulatory approvals applicable to such issuance, or at such other time and/or place as the Company may otherwise agree. The delivery of certificates or other instruments evidencing such Issuance Stock shall be made by the Company on such date against payment of the purchase price for such Issuance Stock.

(d) Notwithstanding anything contained herein to the contrary, if, in connection with any Preemptive Offer, both the GSCP Parties (or any GSCP Governance Rights Assignee) and the Providence Parties (or any Providence Governance Rights Assignee) elect to purchase less than their Preemptive Percentage of the Issuance Stock subject to such Preemptive Offer, no Shareholder shall be entitled to purchase a proportion of its Preemptive Percentage of the Issuance Stock pursuant to this Section 13 in connection with such Preemptive Offer that is greater than the proportion elected to be purchased by the GSCP Parties (or any GSCP Governance Rights Assignee) or the Providence Parties (or any Providence Governance Rights Assignee), which ever is greater.

Section 14. Equity Issuances. The Company shall not Sell any of its Common Stock or Common Stock Equivalents (other than in a Qualified IPO) to any Person unless, in connection with and as a condition to such Sale, each purchaser or recipient of such capital stock who is not then a party to this Agreement executes and delivers to the Company (which the Company shall then deliver to all Shareholders) a counterpart to this Agreement or such other agreement pursuant to which such purchaser or recipient of such Common Stock or Common Stock Equivalents, agrees to be bound by the terms of this Agreement (and pursuant to which either (x) such Person' s spouse executes a spousal acknowledgement or (y) such Person represents that he or she does not have a spouse), except in any case where this requirement is waived by the Board.

Section 15. Legend. Each Shareholder and the Company shall take all such action necessary (including exchanging with the Company certificates representing shares of Stock issued prior to the date hereof) to cause each certificate representing outstanding shares of Stock owned by a Shareholder to bear a legend containing the following words:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE OFFERED, SOLD, PLEDGED, EXCHANGED, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT IN COMPLIANCE WITH SUCH ACT."

"IN ADDITION, THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE RESTRICTIONS ON TRANSFER AND VOTING SET FORTH IN THE AMENDED AND RESTATED SHAREHOLDERS' AGREEMENT DATED AS OF OCTOBER 30, 2006 BY THE COMPANY AND THE PARTIES THERETO, AS AMENDED, A COPY OF WHICH IS ON FILE IN THE OFFICE OF THE COMPANY."

The requirement that the above securities legend be placed upon certificates evidencing shares of Stock shall cease and terminate upon the earliest of the following events: (i) when such shares are transferred in an underwritten public offering, (ii) when such shares are transferred pursuant to Rule 144 under the Securities Act or (iii) when such shares are transferred in any other transaction if the seller delivers to the Company an opinion of its counsel, which counsel and opinion shall be reasonably satisfactory to the Company, or a "no-action" letter from the staff of the SEC, in either case to the effect that such legend is no longer necessary in order to protect the Company against a violation by it of the Securities Act upon any sale or other disposition of such shares without registration thereunder. The requirement that the above legend regarding this Agreement be placed upon certificates evidencing shares of Stock shall cease and terminate upon the Sale of such shares of Stock pursuant to a Public Sale. Upon the consummation of any event requiring the removal of a legend hereunder, the Company, upon the surrender of certificates containing such legend, shall, at its own expense, deliver to the holder of any such shares as to which the requirement for such legend shall have terminated, one or more new certificates evidencing such shares not bearing such legend.

Section 16. Representations and Warranties.

(a) Each party hereto represents and warrants to the other parties hereto as follows:

(i) If it is an entity, it is duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization and has all requisite power and authority to carry on its business as presently conducted and proposed to be conducted.

(ii) It has full power and authority to execute, deliver and perform its obligations under this Agreement.

(iii) This Agreement has been duly and validly authorized, executed and delivered by it, and constitutes a valid and binding obligation of its, enforceable against it in accordance with its terms except to the extent that enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally.

(iv) The execution, delivery and performance of this Agreement by it does not and will not (A) violate, conflict with, or constitute a breach of or default under its organizational documents or (B) violate any law, regulation, order, writ, judgment, injunction or decree applicable to it.

(v) The execution, delivery and performance of this Agreement by it does not and will not (A) require it to obtain any consent, approval, authorization or other order of, or to make any filing, registration or qualification with any court, regulatory body, administrative agency or other governmental body (except such as may have previously been obtained or is permitted to be, and will be, filed or made promptly following the date hereof) or (B) violate, conflict with or constitute a breach or default under, or result in the imposition of a lien or

encumbrance on any of its material properties pursuant to any bond, debenture, note or other evidence of indebtedness of it or any indenture or other material agreement to which he is a party or by which it is bound or to which any of its material property may be subject (except as would not adversely affect its ability to perform its obligations under this Agreement).

(vi) It is not a party to any agreement which is inconsistent with the rights of any party hereunder or otherwise conflicts with the provisions hereof.

(b) The Company represents and warrants to the other parties hereto that, as of the date of this Agreement, it is not a party to any agreement with, and is under no obligation to make any management, monitoring or similar fee to, any GSCP Party, any Providence Party, Leeds, any Other Investor or any of their respective Affiliates, except for, and as set forth in, this Agreement, the Ancillary Documents and the agreements with the Other Investors that are substantially similar to the GSCP Institutional Letter Agreement, the Providence Letter Agreement and the Leeds Letter Agreement.

Section 17. Competition; Information.

(a) The Company and each of the Shareholders agrees and acknowledges that each of the GSCP Parties, any GSCP Governance Rights Assignee, the Providence Parties, any Providence Governance Rights Assignee, Leeds, the GE Parties or any of their respective Affiliates, or any of their respective directors, officers or employees may at any time possess or acquire knowledge of a potential transaction or matter which may be a Competitive Opportunity and may exploit a Competitive Opportunity or engage in, or hold interests in, one or more businesses that may compete with a business of the Company or any of its Subsidiaries. The Company and each of the Shareholders agrees and acknowledges that, except as expressly provided in Section 17(b), neither the Company nor any of its Subsidiaries shall have an interest in, or expectation that, such Competitive Opportunity be offered to it, any such interest or expectation being hereby renounced so that the GSCP Parties, any GSCP Governance Rights Assignee, the Providence Parties, any Providence Governance Rights Assignee, Leeds, the GE Parties and their respective Affiliates, and their respective directors, officers and employees (i) shall have no duty to communicate or present such Competitive Opportunity to the Company or any of its Subsidiaries, (ii) shall have the right to hold any such Competitive Opportunity for its own account, or to recommend, assign or otherwise transfer such Competitive Opportunity to Persons other than the Company and its Subsidiaries and (iii) shall not be liable to the Company or any of its Subsidiaries or their respective shareholders by reason of the fact that it pursues or acquires such Competitive Opportunity for itself, directs, sells, assigns or otherwise transfers such Competitive Opportunity to another Person, does not communicate information regarding such Competitive Opportunity to the Company or any of its Subsidiaries, engages in, or holds any interest in, any business that competes with any business of the Company or any of its Subsidiaries.

(b) Without the prior approval of the Board, no Subject Shareholder (as defined below) shall, and each shall ensure that its Subject Affiliates (as defined below) do not, acquire after the date of this Agreement, any Equity Securities, debt securities or other securities, of any Competing Business (other than a passive investment of 5% or less of the outstanding

equity or debt securities of a publicly-traded entity that may be engaged in a Competing Business), unless such Shareholder first offers the Company the opportunity to acquire such securities and the Board declines such opportunity. "Subject Shareholder" means any Shareholder of the Company other than (i) the GS PEP Funds and Goldman Sachs EDMC Investors, L.P. or (ii) any Shareholder that is not a Management Holder or Employee Holder and that, together with its Affiliates, owns less than 1,500,000 shares of Common Stock (appropriately adjusted to give effect to any stock split, stock dividend, reverse stock split, any combination of the shares of Common Stock or any similar event). "Subject Affiliates" means (i) with respect to any Subject Shareholder that is not a GSCP Party or GE Equity, any of its Affiliates, (ii) with respect to any Subject Shareholder that is a GSCP Party, any private equity fund that is managed by the Principal Investment Area of Goldman, Sachs & Co. (other than those funds that primarily invest in mezzanine and debt securities) and (iii) with respect to GE Equity, any investment vehicle managed by "GE Equity", the equity investment management group which manages GE Capital Equity Investments, Inc. (for the sake of clarity, excluding groups inside of GE Commercial Finance which invest primarily in mezzanine or debt securities). Without the prior approval of the Board, no Management Holder or Employee Holder may provide services, directly or indirectly, to any Competing Business.

In the event that a Shareholder subject to the covenant contained in this Section 17(b) is in breach of such covenant 30 days after receipt of a written notice of such breach from any party hereto, such Shareholder shall thereafter no longer be entitled to any governance rights or information rights granted to it pursuant to Section 3. Notwithstanding anything contained herein to the contrary, the forfeiture of such rights by such Shareholder is in addition to, and not in limitation of, any other right or remedy the Company may have against such Shareholder as provided by law, at equity or under this Agreement.

(c) The Company shall deliver to each Shareholder (other than an Employee Holder):

(i) as soon as available and in any event within 45 days after the end of each of the first three quarters of each fiscal year of the Company, consolidated balance sheets of the Company and its direct and indirect Subsidiaries as of the end of such period then ended, and consolidated statements of income and cash flows of the Company and its direct and indirect Subsidiaries for the period then ended, in each case prepared in conformity with generally accepted accounting principles in the United States applied on a consistent basis, except as otherwise noted therein and subject to the absence of footnotes and to year-end adjustments;

(ii) as soon as available and in any event within 120 days after the end of each fiscal year of the Company, a consolidated balance sheet of the Company and its direct and indirect Subsidiaries as of the end of such year, and consolidated statements of income and cash flows of the Company and its direct and indirect Subsidiaries for the year then ended, in each case prepared in conformity with generally accepted accounting principles in the United States applied on a consistent basis, except as otherwise noted therein, together with an auditor' s report thereon of a firm of established national reputation; and

(iii) to the extent the Company or any direct or indirect Subsidiary is required by law or pursuant to the terms of any outstanding indebtedness of the Company or any direct or indirect subsidiary to prepare such reports, any annual reports, quarterly reports and other periodic reports pursuant to Section 13 or 15(d) of the Exchange Act actually prepared by the Company or any direct or indirect Subsidiary as soon as available.

(d) The Company hereby covenants and agrees that, so long as General Electric Pension Trust or GE Equity is a Shareholder, the Company will use its reasonable efforts to provide such party notice no less than three business days prior to the occurrence of any of the following events: (i) the issuance by the Company of any securities (including, without limitation, any capital stock or notes, debentures or other indebtedness, whether or not convertible into or exchangeable for capital stock, but not including extensions of credit in the ordinary course of business, in each case, involving a principal amount of less than $25,000,000) of the Company to General Electric Company or any subsidiary, division or affiliate of General Electric Company (solely to the extent that the Company is aware that such entity is a subsidiary, division or affiliate of General Electric Company); or (ii) the grant by the Company of any options, warrants or other rights to acquire any equity securities of the Company to General Electric Company or any subsidiary, division or affiliate of General Electric Company (solely to the extent that the Company is aware that such entity is a subsidiary, division or affiliate of General Electric Company).

(e) Each Shareholder agrees to provide the Company with such information regarding itself and its Affiliates, directors, partners, officers and employees as the Company may from time to time reasonably request in connection with filings to be made or information to be provided to accrediting bodies and regulatory bodies.

Section 18. Monitoring Fee. The Shareholders acknowledge that on each January 1 the Company shall pay a monitoring fee to Goldman, Sachs & Co., Providence and Leeds, as required pursuant to the Management Agreement.

Section 19. Duration of Agreement. Except as otherwise provided in Section 3.7, the rights and obligations of a Shareholder under this Agreement shall terminate at such time as such Shareholder no longer is the owner of any shares of Stock. This Agreement, other than Sections 1, 2, 3.5 (with respect to expenses incurred prior to a Qualified IPO), 3.7, 15, 16 and 19 through 33, shall terminate and be of no further force and effect (other than with respect to prior breaches) upon the consummation of a Qualified IPO.

Section 20. Further Assurances. At any time or from time to time after the date hereof, the parties agree to cooperate with each other, and at the request of any other party, to execute and deliver any further instruments or documents and to take all such further action as the other party may reasonably request in order to evidence or effectuate the consummation of the transactions contemplated hereby and to otherwise carry out the intent of the parties hereunder.

Section 21. Amendment and Waiver. Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Agreement shall be effective against

the Company or any Shareholder unless such modification, amendment or waiver is approved in writing by (a) the Company, (b) the GSCP Parties (or a GSCP Governance Rights Assignee, as applicable) for so long as the GSCP Parties (or a GSCP Governance Rights Assignee, as applicable) and their Affiliates hold a number of shares of Common Stock that is no less than 25% of the number of shares of Common Stock held by the GSCP Parties immediately following the Merger, (c) the Providence Parties (or a Providence Governance Rights Assignee, as applicable) for so long as the Providence Parties (or a Providence Governance Rights Assignee, as applicable) and their Affiliates hold a number of shares of Common Stock that is no less than 25% of the number of shares of Common Stock held by the Providence Parties immediately following the Merger, and (d) the Shareholders holding a majority of the shares of Common Stock held by all Shareholders; provided that in the event of any modification, amendment or waiver of any provision of this Agreement which (i) affects only the rights of the Company or the GSCP Parties and/or the Providence Parties or (ii) does not adversely affect the rights of any party hereto other than the GSCP Parties or the Providence Parties, then such modification, amendment or waiver of any provision of this Agreement shall only require the written consent of (A) the Company and (B) to the extent such GSCP Parties' (or a GSCP Governance Rights Assignee' s, as applicable) or Providence Parties' (or a Providence Governance Rights Assignee' s, as applicable) rights are affected by such modification, amendment or waiver, the GSCP Parties or the Providence Parties, as applicable. Notwithstanding the foregoing, no modification, amendment or waiver shall be made or granted in a manner that materially and adversely affects a Shareholder' s rights hereunder without the approval of such Shareholder, unless such modification, amendment or waiver adversely affects all Shareholders in the same manner proportionate to their respective Stock holdings and this Section 21 may not be amended without the approval of all Shareholders. The failure of any party to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of such party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

Section 22. Entire Agreement. This Agreement, the Registration Rights Agreement, the Subscription Agreements, the joinder agreement to the Original Shareholders' Agreement, dated as of July 10, 2006, by and between Leeds and the Company and the other writings referred to herein or delivered pursuant hereto which form a part hereof contain the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

Section 23. Successors and Assigns. Except as otherwise provided herein, this Agreement shall bind and inure to the benefit of and be enforceable by the Company and its successors and assigns and each Shareholder and its successors, assigns, heirs and personal representatives, so long as they hold Stock. Each Selling Shareholder shall have the right to assign all or part of its rights and obligations under this Agreement, without the consent of any of the Other Shareholders, only pursuant to a Sale of Stock in compliance with Section 4 or in a Permitted Sale (except that a Selling Shareholder may not assign its rights under Sections 3, 7, 9 and 11 unless such assignee will be a GSCP Governance Rights Assignee or Providence Governance Rights Assignee, as applicable). Upon any such assignment, such assignee shall have and be able to exercise and enforce all rights of the assigning Shareholder which are

assigned to it (except the rights under Sections 3, 7, 9 and 11, unless such rights are specifically assigned to such assignee and after giving effect to such Sale, such transferee will be a GSCP Governance Rights Assignee or Providence Governance Rights Assignee, as applicable) and, to the extent such rights are assigned, any reference to the assigning Shareholder shall be treated as a reference to the assignee; provided, however, that if such transferee would, after such Sale, be a Management Holder or an Employee Holder, such transferee shall upon the consummation of, and as a condition to, such Sale execute and deliver to the Company (which the Company shall then deliver to all Shareholders) an agreement (or a counterpart to this Agreement) pursuant to which such transferee agrees to be bound by the terms of this Agreement as a Management Holder or an Employee Holder, as applicable.

Section 24. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 25. Remedies. Each Shareholder shall be entitled to enforce its rights under this Agreement specifically, to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights existing in its favor. The parties hereto agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that each party may in its sole discretion apply to any court of law or equity of competent jurisdiction for specific performance and/or injunctive relief (without posting a bond or other security) in order to enforce or prevent any violation of the provisions of this Agreement.

Section 26. Notices. All notices, requests, consents and other communications hereunder to any party shall be deemed to be sufficient if contained in a written instrument delivered in person or by telecopy (with a confirmatory copy sent by different means within three business days of such notice), nationally recognized overnight courier or first class registered or certified mail, return receipt requested, postage prepaid, addressed to such party at the address set forth below and to any other recipient at the address indicated on Schedule 26 hereto and to any subsequent holder of Stock subject to this Agreement at such address as indicated by the Company' s records, or at such address or to the attention of such other person as may hereafter be designated in writing by such party to the other parties:

(i) if to the Company, to:

Education Management Corporation
210 Sixth Avenue
Pittsburgh, Pennsylvania 15222
Telephone: (412) 562-0900
Telecopy: (412) 562-0598
Attention: Chief Executive Officer

with a copy to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Telephone: (212) 455-2000
Telecopy: (212) 455-2502
Attention: Gary I. Horowitz, Esq.

(ii) if to the GSCP Parties, to:

Goldman Sachs Capital Partners
c/o Goldman, Sachs & Co.
85 Broad Street
New York, New York 10004
Telephone: (212) 902-0353
Telecopy: (212) 357-5505
Attention: John Bowman

with a copy to:

Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Telephone: (212) 859-8000
Telecopy: (212) 859-4000
Attention: Robert C. Schwenkel, Esq.
Philip Richter, Esq.

(iii) if to the Providence Parties, to:

Providence Equity Partners
50 Kennedy Plaza, 18th Floor
Providence, Rhode Island 02903
Telephone: (401) 751-1700
Telecopy: (401) 751-1790
Attention: Paul J. Salem

with a copy to:

Weil, Gotshal & Manges LLP
50 Kennedy Plaza
Providence, Rhode Island 02903
Telephone: (401) 278-4700
Telecopy: (401) 278-4701
Attention: David K. Duffell, Esq.

(iv) if to an Employee Holder, to:

Education Management Corporation
210 Sixth Avenue
Pittsburgh, Pennsylvania 15222
Telephone: (412) 562-0900
Telecopy: (412) 562-0598
Attention: General Counsel

with a copy to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Telephone: (212) 455-2000
Telecopy: (212) 455-2502
Attention: Gary I. Horowitz, Esq.

All such notices, requests, consents and other communications will be deemed to have been given hereunder when received.

Section 27. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to the principles of conflicts of law, provided that the provisions set forth herein that are required to be governed by the Pennsylvania Business Corporation Law of 1988, as amended, shall be governed by the Pennsylvania Business Corporation Law of 1988, as amended. Each of the parties hereto hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of New York and of the United States of America, in each case located in the County of New York, for any action, proceeding or investigation in any court or before any governmental authority ("Litigation") arising out of or relating to this Agreement, (and agrees not to commence any Litigation relating thereto except in such courts), and further agrees that service of any process, summons, notice or document by U.S. registered mail to its respective address set forth in this Agreement shall be effective service of process for any Litigation brought against it in any such court. Each of the parties hereto hereby irrevocably and unconditionally waives any objection to the laying of venue of any Litigation arising out of this Agreement or the transactions contemplated hereby in the courts of the State of New York or the United States of America, in each case located in the County of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Litigation brought in any such court has been brought in an inconvenient forum. Each of the parties irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any and all rights to trial by jury in connection with any Litigation arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 28. Possession of Certificates; Power of Attorney. In order to provide for the safekeeping of the certificates representing the shares of Stock held by the Employee Holders pursuant hereto and to facilitate the enforcement of the terms and conditions hereof, at any time requested by the Company (a) each Employee Holder shall redeliver to the Company,

and the Company shall retain physical possession of, all certificates representing shares of Stock held by such Employee Holder pursuant hereto and (b) each Employee Holder shall deliver to the Company an undated stock power, duly executed in blank, for each such certificate. Each Employee Holder shall be relieved of any obligation otherwise imposed by this Agreement to deliver certificates representing shares of Stock if the same are in the custody of the Company.

Section 29. Descriptive Headings. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

Section 30. Construction. Where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party.

Section 31. Survival of Representations and Warranties. All representations and warranties contained in this Agreement or made in writing by any party in connection herewith shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby regardless of any investigation made by, or on behalf of, any Shareholder.

Section 32. Conflicting Agreements. Each Shareholder represents and warrants that such Shareholder has not granted and is not a party to any proxy, voting trust or other agreement which conflicts with any provision of this Agreement, and no holder of Stock shall grant any proxy or become party to any voting trust or other agreement which conflicts with any provision of this Agreement.

Section 33. Counterparts. This Agreement may be executed in separate counterparts each of which shall be an original and all of which taken together shall constitute one and the same agreement.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Shareholders' Agreement as of the day and year first above written.

