

**FIFTH AMENDMENT TO
SECOND AMENDED AND RESTATED
LOAN AND SECURITY AGREEMENT**

This Fifth Amendment to Second Amended and Restated Loan and Security Agreement ("Amendment") is entered into by and between San Joaquin Valley College, Inc., a California corporation ("Borrower") and Comerica Bank ("Bank") on October 24, 2017, and effective as of September 1, 2017 ("Effective Date").

RECITALS

This Amendment is entered into upon the basis of the following facts and understandings of the parties, which facts and understandings are acknowledged by the parties to be true and accurate:

A. Bank and Borrowers previously entered into a Second Amended and Restated Loan and Security Agreement dated September 19, 2012, as may be modified, amended, restated, supplemented, revised or replaced from time to time, including without limitation by that certain First Amendment to Second Amended and Restated Loan and Security Agreement dated as of August 9, 2013, that certain Second Amendment to Second Amended and Restated Loan and Security Agreement and Waiver dated as of May 30, 2014, that certain Third Amendment to Second Amended and Restated Loan and Security Agreement and Waiver dated as of January 25, 2016 and that certain Fourth Amendment to Second Amended and Restated Loan and Security Agreement dated as of June 28, 2017 (collectively, the "Agreement").

B. The parties desire to amend the Agreement in accordance with the terms of this Amendment, and Borrower has requested that Bank waive certain covenant defaults existing under the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

AGREEMENT

1. Incorporation by Reference. The Recitals and the documents referred to therein are incorporated herein by this reference. Except as otherwise noted, the terms not defined herein shall have the meaning set forth in the Agreement.

2. Modification to the Agreement. Subject to the satisfaction of the conditions precedent as set forth in Section 4 hereof, the Agreement is hereby modified as set forth below.

(a) Section 1 of the Agreement is amended by adding or amending and restating (as applicable) the following defined terms to read in their entireties as follows:

"'Borrowing Base' means seventy five percent (75%) of the sum of: (a) Borrower's Unrestricted cash, plus (b) the net amount of Eligible Accounts after deducting therefrom all payments, adjustments and credits applicable thereto; plus (c) Notes Receivable owing from students enrolled in a School in an aggregate amount not to exceed \$5,000,000; less (d) refundable Unearned Income; plus (e) the aggregate amount of Unencumbered Liquid Assets maintained by Michael D. Perry and Mark A. Perry at Bank. Anything contained in the foregoing to the contrary notwithstanding, Bank may adjust the Borrowing Base percentage and the definition of Eligible Accounts as provided for under Section 6.8 hereof."

"'Maturity Date' means August 1, 2019."

(b) Section 6.17b. of the Agreement is amended and restated to read in its entirety as follows:

“b. Borrower shall deliver to Bank within twenty (20) days after the end of each month, company-prepared combined balance sheet and profit and loss statement, which financial statements shall disclose the amount of non-refundable unearned income