EDUCATION MANAGEMENT CORPORATION

By: _____

Name:

Title:

[Signature Page to Amended and Restated Shareholders' Agreement]

GS CAPITAL PARTNERS V FUND, L.P.

By: GSCP V Advisors, L.L.C.,
its general partner

By: _____
Name:
Title:

GS CAPITAL PARTNERS V OFFSHORE FUND, L.P.

By: GSCP V Offshore Advisors, L.L.C.,
its general partner

By: _____
Name:
Title:

GS CAPITAL PARTNERS V GmbH & Co. KG

By: GS Advisors V, L.L.C.,
its managing limited partner

By: _____
Name:
Title:

GS CAPITAL PARTNERS V INSTITUTIONAL, L.P.

By: GS Advisors V, L.L.C.,
its general partner

By: _____
Name:
Title:

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PROVIDENCE EQUITY PARTNERS V L.P.

By: Providence Equity Partners GP V L.P.,
its general partner

By: Providence Equity Partners V LLC,
its general partner

By: _____
Name:
Title:

PROVIDENCE EQUITY PARTNERS V-A L.P.

By: Providence Equity Partners GP V L.P.,
its general partner

By: Providence Equity Partners V LLC,
its general partner

By: _____
Name:
Title:

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PROVIDENCE EQUITY PARTNERS IV L.P.

By: Providence Equity GP IV LP,
its general partner

By: Providence Equity Partners IV L.L.C.,
its general partner

By: _____
Name:
Title:

PROVIDENCE EQUITY OPERATING PARTNERS
IV L.P.

By: Providence Equity GP IV LP,
its general partner

By: Providence Equity Partners IV L.L.C.,
its general partner

By: _____
Name:
Title:

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LEEDS EQUITY PARTNERS IV, L.P.

By: Leeds Equity Associates IV, LLC,
its general partner

By: _____
Name:
Title:

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OTHER INVESTORS:

GS PRIVATE EQUITY PARTNERS 2000, L.P.

By: GS PEP 2000 Advisors, L.L.C.,
its general partner

By: GSAM Gen-Par, L.L.C.,
its Managing Member

By: _____
Name:
Title:

GS PRIVATE EQUITY PARTNERS 2000 OFFSHORE HOLDINGS, L.P.

By: GS PEP 2000 Offshore Holdings Advisors, Inc.,
its general partner

By: _____
Name:
Title:

GS PRIVATE EQUITY PARTNERS 2000 – DIRECT INVESTMENT FUND, L.P.

By: GS PEP 2000 Direct Investment Advisors, L.L.C.,
its general partner

By: GSAM Gen-Par, L.L.C.,
its Managing Member

By: _____
Name:
Title:

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GS PRIVATE EQUITY PARTNERS 2002, L.P.

By: GS PEP 2002 Advisors, L.L.C.,
its general partner

By: GSAM Gen-Par, L.L.C.,
its Managing Member

By: _____
Name:
Title:

GS PRIVATE EQUITY PARTNERS 2002 OFFSHORE HOLDINGS, L.P.

By: GS PEP 2002 Offshore Holdings Advisors, Inc.,
its general partner

By: GSAM Gen-Par, L.L.C.,
its director

By: _____
Name:
Title:

GS PRIVATE EQUITY PARTNERS 2002 – DIRECT INVESTMENT FUND, L.P.

By: GS PEP 2002 Direct Investment Advisors, L.L.C.,
its general partner

By: GSAM Gen-Par, L.L.C.,
its Managing Member

By: _____
Name:
Title:

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GS PRIVATE EQUITY PARTNERS 2002
EMPLOYEE FUND, L.P.

By: GS PEP 2002 Employee Funds GP, L.L.C.,
its general partner

By: _____
Name:
Title:

GOLDMAN SACHS PRIVATE EQUITY PARTNERS
2004, L.P.

By: Goldman Sachs PEP 2004 Advisors, L.L.C.,
its general partner

By: GSAM Gen-Par, L.L.C.,
its Managing Member

By: _____
Name:
Title:

GOLDMAN SACHS PRIVATE EQUITY PARTNERS
2004 OFFSHORE HOLDINGS, L.P.

By: Goldman Sachs PEP 2004 Offshore Holdings
Advisors, Inc., its general partner

By: _____
Name:
Title:

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GOLDMAN SACHS PRIVATE EQUITY PARTNERS
2004 – DIRECT INVESTMENT FUND, L.P.

By: Goldman Sachs PEP 2004 Direct Investment
Advisors, L.L.C., its general partner

By: GSAM Gen-Par, L.L.C.,
its Managing Member

By: _____
Name:
Title:

GOLDMAN SACHS PRIVATE EQUITY PARTNERS
2004 Employee fund, L.P.

By: Goldman Sachs PEP 2004 EMPLOYEE FUNDS
GP, L.L.C., its general partner

By: _____
Name:
Title:

MULTI-STRATEGY HOLDINGS, L.P.

By: Multi-Strategy Holdings Offshore Advisors, Inc.,
its general partner

By: _____
Name:
Title: Authorized Signatory

GOLDMAN SACHS EDMC INVESTORS, L.P.

By: GS EDMC Advisors, L.L.C.,
its general partner

By: _____
Name:
Title:

[Signature Page to Amended and Restated Shareholders' Agreement]

FISHER LYNCH CO-INVESTMENT
PARTNERSHIP, L.P.

By: Fisher Lynch GP, L.P.,
its general partner

By: FLC G.P., Inc.,
its general partner

By: _____
Name: Leon Kuan
Title: Authorized Officer

ONTARIO TEACHERS' PENSION PLAN BOARD

By: _____
Name: Michele Buchignani
Title: Portfolio Manager

GENERAL ELECTRIC PENSION TRUST

By: GE Asset Management Incorporated,
its Investment Manager

By: _____
Name: Andreas T. Hildebrand
Title: Vice President

CGI PRIVATE EQUITY LP, LLC

By: _____
Name:
Title: Attorney-In-Fact

[Signature Page to Amended and Restated Shareholders' Agreement]

CREDIT SUISSE/ CFIG EMDC SPV, LLC

By: DLJ MB Advisors, Inc.,
its Sole Member

By: _____
Name:
Title:

ALPINVEST PARTNERS CS INVESTMENTS 2006 C.V.

By: _____
Name:
Title:

By: _____
Name:
Title:

ALPINVEST PARTNERS LATER STAGE CO-INVESTMENTS CUSTODIAN IIA B.V., (as custodian for ALPINVEST PARTNERS LATER STAGE CO-INVESTMENTS IIA C.V.)

By: _____
Name:
Title:

By: _____
Name:
Title:

GE CAPITAL EQUITY INVESTMENTS, INC.

By: _____
Name:
Title:

MANAGEMENT HOLDERS:

_____

Name: John R. McKernan, Jr.

_____

Name: Edward H. West

_____

Name: Leo F. Mullin

[Signature Page to Amended and Restated Shareholders' Agreement]

COUNTERPART SIGNATURE PAGE TO AMENDED AND RESTATED SHAREHOLDERS AGREEMENT

EMPLOYEE HOLDERS:

_____

Name:

If the undersigned Employee Holder does not have a spouse, the undersigned Employee Holder must sign the following:

The undersigned hereby represents and warrants that the undersigned does not have a spouse.

_____

Name:

If the undersigned Employee Holder has a spouse, the spouse must sign the following:

The undersigned acknowledges that the undersigned has read the foregoing Agreement of the Company that the undersigned' s spouse is a party to and understands that the undersigned' s spouse holds the Stock subject to the provisions of the Agreement and agrees to be bound by the terms and conditions of the foregoing Agreement.

Employee Holder' s Spouse

_____

Name:

[Signature Page to Amended and Restated Shareholders' Agreement]

Notices

Name and Address for Notices

Leeds Equity Partners IV, L.P.

350 Park Avenue, 23rd Floor
New York, New York 10022
Telephone: (212) 835-2000
Telecopy: (212) 835-2020
Attention: Jeffrey T. Leeds

GS Private Equity Partners 2000, L.P.
Goldman, Sachs & Co.
One New York Plaza, 37th Floor
New York, New York 10004
Telephone: (212) 357-3448
Telecopy: (212) 428-4677
Attention: Brandon T. Press
Vice President & Assistant General Counsel

with a copy to:
Goldman, Sachs & Co.
32 Old Slip, 9th Floor
New York, New York 10005
Telephone: (212) 902-9839
Telecopy: (212) 493-0187
Attention: Jennifer Barbetta
Vice President

GS Private Equity Partners 2000 Offshore Holdings, L.P.

Goldman, Sachs & Co.
One New York Plaza, 37th Floor
New York, New York 10004
Telephone: (212) 357-3448
Telecopy: (212) 428-4677
Attention: Brandon T. Press
Vice President & Assistant General Counsel

with a copy to:
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32 Old Slip, 9th Floor
New York, New York 10005
Telephone: (212) 902-9839
Telecopy: (212) 493-0187
Attention: Jennifer Barbetta
Vice President

GS Private Equity Partners 2000 – Direct Investment Fund, L.P.
Goldman, Sachs & Co.
One New York Plaza, 37th Floor
New York, New York 10004
Telephone: (212) 357-3448
Telecopy: (212) 428-4677
Attention: Brandon T. Press
Vice President & Assistant General Counsel

with a copy to:
Goldman, Sachs & Co.
32 Old Slip, 9th Floor
New York, New York 10005
Telephone: (212) 902-9839
Telecopy: (212) 493-0187
Attention: Jennifer Barbetta
Vice President

GS Private Equity Partners 2002, L.P.

Goldman, Sachs & Co.
One New York Plaza, 37th Floor
New York, New York 10004
Telephone: (212) 357-3448

with a copy to:
Goldman, Sachs & Co.
32 Old Slip, 9th Floor
New York, New York 10005
Telephone: (212) 902-9839

Telecopy:	(212) 428-4677	Telecopy:	(212) 493-0187
Attention:	Brandon T. Press Vice President & Assistant General Counsel	Attention:	Jennifer Barbetta Vice President

Name and Address for Notices

GS Private Equity Partners 2002 Offshore Holdings, L.P.

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One New York Plaza, 37th Floor
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Vice President & Assistant General Counsel

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Vice President

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New York, New York 10005
Telephone: (212) 902-9839
Telecopy: (212) 493-0187
Attention: Jennifer Barbetta
Vice President

GS Private Equity Partners 2002 Employee Fund, L.P.

Goldman, Sachs & Co.
One New York Plaza, 37th Floor
New York, New York 10004
Telephone: (212) 357-3448
Telecopy: (212) 428-4677
Attention: Brandon T. Press
Vice President & Assistant General Counsel

with a copy to:

Goldman, Sachs & Co.
32 Old Slip, 9th Floor
New York, New York 10005
Telephone: (212) 902-9839
Telecopy: (212) 493-0187
Attention: Jennifer Barbetta
Vice President

GS Private Equity Partners 2004, L.P.

Goldman, Sachs & Co.
One New York Plaza, 37th Floor
New York, New York 10004
Telephone: (212) 357-3448
Telecopy: (212) 428-4677
Attention: Brandon T. Press
Vice President & Assistant General Counsel

with a copy to:

Goldman, Sachs & Co.
32 Old Slip, 9th Floor 3
New York, New York 10005
Telephone: (212) 902-9839
Telecopy: (212) 493-0187
Attention: Jennifer Barbetta
Vice President

GS Private Equity Partners 2004 Offshore Holdings, L.P.

Goldman, Sachs & Co.

with a copy to:

Goldman, Sachs & Co.

One New York Plaza, 37th Floor
New York, New York 10004
Telephone: (212) 357-3448
Telecopy: (212) 428-4677
Attention: Brandon T. Press
Vice President & Assistant General Counsel

32 Old Slip, 9th Floor
New York, New York 10005
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Attention: Jennifer Barbetta
Vice President

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GS Private Equity Partners 2004 – Direct Investment Fund, L.P.
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Attention: Brandon T. Press
Vice President & Assistant General Counsel

with a copy to:
Goldman, Sachs & Co.
32 Old Slip, 9th Floor
New York, New York 10005
Telephone: (212) 902-9839
Telecopy: (212) 493-0187
Attention: Jennifer Barbetta
Vice President

GS Private Equity Partners 2004 Employee Fund, L.P.
Goldman, Sachs & Co.
One New York Plaza, 37th Floor
New York, New York 10004
Telephone: (212) 357-3448
Telecopy: (212) 428-4677
Attention: Brandon T. Press
Vice President & Assistant General Counsel

with a copy to:
Goldman, Sachs & Co.
32 Old Slip, 9th Floor
New York, New York 10005
Telephone: (212) 902-9839
Telecopy: (212) 493-0187
Attention: Jennifer Barbetta
Vice President

Multi-Strategy Holdings, L.P.
Goldman, Sachs & Co.
One New York Plaza, 37th Floor
New York, New York 10004
Telephone: (212) 357-3448
Telecopy: (212) 428-4677
Attention: Brandon T. Press
Vice President & Assistant General Counsel

with a copy to:
Goldman, Sachs & Co.
32 Old Slip, 9th Floor
New York, New York 10005
Telephone: (212) 902-9839
Telecopy: (212) 493-0187
Attention: Jennifer Barbetta
Vice President

Goldman Sachs EDMC Investors, L.P.
Goldman, Sachs & Co.
One New York Plaza, 37th Floor
New York, New York 10004
Telephone: (212) 357-3448
Telecopy: (212) 428-4677
Attention: Brandon T. Press
Vice President & Assistant General Counsel

Fisher Lynch Co-Investment Partnership, L.P.
Fisher Lynch Capital
2929 Campus Drive, Suite 410
San Mateo, California 94403
Telephone: (650) 233-8016
Telecopy: (650) 240-0277
Attention: Leon Kuan

with a copy to:
Proskauer Rose LLP
One International Place
Boston, Massachusetts 02110-2600
Telephone: (617) 526-9754
Telecopy: (617) 526-9899
Attention: Howard J. Beber, Esq.

Name and Address for Notices

Ontario Teachers' Pension Plan Board
5650 Yonge Street
Toronto, Ontario
Canada M2M 4H5
Telephone: (416) 730-5321
Telecopy: (416) 730-3771
Attention: Michael Padfield, Senior Legal Counsel – Investments
Lee Sienna, Vice President – Private Capital

with a copy to:
Goodwin Procter LLP
53 State Street
Boston, Massachusetts 02109
Telephone: (617) 570-1304
Telecopy: (617) 523-1231
Attention: Kathy A. Fields, Esq.

General Electric Pension Trust
c/o GE Asset Management Incorporated
3001 Summer Street, P.O. Box 7900
Stamford, Connecticut 06904-7900
Telephone: (203) 326-2306
Telecopy: (203) 326-4073
Attention: Daniel L. Furman

with a copy to:
Dewey Ballantine LLP
1301 Avenue of the Americas
New York, New York 10019-6092
Telephone: (212) 259-6570
Telecopy: (212) 259-6333
Attention: Linda E. Ransom

CGI Private Equity LP, LLC
c/o Citigroup Private Equity
388 Greenwich Street, 32nd Floor
New York, New York 10013
Telephone: (212) 816-2151
Telecopy: (212) 816-0221
Attention: Todd Benson

with a copy to:
Citigroup Private Equity
731 Lexington Avenue, 23rd Floor
New York, New York 10022
Telephone: (212) 559-7885
Telecopy: (646) 291-3063
Attention: Ranesh Ramanathan, Esq.

Credit Suisse/CFIG EMDC SPV, LLC
Credit Suisse
11 Madison Avenue, 16th Floor
New York, New York 10010
Telephone: (212) 538-3423
Telecopy: (212) 538-0424
Attention: Nadim Barakat

AlpInvest Partners CS Investments 2006 C.V.
c/o AlpInvest Partners N.V.
Jachthavenweg 118
1081 KJ Amsterdam
The Netherlands
Telephone: +31 20 540 7575
Telecopy: +31 20 540 7500
Attention: Patrick de van der Schueren

with a copy to:
AlpInvest Partners Inc.
630 Fifth Avenue,28th Floor
New York, New York 10111

Telephone: (212) 332-6240
Telecopy: (212) 332-6241
Attention: Iain Leigh

Ropes & Gray LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 841-0600
Telecopy: (212) 841-5725
Attention: Daniel C. Kolb, Esq.

Name and Address for Notices

AlpInvest Partners Later Stage Co-Investments
Custodian IIA B.V. (as custodian for AlpInvest
Partners Later Stage Co-Investments IIA C.V.)
c/o AlpInvest Partners N.V.
Jachthavenweg 118
1081 KJ Amsterdam
The Netherlands

Telephone: +31 20 540 7575
Telecopy: +31 20 540 7500
Attention: Patrick de van der Schueren

with a copy to:
AlpInvest Partners Inc.
630 Fifth Avenue, 28th Floor
New York, New York 10111

Telephone: (212) 332-6240
Telecopy: (212) 332-6241
Attention: Iain Leigh

Ropes & Gray LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 841-0600
Telecopy: (212) 841-5725
Attention: Daniel C. Kolb, Esq.

John R. McKernan, Jr.
[ ]
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with a copy to:
[ ]
[ ]
[ ]

Edward H. West
[ ]
[ ]
[ ]

with a copy to:
[ ]
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[ ]

Leo F. Mullin
[ ]
[ ]
[ ]

with a copy to:
[ ]
[ ]
[ ]

GE Capital Equity Investments, Inc.
c/o GE Equity
201 Merritt 7, 1st Floor
P.O. Box 4800
Norwalk, CT 06856-1056
Fax: (203) 956-4259
Attention: Account Manager – EDMC

with a copy to:
GE Equity
201 Merritt 7, 1st Floor
P.O. Box 4800
Norwalk, CT 06856-1056
Fax: (203) 956-5058
Attention: General Counsel

Form of Accredited Investor Subscription Agreement

Form of Non-Accredited Investor Subscription Agreement

Exhibit 10.9

EDUCATION MANAGEMENT CORPORATION

2006 STOCK OPTION PLAN

1. Purpose of the Plan

The purpose of the Plan is to aid the Company and its Affiliates in recruiting and retaining key employees and directors of outstanding ability and to motivate such employees and directors to exert their best efforts on behalf of the Company and its Affiliates by providing incentives through the granting of Options. The Company expects that it will benefit from the added interest which such key employees and directors will have in the welfare of the Company as a result of their proprietary interest in the Company' s success.

2. Definitions

The following capitalized terms used in the Plan or in an Option agreement have the respective meanings set forth in this Section:

(a) Act: The Securities Exchange Act of 1934, as amended, or any successor thereto.

(b) Affiliate: With respect to any Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person.

(c) Beneficial Owner: A "beneficial owner," as such term is defined in Rule 13d-3 under the Act (or any successor rule thereto).

(d) Board: The Board of Directors of the Company.

(e) Cause: Except as otherwise provided by the Committee in an Option agreement, with respect to termination of the employment of any Participant by a member of the Company Group: (i) if such Participant is at the time of termination a party to an employment or retention agreement with a member of the Company Group which defines such term, the meaning given therein, and (ii) in all other cases, the Board' s good faith determination that such termination is based on such Participant' s (A) continued failure to perform his or her reasonably assigned duties; (B) failure to observe material policies generally applicable to directors or employees of any member of the Company Group; (C) commission of any act of fraud, theft or financial dishonesty with respect to any member of the Company Group or any criminal act involving moral turpitude or any felony; (D) violation of the provisions of any employment, consulting, non-competition or confidentiality agreement with any member of the Company Group; (E) chronic absenteeism; or (F) abuse of alcohol or another controlled substance.

(f) Change in Control: A transaction or occurrence immediately following which the Principal Stockholders, in the aggregate, cease to beneficially own securities of the Company representing a majority of the outstanding voting power entitled generally to vote for the election of directors.

(g) Code: The Internal Revenue Code of 1986, as amended, or any successor thereto.

(h) Committee: The Board or such committee of the Board as may be designated from time to time to administer the Plan.

(i) Company: Education Management Corporation, a Pennsylvania corporation, and any successor thereto by merger, consolidation or otherwise.

(j) Company Group: Collectively, the Company, its subsidiaries and their respective successors and assigns.

(k) Disability: Except as otherwise provided by the Committee in an Option agreement, with respect to a Participant, (i) if such Participant is at the applicable time a party to an employment or retention agreement with a member of the Company Group which defines such term, the meaning given therein, and (ii) in all other cases, a physical or mental infirmity which impairs the Participant' s ability to perform substantially his or her duties for a period of 180 days during any 360 day period.

(l) Effective Date: The date on which the "Effective Time" (as defined in the Merger Agreement) occurs.

(m) Employment: Except as otherwise set forth in an Option agreement, (i) A Participant' s employment if the Participant is an employee of the Company Group and (ii) a Participant' s services as a non-employee director, if the Participant is a non-employee member of the Board.

(n) Fair Market Value: Except as otherwise set forth in an Option agreement, with respect to any securities on any date, the average of the high and low sales prices of such securities on such date on the principal securities exchange on which such securities are listed or admitted to trading, or if such securities are not so listed or admitted to trading, the arithmetic mean of the per security closing bid price and the per security closing asked price on such date as quoted on the Nasdaq or such other market in which such prices are regularly quoted, or, if there have been no published bid or asked quotations with respect to such securities on such date (or in the case of property other than securities), the "Fair Market Value" shall be the value determined in good faith by the Board, and in a manner consistent with Section 409A of the Code.

(o) Merger Agreement: The Agreement and Plan of Merger, dated as of March 3, 2006, by and between EM Acquisition Corporation, a Pennsylvania corporation ("EM Acquisition") and the Company, pursuant to which EM Acquisition has merged with and into the Company, with the Company continuing as the surviving corporation.

(p) Option: A stock option granted pursuant to Section 7 of the Plan.

(q) Option Price: The purchase price per Share of an Option, as determined pursuant to Section 7(a) of the Plan.

(r) Participant: An employee or director who is selected by the Committee to participate in the Plan.

(s) Person: Any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivisions thereof.

(t) Plan: The Education Management Corporation 2006 Stock Option Plan.

(u) Principal Stockholders: GS Capital Partners V Fund, L.P., a Delaware limited partnership, GS Capital Partners V Offshore Fund, L.P., a Cayman Islands exempted limited partnership, GS Capital Partners V GmbH & Co. KG, a limited partnership formed under the laws of the Federal Republic of Germany, GS Capital Partners V Institutional, L.P., a Delaware limited partnership, Providence Equity Partners V L.P., a Delaware limited partnership, Providence Equity Partners V-A L.P., a Delaware limited partnership, Providence Equity Partners IV L.P., a Delaware limited partnership, and Providence Equity Operating Partners IV L.P., a Delaware limited partnership.

(v) Purchased Shares: The Shares for which an Option is being exercised.

(w) Realization Event: Any event or transaction (i) in which the Principal Stockholders receive cash or marketable securities in respect of their interest in Shares, including by means of a sale, exchange or other disposition of their interests in Shares (other than transfers by members of the Principal Stockholders to or among their respective Affiliates) or dividends or other distributions from the Company to its shareholders or (ii) the first day following which both of the following have occurred (x) the Principal Stockholders cease to own in the aggregate at least 30% of the outstanding voting securities of the Company, measured by voting power, and (y) the Principal Stockholders have, in the aggregate, disposed of at least 70% of their Shares and received in respect thereof cash or marketable securities.

(x) Shareholders' Agreement: The Shareholders' Agreement dated as of June 1, 2006 (as amended and restated from time to time) by and among the Company and such other Persons who become parties thereto.

(y) Shares: Shares of common stock, par value $.01 per share, of the Company and any other securities into which such shares of common stock are changed or for which such shares of common stock are exchanged.

(z) Transaction: In a single transaction or a series of related transactions, the occurrence of any of the following events: (i) a Change in Control, or (ii) there shall have occurred: (A) a merger or consolidation of the Company with or into another corporation, other than (x) a merger or consolidation with any other member of the Company Group or (y) a merger or consolidation in which the holders of Company Voting Securities immediately prior to the merger as a class directly or indirectly hold immediately after the merger a majority of all outstanding voting power of the surviving or resulting corporation or its parent; (B) a statutory exchange of shares of one or more classes or series of outstanding Company Voting Securities for cash, securities or other property, other than an exchange in which the holders of Company Voting Securities immediately prior to the exchange as a class directly or indirectly hold immediately after the exchange at least a majority of all outstanding voting power of the entity with which the Company Voting Securities are being exchanged; or (C) the sale or other disposition of more than 80% of the consolidated assets of the Company and its subsidiaries (based on the net book value of the consolidated assets of the Company and its subsidiaries in the most recent audited financial statements of the Company), in one transaction or a series of transactions, other than a sale or disposition in which the holders of Company Voting Securities immediately prior to the sale or disposition as a class directly or indirectly hold immediately after the sale or disposition at least a majority of all outstanding voting power of the entity to which such assets of the Company are sold.

3. Shares Subject to the Plan

The total number of Shares which may be issued under the Plan is 1,368,421, subject to adjustment pursuant to Section 8 hereof. The Shares may consist, in whole or in part, of unissued Shares or treasury Shares. The issuance of Shares upon the exercise of an Option or in consideration of the cancellation or termination of an Option shall reduce the total number of Shares available under the Plan, as applicable. Shares which are subject to Options which terminate or lapse without the payment of consideration may, to the extent of such termination or lapse, again be the subject of Options granted under the Plan. In addition, if an Option is exercised in whole or in part by tendering Shares, actually or by attestation, or by any other method of cashless exercise pursuant to which Shares are retained or deemed retained by the

Company, such retained or deemed retained Shares may again be the subject of Options under the Plan.

4. Administration

The Plan shall be administered by the Committee. Subject to the express limitations of the Plan, the Committee shall have authority in its discretion to determine the employees or directors of the Company and its Affiliates to whom, and the time or times at which, Options may be granted, the number of Shares subject to each Option, the exercise price of an Option, the time or times at which an Option will become vested and any other conditions of an Option. Options may, in the discretion of the Committee, be granted under the Plan in assumption of, or in substitution for, outstanding awards previously granted by the Company or its Affiliates or by a company acquired by the Company or with which the Company combines. The number of Shares underlying such substitute awards shall be counted against the aggregate number of Shares available for Options under the Plan. The Committee is authorized to interpret the Plan, to establish, amend and rescind any rules and regulations relating to the Plan, and to make any other determinations that it deems necessary or desirable for the administration of the Plan. The Committee may amend the terms of any Option agreement, provided that no such amendment shall be made without the consent of a Participant, if such action would diminish any of the rights of such Participant under such Option agreement. The Committee may correct any defect or supply any omission or reconcile any inconsistency in the Plan in the manner and to the extent the Committee deems necessary or desirable. Any decision of the Committee in the interpretation and administration of the Plan, except as otherwise provided herein, shall lie within its sole and absolute discretion and shall be final, conclusive and binding on all parties concerned (including, without limitation, Participants and their beneficiaries or successors). Subject to the express limitations of the Plan, the Committee shall have the full power and authority to establish the terms and conditions of any Option in an Option agreement. The Committee may, in its discretion, accelerate the vesting of any Option at any time.

5. Limitations

No Option may be granted under the Plan after the tenth anniversary of the Effective Date, but Options theretofore granted may extend beyond that date.

6. Eligibility

All employees or directors in the Company Group are eligible to be designated by the Committee to receive an Option under the Plan. To the extent deemed necessary by the Committee, an Option will be evidenced by an Option agreement in a form approved by the Committee consistent with the limitations of this Plan.

7. Terms and Conditions of Options

Options granted under the Plan shall be non-qualified stock options and shall be subject to the foregoing and the following terms and conditions and to such other terms and conditions, not inconsistent therewith, as the Committee shall determine and set forth in the applicable award agreement:

(a) Option Price. The Option Price shall be determined by the Committee, provided that the Option Price may not be less than the Fair Market Value of a Share on the date it is granted.

(b) Exercisability. Options granted under the Plan shall be exercisable at such time and upon such terms and conditions as may be determined by the Committee, but in no event shall an Option be exercisable more than ten years after the date it is granted. The Option agreement may also set forth (i) the effect on exercisability of an Option upon termination of Employment of a Participant under certain circumstances and (ii) the effect of a Realization Event on an Option.

(c) Exercise of Options. Except as otherwise provided in the Plan or in an Option agreement, an Option may be exercised for all, or from time to time any part, of the Shares for which it is then exercisable. For purposes of this Section 7 of the Plan, the exercise date of an Option shall be the later of the date a notice of exercise is received by the Company and, if applicable, the date payment is received by the Company pursuant to the following sentence. The Option Price for the Shares as to which an Option is exercised and any applicable withholding taxes shall be paid to the Company in full at the time of exercise at the election of the Participant in cash or by check or wire transfer, or by such other means as are permitted by the Committee. In addition, the Committee may implement one or more methods of cashless exercise, including, without limitation, (i) permitting a Participant to exercise Options through the use of one or more brokers designated by the Committee by which Shares are sold on a public market to pay the Option Price and any withholding taxes, (ii) permitting a Participant to tender Shares previously owned (actually or by attestation) in payment of the Option Price and applicable withholding taxes, (iii) permitting a Participant to elect to have issued to him or her a reduced number of Purchased Shares to be issued upon such exercise having a Fair Market Value on the date of exercise equal to the aggregate exercise price in respect of such Purchased Shares, provided that the Company is not then prohibited from purchasing or acquiring such Shares, or (iv) such other cashless exercise procedures deemed approved by the Committee. In determining any such cashless exercise procedure, the Committee shall take into account the requirements of applicable law and the accounting treatment associated with such procedure. No Participant shall have any rights to dividends or other rights of a stockholder with respect to Shares subject to an Option until the Participant has given written notice of exercise of the Option, has paid in full for such Shares, has satisfied any applicable withholding tax requirements and, if applicable, has satisfied any other conditions imposed by the Committee or pursuant to the Plan or the applicable Option agreement.

(d)

Unless the Committee determines otherwise, exercise of an Option shall be conditioned upon the execution by the Participant of the Shareholders'

Agreement, if such agreement remains in effect at the time of such exercise.

8. Adjustments Upon Certain Events

Notwithstanding any other provisions in the Plan to the contrary, the following provisions shall apply to all Options granted under the Plan:

(a) Generally. In the event of any cash or Share dividend or split, reverse split, reorganization, reclassification, recapitalization, repurchase, issuance of warrants, rights or debentures, merger, consolidation, spin-off, split-up, combination or exchange of Shares or other corporate exchange, or any distribution to stockholders of Shares or any transaction similar to the foregoing, or upon the occurrence of any other unexpected event or circumstance, the Committee shall, without liability to any member of the Committee or the Board, cause such appropriate adjustments to be made in (i) the maximum number and kind of Shares provided in Section 3 hereof, (ii) the number and kind of Shares subject to then outstanding Options, (iv) the exercise price per Share of outstanding Options, (v) the performance measures or goals relating to an Option and/or (v) any other terms of an Option that are affected by the event. Any such adjustment will be made, to the extent applicable, in compliance with Section 409A of the Code, as determined by the Committee.

(b) Transaction. Subject to the terms of an Option agreement, in connection with (a) the liquidation or dissolution of the Company or (b) a Transaction, either (i) each outstanding Option shall be treated as provided for in the agreement entered into in connection with the Transaction or (ii) if not so provided in such agreement, each Participant shall be entitled to receive in respect of each Share subject to any outstanding Options, upon exercise of any Option, the same number and kind of stock, securities, cash, property or other consideration that each holder of a Share was entitled to receive in the Transaction in respect of a Share; provided, however, that such stock, securities, cash, property, or other consideration shall remain subject to all of the conditions, restrictions and performance criteria which were applicable to the Options prior to such Transaction. Without limiting the generality of the foregoing, the treatment of outstanding Options pursuant to clause (i) of this Section 8(b) in connection with a Transaction may include the cancellation of outstanding Options upon consummation of the Transaction provided either (x) the holders of affected Options have been given a period of at least fifteen (15) days prior to the date of the consummation of the Transaction to exercise the Options (whether or not they were otherwise exercisable) or (y) the holders of the affected Options are paid (in cash or cash equivalents) in respect of each Share covered by the Option being cancelled an amount equal to the excess, if any, of the per Share price paid or distributed to stockholders in the transaction (the value of any non-cash

consideration to be determined by the Committee in its sole discretion) over the exercise price of the Option. For avoidance of doubt, (1) the cancellation of Options pursuant to clause (y) of the preceding sentence may be effected notwithstanding anything to the contrary contained in this Plan or any Option agreement and (2) if the amount determined pursuant to clause (y) of the preceding sentence is zero or less, the affected Option may be cancelled without any payment therefor. The treatment of any Option as provided in this Section 8(b) shall be conclusively presumed to be appropriate for purposes of Section 8(a).

9. Tax Withholding

The Participant shall be responsible for payment of any taxes or similar charges required by law to be withheld from an Option or an amount paid in satisfaction of an Option, which shall be paid by the Participant on or prior to the payment or other event that results in taxable income in respect of an Option.

10. No Right to Employment or Options

The granting of an Option under the Plan shall impose no obligation on the Company or any subsidiary of the Company to continue the Employment of a Participant and shall not lessen or affect the Company' s or such subsidiary' s right to terminate the Employment of such Participant. No Participant or other Person shall have any claim to be granted any Option, and there is no obligation for uniformity of treatment of Participants, or holders or beneficiaries of Options. The terms and conditions of Options and the Committee' s determinations and interpretations with respect thereto need not be the same with respect to each Participant (whether or not such Participants are similarly situated).

11. Successors and Assigns

The rights and obligations under the Plan shall be binding on and inure to all predecessors, successors and assigns of the Company and any Participant, including, without limitation, the estate of such Participant and the executor, administrator or trustee of such estate, or any receiver or trustee in bankruptcy or representative of the Participant' s creditors.

12. Nontransferability of Options

Unless otherwise determined by the Committee, an Option shall not be transferable or assignable by the Participant otherwise than by will or by the laws of descent and distribution. An Option exercisable after the death of a Participant may be exercised by the legatees, personal representatives or distributees of the Participant.

13. Amendments or Termination

The Board may amend, alter or discontinue the Plan, but no amendment, alteration or discontinuation shall be made without the consent of a Participant, if such action would diminish any of the rights of such Participant under any Option theretofore granted to such Participant under the Plan; provided, however, that the Committee may amend the Plan in

such manner as it deems necessary to permit the granting of Options meeting the requirements of the Code or other applicable laws.

14. Compliance with Law

No Option shall be granted under the Plan, and no Shares shall be issued and delivered upon exercise of an Option, unless and until the Company and/or the Participant shall have complied with all applicable Federal or state registration, listing and/or qualification requirements and all other applicable requirements of law or of any regulatory agencies having jurisdiction.

The Committee in its discretion may, as a condition to the exercise of any Option, require each Participant (a) to represent in writing that the Shares received upon exercise of an Option are being acquired for investment and not with a view to distribution and (b) to make such other representations and warranties as are deemed reasonably appropriate by the Committee. Stock certificates representing Shares acquired upon the exercise of any Option that have not been registered under the Securities Act of 1933, as amended, shall, if required by the Committee, bear the legends as may be required by the Shareholders' Agreement or by the Option agreement evidencing a particular Option. Without in any way limiting the provisions set forth above, no Participant shall make any disposition of all or any portion of Shares acquired or to be acquired pursuant to an Option, except in compliance with all applicable Federal and state securities laws and the provisions of the Shareholders' Agreement.

15. International Participants

With respect to Options which may be subject to the laws of jurisdictions outside the United States of America, the Committee may, in its sole discretion, amend the terms of the Plan or Options with respect to such Participants in order to conform such terms with the requirements of such local law.

16. Choice of Law

The Plan shall be governed by and construed in accordance with the laws of the State of New York without giving effect to the principles of conflicts of law, provided that the provisions set forth herein that are required to be governed by the Pennsylvania Business Corporation Law of 1988, as amended, shall be governed by the Pennsylvania Business Corporation Law of 1988, as amended.

17. Effectiveness of the Plan

The Plan shall be effective as of the Effective Date.

Exhibit 10.12

AMENDMENT

TO THE
EDUCATION MANAGEMENT CORPORATION
RETIREMENT PLAN

Pursuant to the authority granted in the Section titled "Changing the Plan" (under the Article titled "What the Employer Does") of the Education Management Corporation Retirement Plan (the "**Plan**"), Education Management Corporation ("**EDMC**"), hereby amends the Plan to be effective as follows:

Effective January 1, 2004:

1. The Section titled "Diversification of ESOP accounts" (under the Article titled "Special ESOP Provisions") of the Plan is amended in the following manner:

(a) by replacing the word "2004" in the second bullet with the phrase "January 2004".

(b) by adding the phrase "for January 2004" immediately after the phrase "so that" in the second bullet.

(c) by adding the following phrase immediately after the phrase "up to 50% of the" in the second bullet:

"sum of the actual number of shares (unadjusted for any corporate events listed below), if any you diversified in the first year and the".

(d) by removing the phrase "minus the" where it appears immediately after the phrase "December 31, 2003" in the second bullet and inserting in its place the phrase ", such product reduced by the actual".

(e) by adding a new phrase "(unadjusted for any corporate events listed below)" immediately after the phrase "number of shares" where it appears in the second bullet.

(f) by adding a new bullet, between the existing second and third bullets, as a new third bullet therein to read in its entirety as follows:

"For the remainder of 2004 (February I through December 31), the diversification percentage resumes at 50%, so that you may diversify 50% of the number of shares in your ESOP account as of December 31, 2002, then minus the number of shares, if any, you diversified under this provision in the first year and January 2004."

(g) by replacing the phrase "December 31, 2004" in the new fourth (old third) bullet with the phrase "December 31, 2002, then".

(h) in the new fifth (old fourth) bullet, by (i) adding the phrase "and thereafter" immediately after the phrase "January 1, 2006"; (ii) removing the word "all" immediately after the phrase "may diversify" and inserting in its place the phrase "the remainder"; (iii) adding the phrase "number of" immediately before the phrase "shares of employer stock"; and (iv) removing the word "remaining" immediately after the phrase "employer stock" and inserting in its place the phrase "as of December 31, 2002, if any, then held".

(i) by adding the following new paragraph immediately following the bullet points

"On and after February 1, 2004, when determining the number of shares which may be diversified in a given year, the number of shares of employer stock in your ESOP account as of December 31, 2002, and the number of shares you diversified under this provision, shall be appropriately adjusted to take into account corporate events (including events prior to February 1, 2004) that change the number of issued and outstanding shares of employer stock, such as stock splits, stock dividends or distributions, recapitalizations, mergers, consolidations, split-ups, combinations, exchanges of shares or the like".

2. The section titled "Amount of pre-retirement diversification" (under the Article titled "Special ESOP Provisions") of the Plan is amended by adding two new sentences at the end thereof to read in their entirety as follows:

"This means that the determination of the number of shares eligible for pre-retirement diversification will be made separately and without regard to the number of shares, if any, you have diversified under the general diversification rights that apply to all ESOP accounts starting August 1, 2003. If you make a simultaneous request for diversification under both provisions, the pre-retirement diversification rule will be applied first and then the general diversification rule will be applied."

3. All other provisions of the Plan not expressly mentioned herein shall remain unchanged.

IN WITNESS WHEREOF, this Amendment has been duly adopted by action on behalf of EDMC on the 9th day of March 2004.

EDUCATION MANAGEMENT CORPORATION

EDMC RETIREMENT COMMITTEE

/s/ Robert McDowell

Robert McDowell

/s/ Ronald Ogrodnik

Ronald Ogrodnik

/s/ James Sober

James Sober

/s/ Frederick Steinberg

Frederick Steinberg

Exhibit 10.13

SECOND AMENDMENT TO THE
EDUCATION MANAGEMENT CORPORATION RETIREMENT PLAN
(Amended and Restated August 1, 2003)

Pursuant to the authority granted in the Section titled "***Changing the Plan***" (under the Article titled "**WHAT THE EMPLOYER DOES**") of the Education Management Corporation Retirement Plan (the "**Plan**"), the Retirement Committee, on behalf of Education Management Corporation ("**EDMC**"), hereby amends the Plan with this **Second Amendment** to be effective as follows:

Effective January 1, 2004 (unless an earlier date is otherwise specified below):

1. A new Section of the Plan, titled "***Latest possible date to take the money (or stock) for all years beginning on and after January 1, 2003***" is added to the end of the Article, titled "**WHEN PAYMENT IS ACTUALLY MADE**", to read as follows:

"Latest possible date to take the money (or stock) for all years beginning on and after January 1, 2003

All distributions made under the Plan (whether to you or to your beneficiary) shall be made in accordance with the express terms and conditions of the Plan provided those Plan rules are not prohibited under the final 2003 Regulations relating to required minimum distributions under Code Section 401(a)(9). If the Plan provides for a form or manner of distribution that the Plan Administrator determines is prohibited under the final 2002 Regulations relating to required minimum distributions under Code Section 401(a)(9), then the form or manner of any such distribution shall be changed and conformed automatically by the Plan Administrator, in its sole discretion, in the most minimal way necessary in order for such distribution to comply with such required minimum distribution rules.

Required minimum distributions are the payments described above that must begin, if you haven' t already taken out your account balance, by the April 1st following the year in which you turn age 70 1/2 or, if you are not a 5% owner, the year you terminate employment, whichever is later. Required minimum distributions are also payments described above that must begin to your beneficiaries following your death, whether or not your benefits have begun.

Time and Manner of Distribution

Unless the participant' s interest is distributed in a single sum on or before the required beginning date, as of the first distribution calendar year, distributions will be made in accordance with sections below, titled "**Required Minimum Distributions During Participant' s Lifetime**" and "**Required Minimum Distributions After Participant' s Death**".

Required Minimum Distributions During Participant' s Lifetime

Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the participant' s lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(a) the quotient obtained by dividing the participant' s account balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the participant' s age as of the participant' s birthday in the distribution calendar year; or

(b) if the participant' s sole designated beneficiary for the distribution calendar year is the participant' s spouse, the quotient obtained by dividing the participant' s account balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the participant' s and spouse' s attained ages as of the participant' s and spouse' s birthdays in the distribution calendar year.,

Lifetime Required Minimum Distributions Continue Through Year of Participant' s Death. Required minimum distributions will be determined under this section, titled "**Required Minimum Distributions During Participant' s Lifetime**", beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the participant' s date of death.

Required Minimum Distributions After Participant' s Death

Death of Participant Before Distributions Begin.

(a) *Timing of Distribution*. If the participant dies before distributions begin, the participant' s entire interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the participant' s surviving spouse is the participant' s sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70 1/2, if later.

(2) If the participant' s surviving spouse is not the participant' s sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.

(3) If there is no designated beneficiary as of September 30 of the year following the year of the participant' s death, the participant' s entire

interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant' s death.

(4) If the participant' s surviving spouse is the participant' s sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse begin, this subsection, titled *"Death of Participant Before Distributions Begin",* other than paragraph (a) of this subsection, will apply as if the surviving spouse were the participant.

For purposes of this subsection, which is titled "**Required Minimum Distributions After Participant' s Death**", unless paragraph (4), above, applies, distributions are considered to begin on the participant' s required beginning date. If paragraph (4), above, applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under paragraph (1), above.

(b) *Amount of Distribution*.

(1) *Participant Survived by Designated Beneficiary.* If the participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant' s death is the quotient obtained by dividing the participant' s account balance by the remaining life expectancy of the participant' s designated beneficiary, determined as provided in the subsection above, titled *"Death On or After Date Distributions Begin".*

(2) *No Designated Beneficiary.* If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant' s death, distribution of the participant' s entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant' s death.

(3) *Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin.* If the participant dies before the date distributions begin, the participant' s surviving spouse is the participant' s sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under paragraph (a) of the subsection above, titled *"Death of Participant Before Distributions Begin",* this subsection, titled *"Death Before Date Distributions Begin"*, will apply as if the surviving spouse were the participant.

Death On or After Date Distributions Begin.

(a) *Participant Survived by Designated Beneficiary.* If the participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant' s death is the quotient obtained by dividing the participant' s account balance by the longer of the remaining life expectancy of the participant or the remaining life expectancy of the participant' s designated beneficiary determined as follows:

(1) The participant' s remaining life expectancy is calculated using the age of the participant in the year of death, reduced by one for each subsequent year.

(2) If the participant' s surviving spouse is the participant' s sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the participant' s death using the surviving spouse' s age as of the spouse' s birthday in that year. For distribution calendar years after the year of the surviving spouse' s death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse' s birthday in the calendar year of the spouse' s death, reduced by one for each subsequent calendar year.

(3) If the participant' s surviving spouse is not the participant' s sole designated beneficiary, the designated beneficiary' s remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the participant' s death, reduced by one for each subsequent year.

(b) *No Designated Beneficiary.* If the participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the participant' s death, the minimum amount that will be distributed for each distribution calendar year after the year of the participant' s death is the quotient obtained by dividing the participant' s account balance by the participant' s remaining life expectancy calculated using the age of the participant in the year of death, reduced by one for each subsequent year.

Definitions

Designated beneficiary. The individual who is designated as the beneficiary under the section of this Plan titled "***Naming your beneficiary and getting spousal consent***" (which is under the Article titled "IN CASE OF DEATH") and is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations."

2. The Section of the Plan, titled "***Having the money transferred directly to another plan***", under the Article, titled "**HOW PAYMENT IS MADE**", is amended by adding a sentence to the end thereof to read as follows:

"Beginning on January 1, 2002, your surviving spouse has the same rights as you do under this section of the Plan with respect to making a direct rollover."

3. The Section of the Plan, titled "***Pre-approved payments***", under the Article, titled "**How to Claim Your Money or Stock**", is amended by restating the second bullet point thereunder to read as follows (new text is underlined):

" For distributions from your ESOP account, payments will be processed on the 5th and the 20th day of each month (effective as of July 1, 2004, payments will be processed daily). It takes Fidelity about 4 to 6 weeks to issue a paper stock certificate. If you would prefer a wire transfer to a brokerage account of your choosing, ask Fidelity whether wire transfers are available. If so, Fidelity will provide you with the necessary information Wire transfers (if available) can be made in 7 to 10 days."

4. The Section of the Plan, titled "***If you're married***", under the Article, titled "**IN CASE OF DEATH**", is amended by adding a sentence to the end thereof to read as follows:

"However, effective as of January 1, 2002, if the recipient is your surviving husband or wife, he or she may, in addition to an IRA, make a direct rollover into any eligible retirement plan sponsored by another employer so long as the other employer will accept such a rollover."

5. The Section of the Plan, titled "***Safe harbor***", under the Article, titled "**PAYMENT BEFORE TERMINATION OF EMPLOYMENT**", is amended (to clarify that the Plan follows the safe harbor rules for hardship distributions) by restating the last bullet point thereunder to read as follows (new text is underlined):

" all qualified plans of the employer provide that the 401(k) contributions made during the year of the distribution will count against the $10,500 limit on 401(k) contributions (which may be increased as described later in this plan) for the calendar year following the calendar year of the distribution (this plan so provides if you choose to use this safe harbor). The limitation described in this bullet point, however, will not apply to any hardship withdrawals taken on or after January 1, 2002."

6. The Section of the Plan, titled "***Diversification of ESOP accounts***", under the Article, titled "**SPECIAL ESOP PROVISIONS**", is amended by restating the last paragraph thereunder to read as follows (new text is underlined):

"The plan administrator may adopt rules and limitations intended to avoid any negative impact of these diversification rights on the trading market for employer stock. Shares of employer stock are sold from ESOP accounts on only two days each month: the 5th and the 20th day of each month (each a "diversification date") (effective as of July 1, 2004, the "diversification date" will be daily rather than on the 5th and the 20th day of each month). If you submit a diversification election, it will be given effect as of the first diversification date occurring after you submit the election or, if different, it will be given effect in accordance with the recordkeeper' s processing procedures."

7. The Section of the Plan, titled *"**Excluding extraordinary items**",* under the Article, titled "**MISCELLANEOUS**", is amended (to clarify the meaning of "deferred compensation") by restating the fourth bullet point thereunder to read as follows (new text is underlined):

" deferred compensation (this is not defined to include employee contributions to any nonqualified deferred compensation plan sponsored by the employer), or"

8. Two new Sections of the Plan, titled "***South University***" and "***American Education Centers, Inc.***", are added to the end of the Article, titled "**SPECIAL ARRANGEMENTS FOR NEW PARTICIPATING EMPLOYERS**", to read as follows:

*"**South University and Other Related Entities.*** In determining the length of your service for the purpose of eligibility to receive matching contributions and for deciding what portion of your account you are entitled to if you leave before age 65, hours of service in the employ of South University (and other related entities) before it was acquired by Education Management Corporation are taken into account as hours of service under the plan to the same extent as if South University had been a participating employer during that period. As an exception, no more than five years of service will be credited under this paragraph to any employee who upon entering this plan is a "restricted employee" as described in the section called "Maximum Amount of 401(k) Contributions.

All of your accounts under the South University 401(k) Profit Sharing Plan were transferred to this Plan on September 1, 2004. All of the contributions made by South University on your behalf to its 401(k) plan will continue to vest in accordance with that plan' s vesting schedule even though they are now held under this Plan. Therefore, the matching contributions and the profit sharing contributions which were transferred to this plan (to a "Prior Plan Match" account

and a "Prior Plan Profit Sharing" account, respectively), will vest under a "six year graded" vesting schedule. Also, for purposes of determining your vested interest in the transferred accounts, years of service will be determined as defined under the South University 401(k) Profit Sharing Plan.

A six year graded vesting schedule means that: (i) after 2 years, you' ll be 20% vested, (u) after 3 years, you' ll be 40% vested, (iii) after 4 years, you' ll be 60% vested, (iv) after 5 years, you' ll be 80% vested, and (v) after 6 years, you' ll be 100% vested. Remember, however, that this vesting schedule applies to only the Prior Plan Match account and the Prior Plan Profit Sharing account and does not apply to other contributions attributable to Plan Years beginning on or after January 1, 2004 under this Plan.

American Education Centers, Inc. and Other Related Entities. In determining the length of your service for the purpose of eligibility to receive matching contributions and for deciding what portion of your account you are entitled to if you leave before age 65, hours of service in the employ of American Education Centers, Inc. (and other related entities) ("AEC") before it was acquired by Education Management Corporation are taken into account as hours of service under the plan to the same extent as if AEC had been a participating employer during that period. As an exception, no more than five years of service will be credited under this paragraph to any employee who upon entering this plan is a "restricted employee" as described in the section called "Maximum Amount of 401(k) Contributions.

All of your accounts under the American Education Centers, Inc. 401(k) Plan were transferred to this Plan on September 1, 2004. All of the contributions made by AEC on your behalf to its 401(k) plan will continue to vest in accordance with that plan' s vesting schedules even though they are now held under this Plan. Therefore, the matching contributions that were transferred to this plan (to a "Prior Plan Match" account) will vest under a "six year graded" vesting schedule, as described below. Also, for purposes of determining your vested interest in the Prior Plan Match account, years of service will be determined as defined under the American Education Centers, Inc. 401(k) Plan. The other employer contributions that were transferred to this plan (to a "Prior Plan Employer Contribution" account) are 100% vested.

A six year graded vesting schedule means that: (i) after 2 years, you' ll be 20% vested, (ii) after 3 years, you' ll be 40% vested, (iii) after 4 years, you' ll be 60% vested, (iv) after 5 years, you' ll be 80% vested, and (v) after 6 years, you' ll be 100% vested. Remember, however, that this vesting schedule applies to only the Prior Plan Match account and does not apply to other contributions attributable to Plan Years beginning on or after January 1, 2004 under this Plan.

Also, you also will continue to have the right to withdraw, even if you are still employed with EDMC, a portion or all of your rollover contributions made to the AEC 401(k) Plan which were transferred to this Plan at any time. The rollover

contributions for which you have this right will be held in an account named "Prior Rollover" account."

9. Appendix A is amended and restated (to add new participating employers) in substantially the same form as Attachment A, which is attached hereto and which is made a part hereof.

10. Appendix B is amended and restated (to update the investment options) in substantially the same form as Attachment B, which is attached hereto and which is made a part hereof.

11. In all other respects, the provisions of the Plan are hereby ratified and confirmed, and they shall continue in full force and effect. In order to continue to set forth the provisions of the Plan in a single document, changes made by this Second Amendment may be incorporated into the most recent restatement of the Plan.

IN WITNESS WHEREOF, this Second Amendment has been duly adopted by action on behalf of EDMC on the 23rd day of December 2004.

EDUCATION MANAGEMENT CORPORATION

By: /s/ Patricia V. Sullivan
Title: VP, Compensation/Benefits/HRIS

Exhibit 10.14

THIRD AMENDMENT TO THE
EDUCATION MANAGEMENT CORPORATION RETIREMENT PLAN
(Amended and Restated August 1. 2003)

Pursuant to the authority granted in the Section titled "***Changing the Plan***" (under the Article titled "**WHAT THE EMPLOYER DOES**") of the Education Management Corporation Retirement Plan (the **"Plan"),** the Retirement Committee, on behalf of Education Management Corporation ("**EDMC**"), hereby amends the Plan with this **Third Amendment** to be effective as of the dates set forth below:

1. Effective as of August 1, 2005, the Section of the Plan, titled "***How to do it***", which is under the Article, titled "**TRADING OFF YOUR PAY FOR CONTRIBUTIONS TO THE PLAN**"**,** is amended by adding the following to the end of the first paragraph thereunder to read as follows:

"However, beginning on August 1, 2005, the only way you will be able to trade off your pay in return for a contribution to the plan is by completing an actual enrollment form. You will be given instructions on how to complete the form, by when it must be completed and submitted, and to whom it must be submitted."

2. Effective as of August 1, 2005, the fourth, and last, bullet point under the Section of the Plan, titled "***How to do it***", which is under the Article, titled "**TRADING OFF YOUR PAY FOR CONTRIBUTIONS TO THE PLAN**", is restated in its entirety to read as follows (the new text is underlined):

" You can change your agreement at any time, but the change will take effect at the beginning of the following month <u>(effective as of August 1, 2005, your change will become effective as soon as soon as administratively practicable with the next pay cycle that follows the date on which your change is processed)</u>."

3. Effective as of March 28, 2005, a new paragraph is added immediately after the second paragraph under the Section of the Plan, titled "**Your choices about timing**"**,** which is under the Article, titled "**WHEN PAYMENT IS ACTUALLY MADE**"**,** to read as follows:

"However, beginning on March 28, 2005, new rules will apply to you if your entitlement is $5,000 or less. The Plan Administrator will still have a right to make an automatic distribution to you if your entitlement is $5,000 or less even if you do not consent to receiving one. The difference is that if your entitlement is $5,000 or less *but* is more than $1,000, the Plan Administrator will pay the distribution, if made, to an individual retirement plan set up in your name if you do not tell the Plan Administrator where to pay the money or if you simply do not respond within a reasonable period of time after being notified of the distribution. If your entitlement is less than $1,000, distributions will be paid to you and not to

an individual retirement plan if you do not tell the Plan Administrator where to pay the money."

4. Effective as of March 21, 2005, the Section of the Plan, titled "***Diversification of ESOP accounts*****,** which is under the Article, titled "**SPECIAL ESOP PROVISIONS**", is amended by adding the following to the end thereof:

"Effective as of March 21, 2005, ESOP diversification requests will be processed on a real time basis in accordance with uniform procedures, including procedures under the trust agreement, that will be consistently applied by Fidelity. Trading stock in a real-time environment generally means that your trade order is sent to the Plan' s broker in real-time for execution, giving you the same control that you would have with traditional brokerage accounts. All questions that you may have regarding this change should be directed to Fidelity."

5. Effective as of the dates set forth therein, Appendix B is amended and restated (to update the investment options) in substantially the same form as Attachment B, which is attached hereto and which is made a part hereof.

6. In all other respects, the provisions of the Plan are hereby ratified and confirmed, and they shall continue in full force and effect. In order to continue to set forth the provisions of the Plan in a single document, changes made by this Third Amendment may be incorporated into the most recent restatement of the Plan.

IN WITNESS WHEREOF, this Third Amendment has been duly adopted by action on behalf of EDMC on the 21st day of December 2005.

EDUCATION MANAGEMENT CORPORATION

By: /s/ Ronald Ogrodnik
Title: SVP Human Resources

Attachment B to the Third Amendment

APPENDIX B TO THE
EDUCATION MANAGEMENT CORPORATION
RETIREMENT PLAN

Investment Options Effective January 1, 2005 (Unless Otherwise Indicated)

Managed Income Portfolio (Fidelity). This is a commingled pool of the Fidelity Group Trust for Employee Benefit Plans. Its objective is to preserve principal while earning interest income. It invests in investment contracts offered by major insurance companies and other approved financial institutions and in certain types of fixed income securities. A small portion of the fund is invested in a money market fund to provide daily liquidity.

Fidelity Intermediate Bond Fund. This is a mutual fund that invests in all types of U. S. and foreign bonds, including corporate or U. S. government issues. Normally, it selects bonds considered medium to high quality ("investment grade") while maintaining an average maturity of 3 to 10 years. These bond prices will go up and down more than those of short-term bonds.

Van Kampen Growth and Income Fund - Class A. This is a mutual fund that seeks income and long-term growth of capital. It invests primarily in income-producing equity securities, including common stocks and convertible securities (although investments are also made in non-convertible preferred stocks and debt securities). The fund may invest up to 25% of its total assets in securities of foreign issuers, which involve greater risks.

Fidelity Contrafund. This is a mutual fund that seeks to provide capital appreciation. It invests primarily in common stocks. The fund also may invest in securities of domestic and foreign issuers whose value the fund' s manager believes is not fully recognized by the public. The fund may invest in "growth" or "value" stocks, or both.

Spartan U.S. Equity Index Fund. This fund, managed by Bankers Trust, seeks to provide investment results that correspond to the total return of common stocks publicly traded in the United States. In seeking this objective, the fund attempts to duplicate the composition and total return of the S&P 500. The fund uses an "indexing" approach and allocates its assets similarly to those of the index. The fund' s composition may not always be identical to that of the S&P 500.

Fidelity Freedom Funds. These are mutual funds that invest in a combination of Fidelity equity, fixed-income, and money market funds. They allocate their assets among those funds according to an asset allocation strategy that becomes increasingly conservative as each Freedom Fund approaches its target retirement date. The Freedom Funds are:

Fidelity Freedom 2010 Fund − targeted to investors expecting to retire around 2010.
Fidelity Freedom 2020 Fund − targeted to investors expecting to retire around 2020.
Fidelity Freedom 2030 Fund − targeted to investors expecting to retire around 2030.
Fidelity Freedom 2040 Fund−targeted to investors expecting to retire around 2040.
Fidelity Freedom Income Fund − targeted to investors who have retired.

Please note: The Fidelity Freedom Funds replace three other Fidelity funds that were previously available − Fidelity Asset Manager, Fidelity Asset Manager: Growth, and

Fidelity Asset Manager: Income. Effective July 6, 2001, no money may be contributed or transferred to those three Asset Manager funds.

Please note also: If you have chosen any of those three Asset Manager funds − Fidelity Asset Manager, Fidelity Asset Manager: Growth, or Fidelity Asset Manager: Income − as the destination for new contributions going into the plan, then effective July 6, 2001, those new contributions will automatically be re-directed by Fidelity into the Fidelity Freedom Fund that corresponds to your birth date, as shown on the table in the following paragraph.

Please note, finally: Participants with money in any of those Asset Manager funds − Fidelity Asset Manager, Fidelity Asset Manager: Growth, and Fidelity Asset Manager: Income − are urged to move the money into other investment options available under the plan. Any money remaining in any of those three Asset Manager funds at September 30, 2001 (that is, 90 days later) will automatically be transferred by Fidelity into the Fidelity Freedom Fund that corresponds to your birth date, as shown on this table:

Year of Birth	**Fidelity Freedom Fund**
1900-1934	Freedom Income
1935-1940	Freedom 2000
1941-1950	Freedom 2010
1951-1960	Freedom 2020
1961-1970	Freedom 2030
1971-1980	Freedom 2040

Fidelity Growth Company Fund. This is a mutual fund that seeks long-term capital appreciation by investing primarily in common stocks and securities convertible into common stocks. It may invest in companies of any size with above-average growth potential, though growth is most often sought in smaller, less well known companies in emerging areas of the economy. The stocks of small companies often involve more risk than those of larger companies.

T. Rowe Price Mid-Cap Value Fund. This is a mutual fund that seeks to provide long-term capital appreciation by investing primarily in mid-sized companies believed by the fund' s manager to be undervalued. It invests at least 80% of its net assets in companies whose market capitalization falls within the range of the S&P MidCap 400 Index or the Russell Midcap Value Index. Investments in midsized companies may involve greater risks than those of larger, more well-known companies, but may be less volatile than investments in smaller companies.

Munder Mid-Cap Core Growth Fund - Class Y–Effective as of November 22, 2005. Effective as of November 22, 2005, the Munder Mid-Cap Core Growth Fund - Class Y will be made available under the Plan. This is a mutual fund that seeks to provide long-term capital appreciation by investing primarily in equity securities of mid-capitalization companies. This mutual fund defines mid-capitalization companies as companies with a market capitalization similar to those represented by the S&P MidCap 400 Index. According to this mutual fund, investments are evaluated based on quality, the potential for consistent, above-average earnings growth, financial productivity and valuation. Investments in mid-sized companies may involve greater risks than those in larger, more well known companies, but may be less volatile than investments in smaller companies.

Franklin Small-Mid Cap Growth Fund - Class A (formerly Franklin Small Cap Growth Fund A). Effective as of December 1, 2005, this option will no longer be available under the Plan. This is a mutual fund managed by Franklin Advisers, Inc. It seeks to increase the value of investments over the long term through capital growth. It invests primarily in equity securities of small capitalization growth companies, which generally have market capitalizations of less than $1.5 billion at the time of the investment. The fund may also invest up to 25% of its assets in foreign securities, which involve special risks, including economic and political uncertainty and currency fluctuation. Effective as of November 22, 2005, this mutual fund will not be available to future Plan contributions. Further, as of the close of business (4:00 p.m. Eastern Standard Time) on November 30, 2005, all balances in this mutual fund will be transferred to the Munder Mid-Cap Core Growth Fund - Class Y unless the participant directs the balance to be transferred to another available investment option under the Plan. Accordingly, as of December 1, 2005, this investment option shall no longer exist under the Plan.

American AAdvantage Small Cap Value Fund - Plan Ahead Class. This is a mutual fund whose objective is to provide long-term capital appreciation and current income. It normally invests at least 80% of its total assets in equity securities of U.S. companies with market capitalizations of $2 billion or less at the time of investment. The fund' s investments may include common stocks, preferred stocks, securities convertible into common stocks, and U.S. dollar-denominated American Depository Receipts. Investments in smaller companies may involve greater risks than those in larger, more well known companies.

Morgan Stanley Institutional Fund, Inc. - Small Company Growth Portfolio - Class B. This is a mutual fund whose objective is to increase the value of investments over the long-term through price appreciation of small-sized companies. It invests primarily in commons stocks of small-sized domestic corporations and, to a limited extent, foreign (non-U.S.) corporations. Investments in smaller companies may involve greater risk than those in larger, better-known companies.

Fidelity Diversified International Fund. This is a mutual fund whose objective is capital growth. It normally invests at least 65% of total assets in foreign securities. It normally invests primarily in common stocks. Stocks are selected by using a computer-aided quantitative analysis supported by fundamental analysis. In exchange for greater potential rewards, foreign investments, especially in emerging markets, involve greater risks than U.S. investments and as with any investment, share price and return will fluctuate. The risks in foreign investments include political and economic uncertainties of foreign countries, as well as the risk of currency fluctuations.

Employer Stock Fund. This is a fund invested in employer common stock. The fund may also hold some cash for liquidity. This fund is available as an investment option effective August 1, 2003. Shares of employer stock may be acquired by the fund either directly from the company or in open market transactions.

Exhibit 25.1

FORM T-1

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

STATEMENT OF ELIGIBILITY
UNDER THE TRUST INDENTURE ACT OF 1939 OF A
CORPORATION DESIGNATED TO ACT AS TRUSTEE

CHECK IF AN APPLICATION TO DETERMINE
ELIGIBILITY OF A TRUSTEE PURSUANT TO
SECTION 305(b)(2) ☐

THE BANK OF NEW YORK

(Exact name of trustee as specified in its charter)

New York	**13-5160382**
(State of incorporation if not a U.S. national bank)	**(I.R.S. employer identification no.)**
One Wall Street, New York, N.Y.	**10286**
(Address of principal executive offices)	**(Zip code)**

Education Management LLC
Education Management Finance Corp.
(Exact name of obligor as specified in its charter)

(See attached pages for additional obligors)

	20-4506022
Delaware	**20-4887689**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. employer identification no.)**
210 Sixth Avenue, Pittsburgh, PA	**15222**
(Address of principal executive offices)	**(Zip code)**

8¾% Senior Notes Due 2014 and Guarantees Thereof
(Title of the indenture securities)

TABLE OF ADDITIONAL OBLIGORS

Exact Name of Registrant Guarantor as Specified in its Charter	State of Other Jurisdiction of Incorporation or Organization	I.R.S. Employer Identification No.	Address. Including Zip Code and Telephone No. Including Area Code, Of Registrant Guarantor's Principal Executive Offices
AID Restaurant, Inc.	Texas	01-0691168	8080 Park Lane Suite 100 Dallas, Texas 75231 214-692-8080
AIH Restaurant, Inc.	Texas	76-0431417	1900 Yorktown Houston, Texas 77056 713-623-2040
AIIM Restaurant, Inc.	Minnesota	41-1977654	15 S. 9th Street La Salle Bldg. Minneapolis, Minnesota 55409 612-827-5981
Argosy University Family Center, Inc.	Minnesota	16-1665500	310 East 38th St. Minneapolis, MN 55409 612-827-5981
Brown Mackie Holding Co.	Delaware	20-3108775	210 Sixth Avenue–33rd Fl. Pittsburgh, PA 15222 412-562-0900
The Connecting Link, Inc.	Georgia	58-1987235	5126 Ralston St. Ventura, CA 93003 805-654-0739
EDMC Aviation, Inc.	Pennsylvania	20-0212231	210 Sixth Avenue–33rd Fl. Pittsburgh, PA 15222 412-562-0900
EDMC Marketing and Advertising, Inc.	Georgia	58-1591601	210 Sixth Avenue–33rd Fl. Pittsburgh, PA 15222 412-562-0900
Higher Education Services, Inc.	Georgia	58-1983881	709 Mall Avenue Savannah, GA 31406 803-799-9082
MCM University Plaza, Inc.	Illinois	36-4118464	210 Sixth Avenue, 33rd Fl. Pittsburgh, PA 15222 412-562-0900

Item 1. General information. Furnish the following information as to the Trustee:

(a) Name and address of each examining or supervising authority to which it is subject.

Name	Address
Superintendent of Banks of the State of New York	2 Rector Street New York, N.Y. 10006 and Albany, N.Y. 12203
Federal Reserve Bank of New York	33 Liberty Plaza, New York, N.Y. 10045
Federal Deposit Insurance Corporation	Washington, D.C. 20429
New York Clearing House Association	New York, N.Y. 10005

(b) Whether it is authorized to exercise corporate trust powers.

Yes.

Item 2. Affiliations with Obligor.

If the obligor is an affiliate of the trustee, describe each such affiliation.

None.

Items 3-15. Not Applicable.

Item 16. List of Exhibits.

Exhibits identified in parentheses below, on file with the Commission, are incorporated herein by reference as an exhibit hereto, pursuant to Rule 7a-29 under the Trust Indenture Act of 1939 (the "Act") and 17 C.F.R. 229.10(d).

1. A copy of the Organization Certificate of The Bank of New York (formerly Irving Trust Company) as now in effect, which contains the authority to commence business and a grant of powers to exercise corporate trust powers. (Exhibit 1 to Amendment No. 1 to Form T-1 filed with Registration Statement No. 33-6215, Exhibits 1a and 1b to Form T-1 filed with Registration Statement No. 33-21672 and Exhibit 1 to Form T-1 filed with Registration Statement No. 33-29637.)
2. A copy of the existing By-laws of the Trustee. (Exhibit 4 to Form T-1 filed with Registration Statement No. 33-31019.)
3. The consent of the Trustee required by Section 321(b) of the Act. (Exhibit 6 to Form T-1 filed with Registration Statement No. 33-44051.)

4. A copy of the latest report of condition of the Trustee published pursuant to law or to the requirements of its supervising or examining authority.

SIGNATURE

Pursuant to the requirements of the Act, the Trustee, The Bank of New York, a corporation organized and existing under the laws of the State of New York, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in The City of New York, and State of New York, on the 6th day of October, 2006.

THE BANK OF NEW YORK

By: /s/ ROBERT A. MASSIMILLO

Name: ROBERT A. MASSIMILLO

Title: VICE PRESIDENT

EXHIBIT 7

Consolidated Report of Condition of

THE BANK OF NEW YORK

of One Wall Street, New York, N.Y. 10286
And Foreign and Domestic Subsidiaries,

a member of the Federal Reserve System, at the close of business June 30, 2006, published in accordance with a call made by the Federal Reserve Bank of this District pursuant to the provisions of the Federal Reserve Act

	Dollar Amounts In Thousands
ASSETS	
Cash and balances due from depository institutions:	
Noninterest-bearing balances and currency and coin	3,372,000
Interest-bearing balances	11,005,000
Securities:	
Held-to-maturity securities	2,269,000
Available-for-sale securities	23,124,000
Federal funds sold and securities purchased under agreements to resell	
Federal funds sold in domestic offices	490,000
Securities purchased under agreements to resell	252,000
Loans and lease financing receivables:	
Loans and leases held for sale	0
Loans and leases, net of unearned income	36,722,000

LESS: Allowance for loan and lease losses	414,000
Loans and leases, net of unearned income and allowance	36,308,000
Trading assets	5,770,000
Premises and fixed assets (including capitalized leases)	848,000
Other real estate owned	0
Investments in unconsolidated subsidiaries and associated companies	302,000
Not applicable	
Intangible assets:	
Goodwill	2,177,000
Other intangible assets	750,000
Other assets	7,196,000
Total assets	93,863,000

LIABILITIES	
Deposits:	
In domestic offices	40,014,000
Noninterest-bearing	21,153,000
Interest-bearing	18,861,000
In foreign offices, Edge and Agreement subsidiaries, and IBFs	31,312,000
Noninterest-bearing	286,000
Interest-bearing	31,026,000
Federal funds purchased and securities sold under agreements to repurchase	
Federal funds purchased in domestic offices	839,000
Securities sold under agreements to repurchase	396,000
Trading liabilities	3,045,000
Other borrowed money:	
(includes mortgage indebtedness and obligations under capitalized leases)	1,670,000
Not applicable	
Not applicable	
Subordinated notes and debentures	1,955,000

Other liabilities	6,011,000
Total liabilities	85,242,000
Minority interest in consolidated subsidiaries	150,000
EQUITY CAPITAL	
Perpetual preferred stock and related surplus	0
Common stock	1,135,000
Surplus (exclude all surplus related to preferred stock)	2,112,000
Retained earnings	5,444,000
Accumulated other comprehensive income	-220,000
Other equity capital components	0
Total equity capital	8,471,000
Total liabilities, minority interest, and equity capital	93,863,000

I, Thomas J. Mastro, Executive Vice President and Comptroller of the above-named bank do hereby declare that this Report of Condition is true and correct to the best of my knowledge and belief.

Thomas J. Mastro,
Executive Vice President and Comptroller

We, the undersigned directors, attest to the correctness of this statement of resources and liabilities. We declare that it has been examined by us, and to the best of our knowledge and belief has been prepared in conformance with the instructions and is true and correct.

Thomas A. Renyi
Gerald L. Hassell

] Directors

Exhibit 25.2

FORM T-1

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

STATEMENT OF ELIGIBILITY
UNDER THE TRUST INDENTURE ACT OF 1939 OF A
CORPORATION DESIGNATED TO ACT AS TRUSTEE

CHECK IF AN APPLICATION TO DETERMINE
ELIGIBILITY OF A TRUSTEE PURSUANT TO
SECTION 305(b)(2) ☐

THE BANK OF NEW YORK

(Exact name of trustee as specified in its charter)

New York	**13-5160382**
(State of incorporation if not a U.S. national bank)	**(I.R.S. employer identification no.)**
One Wall Street, New York, N.Y.	**10286**
(Address of principal executive offices)	**(Zip code)**

Education Management LLC
Education Management Finance Corp.
(Exact name of obligor as specified in its charter)

(See attached pages for additional obligors)

	20-4506022
Delaware	**20-4887689**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. employer identification no.)**
210 Sixth Avenue, Pittsburgh, PA	**15222**
(Address of principal executive offices)	**(Zip code)**

10 1/4% Senior Subordinated Notes Due 2016 and Guarantees Thereof
(Title of the indenture securities)

TABLE OF ADDITIONAL OBLIGORS

Exact Name of Registrant Guarantor as Specified in its Charter	State of Other Jurisdiction of Incorporation or Organization	I.R.S. Employer Identification No.	Address. Including Zip Code and Telephone No. Including Area Code, Of Registrant Guarantor's Principal Executive Offices
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AIH Restaurant, Inc.	Texas	76-0431417	1900 Yorktown Houston, Texas 77056 713-623-2040
AIIM Restaurant, Inc.	Minnesota	41-1977654	15 S. 9th Street La Salle Bldg. Minneapolis, Minnesota 55409 612-827-5981
Argosy University Family Center, Inc.	Minnesota	16-1665500	310 East 38th St. Minneapolis, MN 55409 612-827-5981
Brown Mackie Holding Co.	Delaware	20-3108775	210 Sixth Avenue–33rd Fl. Pittsburgh, PA 15222 412-562-0900
The Connecting Link, Inc.	Georgia	58-1987235	5126 Ralston St. Ventura, CA 93003 805-654-0739
EDMC Aviation, Inc.	Pennsylvania	20-0212231	210 Sixth Avenue–33rd Fl. Pittsburgh, PA 15222 412-562-0900
EDMC Marketing and Advertising, Inc.	Georgia	58-1591601	210 Sixth Avenue–33rd Fl. Pittsburgh, PA 15222 412-562-0900
Higher Education Services, Inc.	Georgia	58-1983881	709 Mall Avenue Savannah, GA 31406 803-799-9082
MCM University Plaza, Inc.	Illinois	36-4118464	210 Sixth Avenue, 33rd Fl. Pittsburgh, PA 15222 412-562-0900

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(a) Name and address of each examining or supervising authority to which it is subject.

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Federal Reserve Bank of New York	33 Liberty Plaza, New York, N.Y. 10045
Federal Deposit Insurance Corporation	Washington, D.C. 20429
New York Clearing House Association	New York, N.Y. 10005

(b) Whether it is authorized to exercise corporate trust powers.

Yes.

Item 2. Affiliations with Obligor.

If the obligor is an affiliate of the trustee, describe each such affiliation.

None.

Items 3-15. Not Applicable.

Item 16. List of Exhibits.

Exhibits identified in parentheses below, on file with the Commission, are incorporated herein by reference as an exhibit hereto, pursuant to Rule 7a-29 under the Trust Indenture Act of 1939 (the "Act") and 17 C.F.R. 229.10(d).

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2. A copy of the existing By-laws of the Trustee. (Exhibit 4 to Form T-1 filed with Registration Statement No. 33-31019.)
3. The consent of the Trustee required by Section 321(b) of the Act. (Exhibit 6 to Form T-1 filed with Registration Statement No. 33-44051.)

4. A copy of the latest report of condition of the Trustee published pursuant to law or to the requirements of its supervising or examining authority.

SIGNATURE

Pursuant to the requirements of the Act, the Trustee, The Bank of New York, a corporation organized and existing under the laws of the State of New York, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in The City of New York, and State of New York, on the 6th day of October, 2006.

THE BANK OF NEW YORK

By: /s/ ROBERT A. MASSIMILLO

Name: ROBERT A. MASSIMILLO
Title: VICE PRESIDENT

EXHIBIT 7

Consolidated Report of Condition of

THE BANK OF NEW YORK

of One Wall Street, New York, N.Y. 10286
And Foreign and Domestic Subsidiaries,

a member of the Federal Reserve System, at the close of business June 30, 2006, published in accordance with a call made by the Federal Reserve Bank of this District pursuant to the provisions of the Federal Reserve Act

	Dollar Amounts In Thousands
ASSETS	
Cash and balances due from depository institutions:	
Noninterest-bearing balances and currency and coin	3,372,000
Interest-bearing balances	11,005,000
Securities:	
Held-to-maturity securities	2,269,000
Available-for-sale securities	23,124,000
Federal funds sold and securities purchased under agreements to resell	
Federal funds sold in domestic offices	490,000
Securities purchased under agreements to resell	252,000
Loans and lease financing receivables:	
Loans and leases held for sale	0
Loans and leases, net of unearned income	36,722,000

LESS: Allowance for loan and lease losses	414,000
Loans and leases, net of unearned income and allowance	36,308,000
Trading assets	5,770,000
Premises and fixed assets (including capitalized leases)	848,000
Other real estate owned	0
Investments in unconsolidated subsidiaries and associated companies	302,000
Not applicable	
Intangible assets:	
Goodwill	2,177,000
Other intangible assets	750,000
Other assets	7,196,000
Total assets	93,863,000

LIABILITIES	
Deposits:	
In domestic offices	40,014,000
Noninterest-bearing	21,153,000
Interest-bearing	18,861,000
In foreign offices, Edge and Agreement subsidiaries, and IBFs	31,312,000
Noninterest-bearing	286,000
Interest-bearing	31,026,000
Federal funds purchased and securities sold under agreements to repurchase	
Federal funds purchased in domestic offices	839,000
Securities sold under agreements to repurchase	396,000
Trading liabilities	3,045,000
Other borrowed money:	
(includes mortgage indebtedness and obligations under capitalized leases)	1,670,000
Not applicable	
Not applicable	
Subordinated notes and debentures	1,955,000

Other liabilities	6,011,000
Total liabilities	85,242,000
Minority interest in consolidated subsidiaries	150,000
EQUITY CAPITAL	
Perpetual preferred stock and related surplus	0
Common stock	1,135,000
Surplus (exclude all surplus related to preferred stock)	2,112,000
Retained earnings	5,444,000
Accumulated other comprehensive income	-220,000
Other equity capital components	0
Total equity capital	8,471,000
Total liabilities, minority interest, and equity capital	93,863,000

I, Thomas J. Mastro, Executive Vice President and Comptroller of the above-named bank do hereby declare that this Report of Condition is true and correct to the best of my knowledge and belief.

Thomas J. Mastro,
Executive Vice President and Comptroller

We, the undersigned directors, attest to the correctness of this statement of resources and liabilities. We declare that it has been examined by us, and to the best of our knowledge and belief has been prepared in conformance with the instructions and is true and correct.

Thomas A. Renyi
Gerald L. Hassell

] Directors

EDUCATION MANAGEMENT LLC
EDUCATION MANAGEMENT FINANCE CORP.

LETTER OF TRANSMITTAL

OFFER TO EXCHANGE
$385,000,000 PRINCIPAL AMOUNT OF THE ISSUERS' 10 1/4% SENIOR SUBORDINATED NOTES DUE 2016, WHICH HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, FOR ANY AND ALL OF THE ISSUERS' OUTSTANDING 10 1/4% SENIOR SUBORDINATED NOTES DUE 2016

THE EXCHANGE OFFER WILL EXPIRE AT 12:00 A.M. MIDNIGHT, NEW YORK CITY TIME, ON , 2006 (THE "EXPIRATION DATE") UNLESS THE OFFER IS EXTENDED. TENDERS MAY BE WITHDRAWN PRIOR TO 12:00 A.M. MIDNIGHT, NEW YORK CITY TIME, ON , 2006.

The Exchange Agent for the Exchange Offer is:
THE BANK OF NEW YORK

By Registered or Certified Mail:	*By Facsimile:*	*By Overnight Courier or Hand:*
The Bank of New York 101 Barclay Street–Floor 7E New York, NY 10286 Attn: Evangeline Gonzales Telephone: 212-815-5098	212-298-1915	The Bank of New York 101 Barclay Street–Floor 7E New York, NY 10286 Attn: Evangeline Gonzales Telephone: 212-815-3738

To Confirm by Telephone:

212-815-3738

DELIVERY OF THIS LETTER OF TRANSMITTAL TO AN ADDRESS OTHER THAN AS SET FORTH ABOVE, OR TRANSMISSION OF THIS LETTER OF TRANSMITTAL VIA FACSIMILE TRANSMISSION TO A NUMBER OTHER THAN AS SET FORTH ABOVE WILL NOT CONSTITUTE A VALID DELIVERY. THE INSTRUCTIONS ACCOMPANYING THIS LETTER OF TRANSMITTAL SHOULD BE READ CAREFULLY BEFORE THIS LETTER OF TRANSMITTAL IS COMPLETED.

Holders of Outstanding Notes (as defined below) should complete this Letter of Transmittal either if Outstanding Notes are to be forwarded herewith or if tenders of Outstanding Notes are to be made by book-entry transfer to an account maintained by the Exchange Agent at the book-entry transfer facility specified by the holder pursuant to the procedures set forth in "The Exchange Offers–Book-Entry Delivery Procedures" and "The Exchange Offers–Procedures for Tendering Outstanding Notes" in the Prospectus (as defined below) and an "Agent' s Message" (as defined below) is not delivered. If tender is being made by book-entry transfer, the holder must have an Agent' s Message delivered in lieu of this Letter of Transmittal.

Holders of Outstanding Notes whose certificates for such Outstanding Notes are not immediately available or who cannot deliver their certificates and all other required documents to the Exchange Agent on or prior to the Expiration Date or who cannot complete the procedures for book-entry transfer on a timely basis, must tender their Outstanding Notes according to the guaranteed delivery procedures set forth in "The Exchange Offers – Guaranteed Delivery Procedures" in the Prospectus.

Unless the context otherwise requires, the term "holder" for purposes of this Letter of Transmittal means any person in whose name Outstanding Notes are registered or any other person who has obtained a properly completed bond power from the registered holder or any person whose Outstanding Notes are held of record by The Depository Trust Company ("DTC").

The undersigned acknowledges receipt of the Prospectus dated , 2006 (as it may be amended or supplemented from time to time, the "Prospectus") of Education Management LLC, a Delaware limited liability company, and Education Management Finance Corp., a Delaware corporation (together with Education Management LLC, the "Issuers"), and certain of the Issuers' subsidiaries (each, a "Guarantor" and collectively, the "Guarantors"), and this Letter of Transmittal (the "Letter of Transmittal"), which together constitute the Issuers' offer (the "Exchange Offer") to exchange an aggregate principal amount of up to $385,000,000 of the Issuers' 10 1/4% Senior Subordinated Notes due 2016 which have been registered under the Securities Act of 1933, as amended (the "Securities Act") (the "Exchange Notes"), for any and all of the Issuers' outstanding 10 1/4% Senior Subordinated Notes due 2016, (the "Outstanding Notes"). The Outstanding Notes are unconditionally guaranteed (the "Old Guarantees") by the Guarantors and the Exchange Notes will be unconditionally guaranteed (the "New Guarantees") by the Guarantors. Upon the terms and subject to the conditions set forth in the Prospectus and this Letter of Transmittal, the Guarantors offer to issue the New Guarantees with respect to all Exchange Notes issued in the Exchange Offer in exchange for the Old Guarantees of the Outstanding Notes for which such Exchange Notes are issued in the Exchange Offer. Throughout this Letter of Transmittal, unless the context otherwise requires and whether so expressed or not, references to the "Exchange Offer" include the Guarantors' offer to exchange the New Guarantees for the Old Guarantees, references to the "Exchange Notes" include the related New Guarantees and references to the "Outstanding Notes" include the related Old Guarantees.

For each Outstanding Note accepted for exchange, the holder of such Outstanding Note will receive an Exchange Note having a principal amount equal to that of the surrendered Outstanding Note. The Exchange Notes will accrue interest at a rate of 10 1/4% per annum, commencing on December 1, 2006, payable on June 1 and December 1 of each year.

Capitalized terms used but not defined herein shall have the same meaning given them in the Prospectus.

YOUR BANK OR BROKER CAN ASSIST YOU IN COMPLETING THIS FORM. THE INSTRUCTIONS INCLUDED WITH THIS LETTER OF TRANSMITTAL MUST BE FOLLOWED. QUESTIONS AND REQUESTS FOR ASSISTANCE OR FOR ADDITIONAL COPIES OF THE PROSPECTUS AND THIS LETTER OF TRANSMITTAL MAY BE DIRECTED TO THE EXCHANGE AGENT, WHOSE ADDRESS AND TELEPHONE NUMBER APPEAR ON THE FRONT PAGE OF THIS LETTER OF TRANSMITTAL.

The undersigned has completed the appropriate boxes below and signed this Letter of Transmittal to indicate the action that the undersigned desires to take with respect to the Exchange Offer.

PLEASE READ THE ENTIRE LETTER OF TRANSMITTAL AND THE PROSPECTUS CAREFULLY BEFORE CHECKING ANY BOX BELOW.

List below the Outstanding Notes to which this Letter of Transmittal relates. If the space provided below is inadequate, the certificate numbers and aggregate principal amounts of Outstanding Notes should be listed on a separate signed schedule affixed hereto.

All Tendering Holders Complete Box 1:

Box 1*

Description of Outstanding Notes Tendered Herewith

Name(s) and Address(es) of Registered Holder(s) (Please fill in, if blank, exactly as name(s) appear(s) on Certificate(s))	**Certificate or Registration Number(s) of Outstanding Notes****	**Aggregate Principal Amount Represented by Outstanding Notes**	**Aggregate Principal Amount of Outstanding Notes Being Tendered*****
Total:			

* If the space provided is inadequate, list the certificate numbers and principal amount of Outstanding Notes on a separate signed schedule and attach the list to this Letter of Transmittal.

** Need not be completed by book-entry holders.

*** The minimum permitted tender is $2,000 in principal amount and must be tendered in multiples of $1,000 in excess thereof. Unless otherwise indicated in this column, the holder will be deemed to have tendered the full aggregate principal amount represented by such Outstanding Notes. See instruction 2.

Box 2

Book-Entry Transfer

☐ CHECK HERE IF TENDERED OUTSTANDING NOTES ARE BEING DELIVERED BY BOOK-ENTRY TRANSFER MADE TO THE ACCOUNT MAINTAINED BY THE EXCHANGE AGENT AND COMPLETE THE FOLLOWING:

Name of Tendering Institution:_____

Account Number:_____

Transaction Code Number:_____

Holders of Outstanding Notes that are tendering by book-entry transfer to the Exchange Agent' s account at DTC can execute the tender through DTC' s Automated Tender Offer Program ("ATOP") for which the transaction will be eligible. DTC participants that are accepting the Exchange Offer must transmit their acceptances to DTC, which will verify the acceptance and execute a book-entry delivery to the Exchange Agent' s account at DTC. DTC will then send a computer-generated message (an "Agent' s Message") to the Exchange Agent for its acceptance in which the holder of the Outstanding Notes acknowledges and agrees to be bound by the terms of, and makes the representations and warranties contained in, this Letter of Transmittal, and the DTC participant confirms on behalf of itself and the beneficial owners of such Outstanding Notes all provisions of this Letter of Transmittal (including any representations and warranties) applicable to it and such beneficial owner as fully as if it had completed the information required herein and executed and transmitted this Letter of Transmittal to the Exchange Agent. Each DTC participant transmitting an acceptance of the Exchange Offer through the ATOP procedures will be deemed to have agreed to be bound by the terms of this Letter of Transmittal. Delivery of an Agent' s Message by DTC will satisfy the

terms of the Exchange Offer as to execution and delivery of a Letter of Transmittal by the participant identified in the Agent' s Message. DTC participants may also accept the Exchange Offer by submitting a Notice of Guaranteed Delivery through ATOP.

Box 3
Notice of Guaranteed Delivery
(See Instruction 2 below)

☐ CHECK HERE IF TENDERED OUTSTANDING NOTES ARE BEING DELIVERED PURSUANT TO A NOTICE OF GUARANTEED DELIVERY PREVIOUSLY SENT TO THE EXCHANGE AGENT AND COMPLETE THE FOLLOWING:

Name(s) of Registered Holder(s):_____
Window Ticket Number (if any):_____
Name of Eligible Guarantor Institution that Guaranteed Delivery:_____
Date of Execution of Notice of Guaranteed Delivery:_____
IF GUARANTEED DELIVERY IS TO BE MADE BY BOOK-ENTRY TRANSFER:
Name of Tendering Institution:_____
Account Number:_____
Transaction Code Number:_____

Box 4
Return of Non-Exchanged Outstanding Notes
Tendered by Book-Entry Transfer

☐ CHECK HERE IF OUTSTANDING NOTES TENDERED BY BOOK-ENTRY TRANSFER AND NON-EXCHANGED OUTSTANDING NOTES ARE TO BE RETURNED BY CREDITING THE ACCOUNT NUMBER SET FORTH ABOVE.

Box 5
Participating Broker-Dealer

☐ CHECK HERE IF YOU ARE A BROKER-DEALER WHO ACQUIRED THE OUTSTANDING NOTES FOR YOUR OWN ACCOUNT AS A RESULT OF MARKET-MAKING OR OTHER TRADING ACTIVITIES AND WISH TO RECEIVE TEN (10) ADDITIONAL COPIES OF THE PROSPECTUS AND OF ANY AMENDMENTS OR SUPPLEMENTS THERETO.

Name:_____
Address:_____

If the undersigned is not a broker-dealer, the undersigned represents that it is acquiring the Exchange Notes in the ordinary course of business and has no arrangement or understanding with any person to participate in a distribution of the Exchange Notes. If the undersigned is a broker-dealer that will receive Exchange Notes for its own account in exchange for Outstanding Notes that were acquired as a result of market-making activities or other trading activities, it acknowledges that it will deliver a prospectus meeting the requirements of the Securities Act in connection with any resale or transfer of such Exchange Notes; however, by so acknowledging and by delivering a prospectus, the undersigned will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act. A broker-dealer may not participate in the Exchange Offer with respect to Outstanding Notes acquired other than as a result of market-making activities or other trading activities. Any broker-dealer who purchased Outstanding Notes from the Issuers to resell pursuant to Rule 144A under the Securities Act or any other available exemption under the Securities Act must comply with the registration and prospectus delivery requirements under the Securities Act.

PLEASE READ THE ACCOMPANYING INSTRUCTIONS CAREFULLY

Ladies and Gentlemen:

Upon the terms and subject to the conditions of the Exchange Offer, the undersigned hereby tenders to the Issuers the aggregate principal amount of the Outstanding Notes indicated above. Subject to, and effective upon, the acceptance for exchange of all or any portion of the Outstanding Notes tendered herewith in accordance with the terms and conditions of the Exchange Offer (including, if the Exchange Offer is extended or amended, the terms and conditions of any such extension or amendment), the undersigned hereby exchanges, assigns and transfers to, or upon the order of, the Issuers all right, title and interest in and to such Outstanding Notes as are being tendered herewith.

The undersigned hereby irrevocably constitutes and appoints the Exchange Agent as its true and lawful agent and attorney-in-fact of the undersigned (with full knowledge that the Exchange Agent also acts as the agent of the Issuers, in connection with the Exchange Offer) with respect to the tendered Outstanding Notes, with full power of substitution and resubstitution (such power of attorney being deemed an irrevocable power coupled with an interest) to (1) deliver certificates representing such Outstanding Notes, or transfer ownership of such Outstanding Notes on the account books maintained by the book-entry transfer facility specified by the holder(s) of the Outstanding Notes, together, in each such case, with all accompanying evidences of transfer and authenticity to, or upon the order of, the Issuers, (2) present and deliver such Outstanding Notes for transfer on the books of the Issuers and (3) receive all benefits or otherwise exercise all rights and incidents of beneficial ownership of such Outstanding Notes, all in accordance with the terms of the Exchange Offer.

The undersigned hereby represents and warrants that (a) the undersigned has full power and authority to tender, exchange, assign and transfer the Outstanding Notes tendered hereby, (b) when such tendered Outstanding Notes are accepted for exchange, the Issuers will acquire good and unencumbered title thereto, free and clear of all liens, restrictions, charges and encumbrances and (c) the Outstanding Notes tendered for exchange are not subject to any adverse claims or proxies when accepted by the Issuers. The undersigned hereby further represents that any Exchange Notes acquired in exchange for Outstanding Notes tendered hereby will have been acquired in the ordinary course of business of the person receiving such Exchange Notes, whether or not such person is the undersigned, that neither the holder of such Outstanding Notes nor any such other person has an arrangement or understanding with any person to participate in the distribution of such Exchange Notes, and that neither the holder of such Outstanding Notes nor any such other person is an "affiliate," as such term is defined in Rule 405 under the Securities Act, of the Issuers or any Guarantor. If the undersigned is a person in the United Kingdom, the undersigned represents that its ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business.

The undersigned also acknowledges that this Exchange Offer is being made based on the Issuers' understanding of an interpretation by the staff of the Securities and Exchange Commission (the "SEC") as set forth in no-action letters issued to third parties, including *Morgan Stanley & Co. Incorporated* (available June 5, 1991), *Exxon Capital Holdings Corporation* (available May 13, 1988), as interpreted in the SEC' s letter to *Shearman & Sterling,* dated July 2, 1993, or similar no-action letters, that the Exchange Notes issued in exchange for the Outstanding Notes pursuant to the Exchange Offer may be offered for resale, resold and otherwise transferred by each holder thereof (other than a broker-dealer who acquires such Exchange Notes directly from the Issuers for resale pursuant to Rule 144A under the Securities Act or any other available exemption under the Securities Act or any such holder that is an "affiliate" of the Issuers or the Guarantors within the meaning of Rule 405 under the Securities Act), without compliance with the registration and prospectus delivery provisions of the Securities Act, provided that such Exchange Notes are acquired in the ordinary course of such holder' s business and such holder is not engaged in, and does not intend to engage in, a distribution of such Exchange Notes and has no arrangement or understanding with any person to participate in the distribution of such Exchange Notes. If a holder of the Outstanding Notes is an affiliate of the Issuers or the Guarantors, is not acquiring the Exchange Notes in the ordinary course of its business, is engaged in or intends to engage in a distribution of the Exchange Notes or has any arrangement or understanding with respect to the distribution of the Exchange Notes to be acquired pursuant to the Exchange Offer, such holder (x) may not rely on the applicable interpretations of the

staff of the SEC and (y) must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any secondary resale transaction. If the undersigned is a broker-dealer that will receive the Exchange Notes for its own account in exchange for the Outstanding Notes, it represents that the Outstanding Notes to be exchanged for the Exchange Notes were acquired by it as a result of market-making activities or other trading activities and acknowledges that it will deliver a prospectus in connection with any resale or transfer of such Exchange Notes; however, by so acknowledging and by delivering a prospectus, the undersigned will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act.

The undersigned will, upon request, execute and deliver any additional documents deemed by the Issuers or the Exchange Agent to be necessary or desirable to complete the exchange, assignment and transfer of the tendered Outstanding Notes or transfer ownership of such Outstanding Notes on the account books maintained by the book-entry transfer facility. The undersigned further agrees that acceptance of any and all validly tendered Outstanding Notes by the Issuers and the issuance of Exchange Notes in exchange therefor shall constitute performance in full by the Issuers of the Issuers' obligations under the Registration Rights Agreement dated June 1, 2006, among the Issuers, the Guarantors named therein, Credit Suisse Securities (USA) LLC, Goldman, Sachs & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated and Banc of America Securities LLC (the "Registration Rights Agreement"), and that the Issuers shall have no further obligations or liabilities thereunder except as provided in Section 5 of such agreement. The undersigned will comply with its obligations under the Registration Rights Agreement.

The Exchange Offer is subject to certain conditions as set forth in the Prospectus under the caption "The Exchange Offers−Conditions to the Exchange Offers." The undersigned recognizes that as a result of these conditions (which may be waived, in whole or in part, by the Issuers), as more particularly set forth in the Prospectus, the Issuers may not be required to exchange any of the Outstanding Notes tendered hereby and, in such event, the Outstanding Notes not exchanged will be returned to the undersigned at the address shown above, promptly following the expiration or termination of the Exchange Offer. In addition, the Issuers may amend the Exchange Offer at any time prior to the Expiration Date if any of the conditions set forth under "The Exchange Offers−Conditions to the Exchange Offers" occur.

All authority herein conferred or agreed to be conferred in this Letter of Transmittal shall survive the death or incapacity of the undersigned and every obligation of the undersigned hereunder shall be binding upon the successors, assigns, heirs, administrators, trustees in bankruptcy and legal representatives of the undersigned. Tendered Outstanding Notes may be withdrawn at any time prior to the Expiration Date in accordance with the procedures set forth in the terms of this Letter of Transmittal.

Unless otherwise indicated herein in the box entitled "Special Registration Instructions" below, please deliver the Exchange Notes (and, if applicable, substitute certificates representing the Outstanding Notes for any Outstanding Notes not exchanged) in the name of the undersigned or, in the case of a book-entry delivery of the Outstanding Notes, please credit the account indicated above. Similarly, unless otherwise indicated under the box entitled "Special Delivery Instructions" below, please send the Exchange Notes (and, if applicable, substitute certificates representing the Outstanding Notes for any Outstanding Notes not exchanged) to the undersigned at the address shown above in the box entitled "Description of Outstanding Notes Tendered Herewith."

THE UNDERSIGNED, BY COMPLETING THE BOX ENTITLED "DESCRIPTION OF OUTSTANDING NOTES TENDERED HEREWITH" ABOVE AND SIGNING THIS LETTER, WILL BE DEEMED TO HAVE TENDERED THE OUTSTANDING NOTES AS SET FORTH IN SUCH BOX.

Box 6

SPECIAL REGISTRATION INSTRUCTIONS

(See Instructions 4 and 5)

To be completed ONLY if certificates for the Outstanding Notes not tendered and/or certificates for the Exchange Notes are to be issued in the name of someone other than the registered holder(s) of the Outstanding Notes whose name(s) appear(s) above.

Issue: ☐ Outstanding Notes not tendered to:

☐ Exchange Notes to:

Name(s): _____

_____

(Please Print or Type)

Address: _____

_____

_____

_____

_____

_____

(Include Zip Code)

Daytime Area Code and Telephone Number.

_____

_____

_____

Taxpayer Identification or Social Security Number:

_____

_____

_____

Box 7

SPECIAL DELIVERY INSTRUCTIONS

(See Instructions 4 and 5)

To be complete1,d ONLY if certificates for the Outstanding Notes not tendered and/or certificates for the Exchange Notes are to be issued in the name of someone other than the registered holder(s) of the Outstanding Notes whose name(s) appear(s) above.

Issue: ☐ Outstanding Notes not tendered to:

☐ Exchange Notes to:

Name(s): _____

_____

_____

(Please Print or Type)

Address: _____

_____

_____

_____

_____

_____

(Include Zip Code)

Daytime Area Code and Telephone Number.

_____

_____

_____

Taxpayer Identification or Social Security Number:

_____

_____

_____

Box 8

TENDERING HOLDER(S) SIGN HERE

(Complete accompanying substitute form W-9)

Must be signed by the registered holder(s) (which term, for the purposes described herein, shall include the book-entry transfer facility whose name appears on a security listing as the owner of the Outstanding Notes) of the Outstanding Notes exactly as their name(s) appear(s) on the Outstanding Notes hereby tendered or by any person(s) authorized to become the registered holder(s) by properly completed bond powers or endorsements and documents transmitted herewith. If signature is by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation or other person acting in a fiduciary or representative capacity, please set forth the full title of such person. See Instruction 4.

_____

(Signature(s) of Holder(s))

Date: _____

Name(s): _____

(Please Type or Print)

Capacity (full title): _____

Address: _____

(Including Zip Code)

Daytime Area Code and Telephone Number: _____

Taxpayer Identification or Social Security Number: _____

GUARANTEE OF SIGNATURE(S)

(If Required−See Instruction 4)

Authorized Signature:_____

Date: _____

Name: _____

Title: _____

Name of Firm: _____

Address of Firm: _____

_____

(Include Zip Code)

Area Code and Telephone Number: _____

Taxpayer Identification or Social Security Number: _____

Box 9

PAYER' S NAME:

EDUCATION MANAGEMENT LLC

EDUCATION MANAGEMENT FINANCE CORP.

Substitute

Form W-9

Department of the Treasury Internal Revenue Service

Payer' s Request for Taxpayer Identification Number (TIN)

Part 1–PLEASE PROVIDE YOUR TIN IN THE BOX AT RIGHT AND CERTIFY BY SIGNING AND DATING BELOW.

Name

Social Security Number

OR

Employer Identification Number

Part 3–

Awaiting TIN ☐

Part 2–Certification–UNDER THE PENALTIES OF PERJURY, I CERTIFY THAT:

(1) The number shown on this form is my correct Taxpayer Identification Number (or I am waiting for a number to be issued to me), and

(2) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (the "IRS") that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and

(3) I am a U.S. person (including a U.S. resident alien).

CERTIFICATE INSTRUCTIONS–You must cross out item (2) above if you have been notified by the IRS that you are currently subject to backup withholding because of under-reporting interest or dividends on your tax return. However, if after being notified by the IRS that you were subject to backup withholding you received another notification from the IRS that you are no longer subject to backup withholding, do not cross out such item (2).

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Sign Here

Signature _____

Date

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM MAY RESULT IN BACKUP WITHHOLDING OF 28% OF ANY PAYMENTS MADE TO YOU PURSUANT TO THE OFFER. PLEASE REVIEW THE ENCLOSED GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9 FOR ADDITIONAL DETAILS.

YOU MUST COMPLETE THE FOLLOWING CERTIFICATE IF YOU CHECKED THE BOX IN PART 3 OF THE SUBSTITUTE FORM W-9.

CERTIFICATE OF AWAITING TAXPAYER IDENTIFICATION NUMBER

I certify under penalties of perjury that a taxpayer identification number has not been issued to me, and either (1) I have mailed or delivered an application to receive a taxpayer identification number to the appropriate Internal Revenue Service Center or Social Security Administration Office, or (2) I intend to mail or deliver an application in the near future. I understand that if I do not provide a taxpayer identification number by the time of payment, 28% of all reportable payments made to me will be withheld.

Signature _____ Date _____

GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9

Guidelines for Determining the Proper Identification Number for the payee (You) to Give the Payer.–Social security numbers have nine digits separated by two hyphens: i.e., 000-00-0000. Employee identification numbers have nine digits separated by only one hyphen: i.e., 00-0000000. The table below will help determine the number to give the payer. All "Section" references are to the Internal Revenue Code of 1986, as amended. "IRS" is the Internal Revenue Service.

For this type of account:	Give the SOCIAL SECURITY number of –
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account, or, if combined fund, the first individual on the account[1]
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor[2]
4. a. The usual revocable savings trust account (grantor is also trustee)	The grantor-trustee[1]
b. So-called trust that is not a legal or valid trust under state law	The actual owner[1]
5. Sole proprietorship	The owner[3]

For this type of account:	Give the EMPLOYER IDENTIFICATION number of
6. Sole proprietorship	The owner[3]
7. A valid trust, estate, or pension trust	The legal entity[4]
8. Corporate	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization account	The organization
10. Partnership	The partnership

11.	A broker or registered nominee	The broker or nominee
12.	Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

1. List first and circle the name of the person whose number you furnish. If only one person on a joint account has a social security number, that person' s number must be furnished.
2. Circle the minor' s name and furnish the minor' s social security number.
3. You must show your individual name, but you may also enter your business or "doing business as" name. You may use either your social security number or your employer identification number (if you have one).
4. List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the taxpayer identification number of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

NOTE: IF NO NAME IS CIRCLED WHEN THERE IS MORE THAN ONE NAME, THE NUMBER WILL BE CONSIDERED TO BE THAT OF THE FIRST NAME LISTED.

GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9

Obtaining a Number

If you don' t have a taxpayer identification number or you don' t know your number, obtain Form SS-5, Application for a Social Security Card, at the local Social Administration office, or Form SS-4, Application for Employer Identification Number, by calling 1 (800) TAX-FORM, and apply for a number.

Payees Exempt from Backup Withholding

Payees specifically exempted from withholding include:

An organization exempt from tax under Section 501(a), an individual retirement account (IRA), or a custodial account under Section 403(b)(7), if the account satisfies the requirements of Section 401(f)(2).

The United States or a state thereof, the District of Columbia, a possession of the United States, or a political subdivision or wholly-owned agency or instrumentality of any one or more of the foregoing.

An international organization or any agency or instrumentality thereof.

A foreign government and any political subdivision, agency or instrumentality thereof.

Payees that may be exempt from backup withholding include:

A corporation.

A financial institution.

A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States.

A real estate investment trust.

A common trust fund operated by a bank under Section 584(a).

An entity registered at all times during the tax year under the Investment Company Act of 1940.

A middleman known in the investment community as a nominee or custodian.

A futures commission merchant registered with the Commodity Futures Trading Commission.

A foreign central bank of issue.

A trust exempt from tax under Section 664 or described in Section 4947.

Payments of dividends and patronage dividends generally exempt from backup withholding include:

Payments to nonresident aliens subject to withholding under Section 1441.

Payments to partnerships not engaged in a trade or business in the United States and that have at least one nonresident alien partner.

Payments of patronage dividends not paid in money.

Payments made by certain foreign organizations.

Section 404(k) payments made by an ESOP.

Payments of interest generally exempt from backup withholding include:

Payments of interest on obligations issued by individuals. Note: You may be subject to backup withholding if this interest is $600 or more and you have not provided your correct taxpayer identification number to the payer.

Payments of tax-exempt interest (including exempt-interest dividends under Section 852).

Payments described in Section 6049(b)(5) to nonresident aliens.

Payments on tax-free covenant bonds under Section 1451.

Payments made by certain foreign organizations.

Mortgage interest paid to you.

Certain payments, other than payments of interest, dividends, and patronage dividends, that are exempt from information reporting are also exempt from backup withholding. For details, see the regulations under Sections 6041, 6041A, 6042, 6044, 6045, 6049, 6050A and 6050N.

Exempt payees described above must file Form W-9 or a substitute Form W-9 to avoid possible erroneous backup withholding. FILE THIS FORM WITH THE PAYER, FURNISH YOUR TAXPAYER IDENTIFICATION NUMBER, WRITE "EXEMPT" IN PART 2 OF THE FORM, SIGN AND DATE THE FORM AND RETURN IT TO THE PAYER.

Privacy Act Notice.−Section 6109 requires you to provide your correct taxpayer identification number to payers, who must report the payments to the IRS. The IRS uses the number for identification purposes and may also provide this information to various government agencies for tax enforcement or litigation purposes. Payers must be given the numbers whether or not recipients are required to file tax returns. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not furnish a taxpayer identification number to the payer. Certain penalties may also apply.

Penalties

(1) **Failure to Furnish Taxpayer Identification Number**.−If you fail to furnish your taxpayer identification number to a payer, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

(2) **Civil Penalty for False Information with Respect to Withholding**.−If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.

(3) **Criminal Penalty for Falsifying Information**.−Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

FOR ADDITIONAL INFORMATION CONTACT YOUR TAX CONSULTANT OR THE INTERNAL REVENUE SERVICE.

INSTRUCTIONS
FORMING PART OF THE TERMS AND CONDITIONS OF THE EXCHANGE OFFER

General

Please do not send certificates for Outstanding Notes directly to the Issuers. Your certificates for Outstanding Notes, together with your signed and completed Letter of Transmittal and any required supporting documents, should be mailed or otherwise delivered to the Exchange Agent at the address set forth on the first page hereof. The method of delivery of Outstanding Notes, this Letter of Transmittal and all other required documents is at your sole option and risk and the delivery will be deemed made only when actually received by the Exchange Agent. If delivery is by mail, registered mail with return receipt requested, properly insured, or overnight or hand delivery service is recommended. In all cases, sufficient time should be allowed to ensure timely delivery.

1. Delivery of this Letter of Transmittal and Certificates; Guaranteed Delivery Procedures. A holder of Outstanding Notes (which term, for the purposes described herein, shall include the book-entry transfer facility whose name appears on a security listing as the owner of the Outstanding Notes) may tender the same by (i) properly completing and signing this Letter of Transmittal or a facsimile hereof (all references in the Prospectus to the Letter of Transmittal shall be deemed to include a facsimile thereof) and delivering the same, together with the certificate or certificates, if applicable, representing the Outstanding Notes being tendered and any required signature guarantees and any other documents required by this Letter of Transmittal, to the Exchange Agent at its address set forth above on or prior to the Expiration Date, (ii) complying with the procedure for book-entry transfer described below or (iii) complying with the guaranteed delivery procedures described below.

Holders who wish to tender their Outstanding Notes and (i) whose Outstanding Notes are not immediately available or (ii) who cannot deliver their Outstanding Notes, this Letter of Transmittal and all other required documents to the Exchange Agent on or prior to the Expiration Date or (iii) who cannot comply with the book-entry transfer procedures on a timely basis, must tender their Outstanding Notes pursuant to the guaranteed delivery procedure set forth in "The Exchange Offers−Guaranteed Delivery Procedures" in the Prospectus and by completing Box 3. Holders may tender their Outstanding Notes if: (i) the tender is made by or through an Eligible Guarantor Institution (as defined below); (ii) the Exchange Agent receives (by facsimile transmission, mail or hand delivery), on or prior to the Expiration Date, a properly completed and duly executed Notice of Guaranteed Delivery in the form provided with this Letter of Transmittal that (a) sets forth the name and address of the holder of Outstanding Notes, if applicable, the certificate number(s) of the Outstanding Notes to be tendered and the principal amount of Outstanding Notes tendered; (b) states that the tender is being made thereby; and (c) guarantees that, within three New York Stock Exchange trading days after the Expiration Date, the Letter of Transmittal, or a facsimile thereof, together with the Outstanding Notes or a book-entry confirmation, and any other documents required by the Letter of Transmittal, will be deposited by the Eligible Guarantor Institution with the Exchange Agent; or (iii) the Exchange Agent receives a properly completed and executed Letter of Transmittal, or facsimile thereof and the certificate(s) representing all tendered Outstanding Notes in proper form or a confirmation of book-entry transfer of the Outstanding Notes into the Exchange Agent' s account at the appropriate book-entry transfer facility and all other documents required by this Letter of Transmittal within three New York Stock Exchange trading days after the Expiration Date.

Any Holder who wishes to tender Outstanding Notes pursuant to the guaranteed delivery procedures described above must ensure that the Exchange Agent receives the Notice of Guaranteed Delivery relating to such Outstanding Notes prior to the Expiration Date. Failure to complete the guaranteed delivery procedures outlined above will not, of itself, affect the validity or effect a revocation of any Letter of Transmittal form properly completed and executed by a holder who attempted to use the guaranteed delivery procedures.

No alternative, conditional, irregular or contingent tenders will be accepted. Each tendering holder, by execution of this Letter of Transmittal (or facsimile thereof), shall waive any right to receive notice of the acceptance of the Outstanding Notes for exchange.

2. Partial Tenders; Withdrawals. Tenders of Outstanding Notes will be accepted only in the principal amount of $2,000 and integral multiples of $1,000 in excess thereof. If less than the entire principal amount of Outstanding Notes evidenced by a submitted certificate is tendered, the tendering holder(s) must fill in the aggregate principal amount of Outstanding Notes tendered in the column entitled "Description of Outstanding Notes Tendered Herewith" in Box 1 above. A newly issued certificate for the Outstanding Notes submitted but not tendered will be sent to such holder promptly after the Expiration Date, unless otherwise provided in the appropriate box on this Letter of Transmittal. All Outstanding Notes delivered to the Exchange Agent will be deemed to have been tendered in full unless otherwise clearly indicated. Outstanding Notes tendered pursuant to the Exchange Offer may be withdrawn at any time prior to the Expiration Date, after which tenders of Outstanding Notes are irrevocable.

To be effective with respect to the tender of Outstanding Notes, a written notice of withdrawal (which may be by telegram, telex, facsimile or letter) must: (i) be received by the Exchange Agent at the address for the Exchange Agent set forth above before the Issuers notify the Exchange Agent that the Issuers have accepted the tender of Outstanding Notes pursuant to the Exchange Offer; (ii) specify the name of the person who tendered the Outstanding Notes to be withdrawn; (iii) identify the Outstanding Notes to be withdrawn (including the principal amount of such Outstanding Notes, or, if applicable, the certificate numbers shown on the particular certificates evidencing such Outstanding Notes and the principal amount of Outstanding Notes represented by such certificates); (iv) include a statement that such holder is withdrawing its election to have such Outstanding Notes exchanged; (v) specify the name in which any such Outstanding Notes are to be registered, if different from that of the withdrawing holder; and (vi) be signed by the holder in the same manner as the original signature on this Letter of Transmittal (including any required signature guarantee). The Exchange Agent will return the properly withdrawn Outstanding Notes promptly following receipt of notice of withdrawal. If Outstanding Notes have been tendered pursuant to the procedure for book-entry transfer, any notice of withdrawal must specify the name and number of the account at the book-entry transfer facility to be credited with the withdrawn Outstanding Notes or otherwise comply with the book-entry transfer facility' s procedures. All questions as to the validity, form and eligibility of notices of withdrawals, including time of receipt, will be determined by the Issuers, and such determination will be final and binding on all parties.

Any Outstanding Notes so withdrawn will be deemed not to have been validly tendered for exchange for purposes of the Exchange Offer. Any Outstanding Notes which have been tendered for exchange but which are not accepted for exchange for any reason will be returned to the holder thereof without cost to such holder (or, in the case of Outstanding Notes tendered by book-entry transfer into the Exchange Agent' s account at the book entry transfer facility pursuant to the book-entry transfer procedures described above, such Outstanding Notes will be credited to an account with such book-entry transfer facility specified by the holder) promptly after withdrawal, rejection of tender or termination of the Exchange Offer. Properly withdrawn Outstanding Notes may be retendered by following one of the procedures described under the caption "The Exchange Offers−Procedures for Tender Outstanding Notes" in the Prospectus at any time prior to the Expiration Date.

Neither the Issuer, any affiliate or assigns of the Issuer, the Exchange Agent nor any other person will be under any duty to give any notification of any irregularities in any notice of withdrawal or incur any liability for failure to give such notification (even if such notice is given to other persons).

3. Beneficial Owner Instructions. Only a holder of Outstanding Notes (i.e., a person in whose name Outstanding Notes are registered on the books of the registrar or, or, in the case of Outstanding Notes held through book-entry, such book-entry transfer facility specified by the holder), or the legal representative or attorney-in-fact of a holder, may execute and deliver this Letter of Transmittal. Any beneficial owner of Outstanding Notes who wishes to accept the Exchange Offer must arrange promptly for the appropriate holder to execute and deliver this Letter of Transmittal on his or her behalf through the execution and delivery to the appropriate holder of the "Instructions to Registered Holder from Beneficial Owner" form accompanying this Letter of Transmittal.

4. Signature on this Letter of Transmittal; Written Instruments and Endorsements; Guarantee of Signatures. If this Letter of Transmittal is signed by the registered holder(s) (which term, for the purposes described herein, shall include the book-entry transfer facility whose name appears on a security listing as the owner of the Outstanding Notes) of the Outstanding Notes tendered hereby, the signature must correspond exactly with the name(s) as written on the face of the certificates (or on such security listing) without alteration, addition, enlargement or any change whatsoever.

If any of the Outstanding Notes tendered hereby are owned of record by two or more joint owners, all such owners must sign this Letter of Transmittal.

If a number of Outstanding Notes registered in different names are tendered, it will be necessary to complete, sign and submit as many separate copies of this Letter of Transmittal (or facsimiles thereof) as there are different registrations of Outstanding Notes.

When this Letter of Transmittal is signed by the registered holder(s) of Outstanding Notes (which term, for the purposes described herein, shall include the book-entry transfer facility whose name appears on a security listing as the owner of the Outstanding Notes) listed and tendered hereby, no endorsements of certificates or separate written instruments of transfer or exchange are required. If, however, this Letter of Transmittal is signed by a person other than the registered holder(s) of the Outstanding Notes listed or the Exchange Notes are to be issued, or any untendered Outstanding Notes are to be reissued, to a person other than the registered holder(s) of the Outstanding Notes, such Outstanding Notes must be endorsed or accompanied by separate written instruments of transfer or exchange in form satisfactory to the Issuers and duly executed by the registered holder, in each case signed exactly as the name or names of the registered holder(s) appear(s) on the Outstanding Notes and the signatures on such certificates must be guaranteed by an Eligible Guarantor Institution. If this Letter of Transmittal, any certificates or separate written instruments of transfer or exchange are signed by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations or others acting in a fiduciary or representative capacity, such persons should so indicate when signing, and, unless waived by the Issuers, submit proper evidence satisfactory to the Issuers, in the Issuers' sole discretion, of such persons' authority to so act.

Endorsements on certificates for the Outstanding Notes or signatures on bond powers required by this Instruction 4 must be guaranteed by a member firm of a registered national securities exchange or of the National Association of Securities Dealers, Inc., a commercial bank or trust company having an office or correspondent in the United States or another "eligible guarantor institution" within the meaning of Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended (an "Eligible Guarantor Institution").

Signatures on this Letter of Transmittal must be guaranteed by an Eligible Guarantor Institution, unless Outstanding Notes are tendered: (i) by a registered holder (which term, for the purposes described herein, shall include the book-entry transfer facility whose name appears on a security listing as the owner of the Outstanding Notes) who has not completed the box entitled "Special Registration Instructions" or "Special Delivery Instructions" on this Letter of Transmittal; or (ii) for the account of an Eligible Guarantor Institution.

5. Special Registration and Delivery Instructions. Tendering holders should indicate, in the applicable Box 6 or Box 7, the name and address in/to which the Exchange Notes and/or certificates for Outstanding Notes not exchanged are to be issued or sent, if different from the name(s) and address(es) of the person signing this Letter of Transmittal. In the case of issuance in a different name, the tax identification number or social security number of the person named must also be indicated. A holder tendering the Outstanding Notes by book-entry transfer may request that the Outstanding Notes not exchanged be credited to such account maintained at the book-entry transfer facility as such holder may designate. See Box 4.

If no such instructions are given, the Exchange Notes (and any Outstanding Notes not tendered or not accepted) will be issued in the name of and sent to the holder signing this Letter of Transmittal or deposited into such holder' s account at the applicable book-entry transfer facility.

6. Transfer Taxes. The Issuers shall pay all transfer taxes, if any, applicable to the transfer and exchange of the Outstanding Notes to the Issuers or the Issuers' order pursuant to the Exchange Offer. If, however, the Exchange Notes are delivered to or issued in the name of a person other than the registered holder, or if a transfer tax is imposed for any reason other than the transfer and exchange of Outstanding Notes to the Issuers or the Issuers' order pursuant to the Exchange Offer, the amount of any such transfer taxes (whether imposed on the registered holder or any other person) will be payable by the tendering holder. If satisfactory evidence of payment of such taxes or exemption therefrom is not submitted herewith the amount of such transfer taxes will be billed directly to such tendering holder.

Except as provided in this Instruction 6, it will not be necessary for transfer tax stamps to be affixed to the Outstanding Notes listed in this Letter of Transmittal.

7. Waiver of Conditions. The Issuers reserve the absolute right to waive, in whole or in part, any of the conditions to the Exchange Offers set forth in the Prospectus.

8. Mutilated, Lost, Stolen or Destroyed Securities. Any holder whose Outstanding Notes have been mutilated, lost, stolen or destroyed, should promptly contact the Exchange Agent at the address set forth on the first page hereof for further instructions. The holder will then be instructed as to the steps that must be taken in order to replace the certificate(s). This Letter of Transmittal and related documents cannot be processed until the procedures for replacing lost, destroyed or stolen certificate(s) have been completed.

9. No Conditional Tenders; No Notice of Irregularities. No alternative, conditional, irregular or contingent tenders will be accepted. All tendering holders, by execution of this Letter of Transmittal, shall waive any right to receive notice of the acceptance of their Outstanding Notes for exchange. The Issuers reserve the right, in the Issuers' reasonable judgment, to waive any defects, irregularities or conditions of tender as to particular Outstanding Notes. The Issuers' interpretation of the terms and conditions of the Exchange Offer (including the instructions in this Letter of Transmittal) will be final and binding on all parties. Unless waived, any defects or irregularities in connection with tenders of Outstanding Notes must be cured within such time as the Issuers shall determine. Although the Issuers intend to notify holders of defects or irregularities with respect to tenders of Outstanding Notes, neither the Issuers, the Exchange Agent nor any other person is under any obligation to give such notice nor shall they incur any liability for failure to give such notification. Tenders of Outstanding Notes will not be deemed to have been made until such defects or irregularities have been cured or waived. Any Outstanding Notes received by the Exchange Agent that are not properly tendered and as to which the defects or irregularities have not been cured or waived will be returned by the Exchange Agent to the tendering holder promptly following the Expiration Date.

10. Requests for Assistance or Additional Copies. Questions relating to the procedure for tendering, as well as requests for additional copies of the Prospectus and this Letter of Transmittal, may be directed to the Exchange Agent at the address and telephone number set forth on the first page hereof.

IMPORTANT: THIS LETTER OF TRANSMITTAL OR A FACSIMILE OR COPY THEREOF (TOGETHER WITH CERTIFICATES OF OUTSTANDING NOTES OR CONFIRMATION OF BOOK-ENTRY TRANSFER AND ALL OTHER REQUIRED DOCUMENTS) OR A NOTICE OF GUARANTEED DELIVERY MUST BE RECEIVED BY THE EXCHANGE AGENT ON OR PRIOR TO THE EXPIRATION DATE.

IMPORTANT TAX INFORMATION

Under U.S. federal income tax law, a tendering holder whose Outstanding Notes are accepted for exchange may be subject to backup withholding unless the holder provides The Bank of New York as Paying Agent (the "Paying Agent"), with either (i) such holder' s correct taxpayer identification number ("TIN") on the Substitute Form W-9 attached hereto, certifying (A) that the TIN provided on Substitute Form W-9 is correct (or that such holder of Outstanding Notes is awaiting a TIN), (B) that the holder of Outstanding Notes is not subject to backup withholding because (x) such holder of Outstanding Notes is exempt from backup withholding, (y) such holder of Outstanding Notes has not been notified by the Internal Revenue Service that he or she is subject to backup withholding as a result of a failure to report all interest or dividends or (z) the Internal Revenue Service has notified the holder of Outstanding Notes that he or she is no longer subject to backup withholding and (C) that the holder of Outstanding Notes is a U.S. person (including a U.S. resident alien); or (ii) an adequate basis for exemption from backup withholding. If such holder of Outstanding Notes is an individual, the TIN is such holder' s social security number. If the Paying Agent is not provided with the correct TIN, the holder of Outstanding Notes may also be subject to certain penalties imposed by the Internal Revenue Service and any payments that are made to such holder may be subject to backup withholding (see below).

Certain holders of Outstanding Notes (including, among others, all corporations and certain foreign individuals) are not subject to these backup withholding and reporting requirements. However, exempt holders of Outstanding Notes should indicate their exempt status on the Substitute Form W-9. For example, a corporation should complete the Substitute Form W-9, providing its TIN and indicating that it is exempt from backup withholding. In order for a foreign individual to qualify as an exempt recipient, the holder must submit a Form W-8BEN, signed under penalties of perjury, attesting to that individual' s exempt status. A Form W-8BEN can be obtained from the Paying Agent. See the enclosed "Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9" for more instructions. Holders are encouraged to consult their own tax advisors to determine whether they are exempt from these backup withholding and reporting requirements.

If backup withholding applies, the Paying Agent is required to withhold 28% of any payments made to the holder of Outstanding Notes or other payee. Backup withholding is not an additional tax. Rather, the tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund may be obtained from the Internal Revenue Service, provided the required information is furnished. The Paying Agent cannot refund amounts withheld by reason of backup withholding.

A holder who does not have a TIN may check the box in Part 3 of the Substitute Form W-9 if the surrendering holder of Outstanding Notes has not been issued a TIN and has applied for a TIN or intends to apply for a TIN in the near future. If the box in Part 3 is checked, the holder of Outstanding Notes or other payee must also complete the Certificate of Awaiting Taxpayer Identification Number below in order to avoid backup withholding. Notwithstanding that the box in Part 3 is checked and the Certificate of Awaiting Taxpayer Identification Number is completed, the Paying Agent will withhold 28% of all payments made prior to the time a properly certified TIN is provided to the Paying Agent and, if the Paying Agent is not provided with a TIN within 60 days, such amounts will be paid over to the Internal Revenue Service. The holder of Outstanding Notes is required to give the Paying Agent the TIN (e.g., social security number or employer identification number) of the record owner of the Outstanding Notes. If the Outstanding Notes are in more than one name or are not in the name of the actual owner, consult the enclosed "Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9" for additional guidance on which number to report.

EXHIBIT 99.2

EDUCATION MANAGEMENT LLC
EDUCATION MANAGEMENT FINANCE CORP.

OFFER TO EXCHANGE

$385,000,000 PRINCIPAL AMOUNT OF THE ISSUERS' 10 1/4% SENIOR SUBORDINATED NOTES DUE 2016, WHICH HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, FOR ANY AND ALL OF THE ISSUERS' OUTSTANDING 10 1/4% SENIOR SUBORDINATED NOTES DUE 2016

, 2006

To Brokers, Dealers, Commercial Banks,
Trust Companies and other Nominees:

As described in the enclosed Prospectus, dated , 2006 (as the same may be amended or supplemented from time to time, the "Prospectus"), and Letter of Transmittal (the "Letter of Transmittal"), Education Management LLC and Education Management Finance Corp. (the "Issuers") and certain subsidiaries of the Issuers (the "Guarantors"), are offering to exchange (the "Exchange Offer") an aggregate principal amount of up to $385,000,000 of the Issuers' 10 1/4% Senior Subordinated Notes due 2016 which have been registered under the Securities Act of 1933, as amended (the "Securities Act") (the "Exchange Notes"), for any and all of the Issuers' outstanding 10 1/4% Senior Subordinated Notes due 2016, (the "Outstanding Notes") in integral multiples of $2,000 and multiples of $1,000 in excess thereof upon the terms and subject to the conditions of the enclosed Prospectus and related Letter of Transmittal. The terms of the Exchange Notes are identical in all material respects (including principal amount, interest rate and maturity) to the terms of the Outstanding Notes for which they may be exchanged pursuant to the Exchange Offer, except that the Exchange Notes are freely transferable by holders thereof. The Outstanding Notes are unconditionally guaranteed (the "Old Guarantees") by the Guarantors, and the Exchange Notes will be unconditionally guaranteed (the "New Guarantees") by the Guarantors. Upon the terms and subject to the conditions set forth in the Prospectus and the Letter of Transmittal, the Guarantors offer to issue the New Guarantees with respect to all Exchange Notes issued in the Exchange Offer in exchange for the Old Guarantees of the Outstanding Notes for which such Exchange Notes are issued in the Exchange Offer. Throughout this letter, unless the context otherwise requires and whether so expressed or not, references to the "Exchange Offer" include the Guarantors' offer to exchange the New Guarantees for the Old Guarantees, references to the "Exchange Notes" include the related New Guarantees and references to the "Outstanding Notes" include the related Old Guarantees. The Issuers will accept for exchange any and all Outstanding Notes properly tendered according to the terms of the Prospectus and the Letter of Transmittal. Consummation of the Exchange Offer is subject to certain conditions described in the Prospectus.

WE URGE YOU TO PROMPTLY CONTACT YOUR CLIENTS FOR WHOM YOU HOLD OUTSTANDING NOTES REGISTERED IN YOUR NAME OR IN THE NAME OF YOUR NOMINEE. PLEASE BRING THE EXCHANGE OFFER TO THEIR ATTENTION AS PROMPTLY AS POSSIBLE.

Enclosed are copies of the following documents:

1. The Prospectus;
2. The Letter of Transmittal for your use in connection with the tender of Outstanding Notes and for the information of your clients, including a Substitute Form W-9 and Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9 (providing information relating to U.S. federal income tax backup withholding);
3. A form of Notice of Guaranteed Delivery; and

4. A form of letter, including a letter of instructions to a registered holder from a beneficial owner, which you may use to correspond with your clients for whose accounts you hold Outstanding Notes that are registered in your name or the name of your nominee, with space provided for obtaining such clients' instructions regarding the Exchange Offer.

Your prompt action is requested. Please note that the Exchange Offer will expire at 12:00 a.m. midnight, New York City time, on , 2006 (the "Expiration Date"), unless the Issuers otherwise extend the Exchange Offer.

To participate in the Exchange Offer, certificates for Outstanding Notes, together with a duly executed and properly completed Letter of Transmittal or facsimile thereof, or a timely confirmation of a book-entry transfer of such Outstanding Notes into the account of The Bank of New York (the "Exchange Agent"), at the book-entry transfer facility, with any required signature guarantees, and any other required documents, must be received by the Exchange Agent by the Expiration Date as indicated in the Prospectus and the Letter of Transmittal.

The Issuers will not pay any fees or commissions to any broker or dealer or to any other persons (other than the Exchange Agent) in connection with the solicitation of tenders of the Outstanding Notes pursuant to the Exchange Offer. However, the Issuers will pay or cause to be paid any transfer taxes, if any, applicable to the tender of the Outstanding Notes to the Issuers or the Issuers' order, except as otherwise provided in the Prospectus and Letter of Transmittal.

If holders of the Outstanding Notes wish to tender, but it is impracticable for them to forward their Outstanding Notes prior to the Expiration Date or to comply with the book-entry transfer procedures on a timely basis, a tender may be effected by following the guaranteed delivery procedures described in the Prospectus and in the Letter of Transmittal.

Any inquiries you may have with respect to the Exchange Offer should be addressed to the Exchange Agent its address and telephone number set forth in the enclosed Prospectus and Letter of Transmittal. Additional copies of the enclosed materials may be obtained from the Exchange Agent.

Very truly yours,

EDUCATION MANAGEMENT LLC
EDUCATION MANAGEMENT FINANCE CORP.

NOTHING CONTAINED HEREIN OR IN THE ENCLOSED DOCUMENTS SHALL CONSTITUTE YOU OR ANY OTHER PERSON AS AN AGENT OF THE ISSUERS OR THE EXCHANGE AGENT, OR AUTHORIZE YOU OR ANY OTHER PERSON TO USE ANY DOCUMENT OR MAKE ANY STATEMENTS ON BEHALF OF EITHER OF THEM IN CONNECTION WITH THE EXCHANGE OFFER, OTHER THAN THE DOCUMENTS ENCLOSED HEREWITH AND THE STATEMENTS EXPRESSLY CONTAINED THEREIN.

EXHIBIT 99.3

EDUCATION MANAGEMENT LLC
EDUCATION MANAGEMENT FINANCE CORP.

OFFER TO EXCHANGE

$385,000,000 PRINCIPAL AMOUNT OF THE ISSUERS' 10 1/4% SENIOR SUBORDINATED NOTES DUE 2016, WHICH HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, FOR ANY AND ALL OF THE ISSUERS' OUTSTANDING 10 1/4% SENIOR SUBORDINATED NOTES DUE 2016

, 2006

To Our Clients:

Enclosed for your consideration are a Prospectus, dated , 2006 (as the same may be amended or supplemented from time to time, the "Prospectus"), and a Letter of Transmittal (the "Letter of Transmittal"), relating to the offer (the "Exchange Offer") by Education Management LLC and Education Management Finance Corp. (the "Issuers") and certain subsidiaries of the Issuers (the "Guarantors"), to exchange (the "Exchange Offer") an aggregate principal amount of up to $385,000,000 of the Issuers' 10 1/4% Senior Subordinated Notes due 2016 which have been registered under the Securities Act of 1933, as amended (the "Securities Act") (the "Exchange Notes"), for any and all of the Issuers' outstanding 10 1/4% Senior Subordinated Notes due 2016, (the "Outstanding Notes") in integral multiples of $2,000 and multiples of $1,000 in excess thereof upon the terms and subject to the conditions of the enclosed Prospectus and the enclosed Letter of Transmittal. The terms of the Exchange Notes are identical in all material respects (including principal amount, interest rate and maturity) to the terms of the Outstanding Notes for which they may be exchanged pursuant to the Exchange Offer, except that the Exchange Notes are freely transferable by holders thereof, upon the terms and subject to the conditions of the enclosed Prospectus and the related Letter of Transmittal. The Outstanding Notes are unconditionally guaranteed (the "Old Guarantees") by the Guarantors, and the Exchange Notes are unconditionally guaranteed (the "New Guarantees") by the Guarantors. Upon the terms and subject to the conditions set forth in the Prospectus and the Letter of Transmittal, the Guarantors offer to issue the New Guarantees with respect to all Exchange Notes issued in the Exchange Offer in exchange for the Old Guarantees of the Outstanding Notes for which such Exchange Notes are issued in the Exchange Offer. Throughout this letter, unless the context otherwise requires and whether so expressed or not, references to the "Exchange Offer" include the Guarantors' offer to exchange the New Guarantees for the Old Guarantees, references to the "Exchange Notes" include the related New Guarantees and references to the "Outstanding Notes" include the related Old Guarantees. The Issuers will accept for exchange any and all Outstanding Notes properly tendered according to the terms of the Prospectus and the Letter of Transmittal. Consummation of the Exchange Offer is subject to certain conditions described in the Prospectus.

PLEASE NOTE THAT THE EXCHANGE OFFER WILL EXPIRE AT 12:00 A.M. MIDNIGHT, NEW YORK CITY TIME, ON , 2006 (THE "EXPIRATION DATE"), UNLESS THE ISSUERS EXTEND THE EXCHANGE OFFER.

The enclosed materials are being forwarded to you as the beneficial owner of the Outstanding Notes held by us for your account but not registered in your name. A tender of such Outstanding Notes may only be made by us as the registered holder and pursuant to your instructions. Therefore, the Issuers urge beneficial owners of Outstanding Notes registered in the name of a broker, dealer, commercial bank, trust company or other nominee to contact such registered holder promptly if such beneficial owners wish to tender their Outstanding Notes in the Exchange Offer.

Accordingly, we request instructions as to whether you wish to tender any or all such Outstanding Notes held by us for your account, pursuant to the terms and conditions set forth in the enclosed Prospectus and Letter of Transmittal. If you wish to have us tender any or all of your outstanding notes, please so instruct us by completing, signing and returning to us the "Instructions to Registered Holder from Beneficial Owner" form that appears below. We urge you to read the Prospectus and the Letter of Transmittal carefully before instructing us as to whether or not to tender your Outstanding Notes.

The accompanying Letter of Transmittal is furnished to you for your information only and may not be used by you to tender Outstanding Notes held by us and registered in our name for your account or benefit.

If we do not receive written instructions in accordance with the below and the procedures presented in the Prospectus and the Letter of Transmittal, we will not tender any of the Outstanding Notes on your account.

INSTRUCTIONS TO REGISTERED HOLDER FROM BENEFICIAL OWNER

The undersigned beneficial owner acknowledges receipt of your letter and the accompanying Prospectus dated , 2006 (as the same may be amended or supplemented from time to time, the "Prospectus"), and a Letter of Transmittal (the "Letter of Transmittal"), relating to the offer (the "Exchange Offer") by Education Management LLC and Education Management Finance Corp. (the "Issuers") and certain subsidiaries of the Issuers (the "Guarantors"), to exchange (the "Exchange Offer") an aggregate principal amount of up to $385,000,000 of the Issuers' 10 1/4% Senior Subordinated Notes due 2016, which have been registered under the Securities Act of 1933, as amended (the "Securities Act") (the "Exchange Notes"), for any and all of the Issuers' outstanding 10 1/4% Senior Subordinated Notes due 2016 (the "Outstanding Notes"), upon the terms and subject to the conditions set forth in the Prospectus and the Letter of Transmittal. Capitalized terms used but not defined herein have the meanings ascribed to them in the Prospectus.

This will instruct you, the registered holder, to tender the principal amount of the Outstanding Notes indicated below held by you for the account of the undersigned, upon the terms and subject to the conditions set forth in the Prospectus and the Letter of Transmittal.

Principal Amount Held for Account Holder(s)	**Principal Amount to be Tendered***

* Unless otherwise indicated, the entire principal amount held for the account of the undersigned will be tendered.

If the undersigned instructs you to tender the Outstanding Notes held by you for the account of the undersigned, it is understood that you are authorized (a) to make, on behalf of the undersigned (and the undersigned, by its signature below, hereby makes to you), the representations and warranties contained in the Letter of Transmittal that are to be made with respect to the undersigned as a beneficial owner of the Outstanding Notes, including but not limited to the representations that the undersigned (i) is not an "affiliate," as defined in Rule 405 under the Securities Act, of the Issuers or the Guarantors, (ii) is not engaged in, and does not intend to engage in, and has no arrangement or understanding with any person to participate in, a distribution of Exchange Notes, (iii) is acquiring the Exchange Notes in the ordinary course of its business and (iv) is not a broker-dealer tendering Outstanding Notes acquired for its own account directly from the Issuers. If a holder of the Outstanding Notes is an affiliate of the Issuers or the Guarantors, is not acquiring the Exchange Notes in the ordinary course of its business, is engaged in or intends to engage in a distribution of the Exchange Notes or has any arrangement or understanding with respect to the distribution of the Exchange Notes to be acquired pursuant to the Exchange Offer, such holder may not rely on the applicable interpretations of the staff of the Securities and Exchange Commission relating to exemptions from the registration and prospectus delivery requirements of the Securities Act and must comply with such requirements in connection with any secondary resale transaction.

SIGN HERE

Dated: _____, 2006

Signature(s):_____

Print Name(s):_____

Address:_____

_____

(Please include Zip Code)

Telephone Number_____

(Please include Area Code)

Tax Identification Number or Social Security Number:_____

My Account Number With You:_____

EXHIBIT 99.4

EDUCATION MANAGEMENT LLC
EDUCATION MANAGEMENT FINANCE CORP.

NOTICE OF GUARANTEED DELIVERY

OFFER TO EXCHANGE

$385,000,000 PRINCIPAL AMOUNT OF THE ISSUERS' 10 1/4% SENIOR SUBORDINATED NOTES DUE 2016, WHICH HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, FOR ANY AND ALL OF THE ISSUERS' OUTSTANDING 10 1/4% SENIOR SUBORDINATED NOTES DUE 2016

This form, or one substantially equivalent hereto, must be used to accept the Exchange Offer made by Education Management LLC, a Delaware limited liability company, and Education Management Finance Corp., a Delaware corporation (together with Education Management LLC, the "Issuers"), and the Guarantors, pursuant to the Prospectus, dated , 2006 (the "Prospectus"), and the enclosed Letter of Transmittal (the "Letter of Transmittal"), if the certificates for the Outstanding Notes are not immediately available or if the procedure for book-entry transfer cannot be completed on a timely basis or time will not permit all required documents to reach the Exchange Agent prior to p.m., New York City time, on the Expiration Date of the Exchange Offer. Such form may be delivered or transmitted by facsimile transmission, mail or hand delivery to The Bank of New York (the "Exchange Agent") as set forth below. In addition, in order to utilize the guaranteed delivery procedure to tender the Outstanding Notes pursuant to the Exchange Offer, a completed, signed and dated Letter of Transmittal (or facsimile thereof) must also be received by the Exchange Agent prior to 12:00 a.m. midnight, New York City time, on the Expiration Date of the Exchange Offer. Capitalized terms not defined herein have the meanings ascribed to them in the Letter of Transmittal.

The Exchange Agent is:

THE BANK OF NEW YORK

By Registered or Certified Mail:	*By Facsimile:*	*By Overnight Courier or Hand:*
The Bank of New York 101 Barclay Street−7 East New York, NY 10286 Attn: [ ] Telephone: 212-815-5098	212-298-1915	The Bank of New York 101 Barclay Street−7 East New York, NY 10286 Attn: [ ] Telephone: 212-815-5098

To Confirm by Telephone:

212-815-5098

DELIVERY OF THIS NOTICE OF GUARANTEED DELIVERY TO AN ADDRESS OTHER THAN AS SET FORTH ABOVE OR TRANSMISSION VIA FACSIMILE TO A NUMBER OTHER THAN AS SET FORTH ABOVE WILL NOT CONSTITUTE A VALID DELIVERY.

This Notice of Guaranteed Delivery is not to be used to guarantee signatures. If a signature on a Letter of Transmittal is required to be guaranteed by an Eligible Guarantor Institution (as defined in the Prospectus), such signature guarantee must appear in the applicable space in Box 8 provided on the Letter of Transmittal for Guarantee of Signatures.

Ladies and Gentlemen:

Upon the terms and subject to the conditions set forth in the Prospectus and the accompanying Letter of Transmittal, the undersigned hereby tenders to the Issuers the principal amount of Outstanding Notes indicated below, pursuant to the guaranteed delivery procedures described in "The Exchange Offers−Guaranteed Delivery Procedures" section of the Prospectus.

Certificate Number(s) (if known) of Outstanding Notes or Account Number at Book-Entry Transfer Facility	Aggregate Principal Amount Represented by Outstanding Notes	Aggregate Principal Amount of Outstanding Notes Being Tendered

PLEASE COMPLETE AND SIGN

_____

(Signature(s) of Record Holder(s))

_____

(Please Type or Print Name(s) of Record Holder(s))

Dated:_____, 2006

Address: _____

(Zip Code)

_____

(Daytime Area Code and Telephone No.)

☐ Check this Box if the Outstanding Notes will be delivered by book-entry transfer to The Depository Trust Company.

AccountNumber:_____

THE ACCOMPANYING GUARANTEE MUST BE COMPLETED.

GUARANTEE OF DELIVERY
(Not to be used for signature guarantee)

The undersigned, a member of a recognized signature medallion program or an "eligible guarantor institution," as such term is defined in Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), hereby (a) represents that the above person(s) "own(s)" the Outstanding Notes tendered hereby within the meaning of Rule 14e-4(b)(2) under the Exchange Act, (b) represents that the tender of those Outstanding Notes complies with Rule 14e-4 under the Exchange Act, and (c) guarantees to deliver to the Exchange Agent, at its address set forth in the Notice of Guaranteed Delivery, the certificates representing all tendered Outstanding Notes, in proper form for transfer, or a book-entry confirmation (a confirmation of a book-entry transfer of the Outstanding Notes into the Exchange Agent' s account at The Depository Trust Company), together with a properly completed and duly executed Letter of Transmittal (or facsimile thereof), with any required signature guarantees, and any other documents required by the Letter of Transmittal within three (3) New York Stock Exchange trading days after the Expiration Date.

Name of Firm: _____

(Authorized Signature)

Address: _____

(Zip Code)

Area Code and Tel. No.: _____

Name: _____

(Please Type or Print)

Title: _____

Dated: _____, 2006

NOTE: DO NOT SEND OUTSTANDING NOTES WITH THIS NOTICE OF GUARANTEED DELIVERY. OUTSTANDING NOTES SHOULD BE SENT WITH YOUR LETTER OF TRANSMITTAL

INSTRUCTIONS FOR NOTICE OF GUARANTEED DELIVERY

1. **Delivery of this Notice of Guaranteed Delivery.**

A properly completed and duly executed copy of this Notice of Guaranteed Delivery and any other documents required by this Notice of Guaranteed Delivery must be received by the Exchange Agent at its address set forth on the cover page hereof prior to the Expiration Date of the Exchange Offer. The method of delivery of this Notice of Guaranteed Delivery and any other required documents to the Exchange Agent is at the election and risk of the holders and the delivery will be deemed made only when actually received by the Exchange Agent. Instead of delivery by mail, it is recommended that the holders use an overnight or hand delivery service, properly insured. If such delivery is by mail, it is recommended that the holders use properly insured, registered mail with return receipt requested. In all cases, sufficient time should be allowed to assure timely delivery. For a description of the guaranteed delivery procedure, see Instruction 1 of the Letter of Transmittal. No notice of Guaranteed Delivery should be sent to the Issuers.

2. **Signatures on this Notice of Guaranteed Delivery.**

If this Notice of Guaranteed Delivery is signed by the registered holder(s) of the Outstanding Notes referred to herein, the signatures must correspond with the name(s) written on the face of the Outstanding Notes without alteration, addition, enlargement or any change whatsoever. If this Notice of Guaranteed Delivery is signed by a person other than the registered holder(s) of any Outstanding Notes listed, this Notice of Guaranteed Delivery must be accompanied by appropriate bond powers, signed as the name of the registered holder(s) appear(s) on the Outstanding Notes without alteration, addition, enlargement or any change whatsoever. If this Notice of Guaranteed Delivery is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation or other person acting in a fiduciary or representative capacity, such person should so indicate when signing and, unless waived by the Issuers, evidence satisfactory to the Issuers of their authority so to act must be submitted with this Notice of Guaranteed Delivery.

3. **Questions and Requests for Assistance or Additional Copies.**

Questions and requests for assistance and requests for additional copies of the Prospectus may be directed to the Exchange Agent at the address set forth on the cover hereof. Holders may also contact their broker, dealer, commercial bank, trust company, or other nominee for assistance concerning the Exchange Offer.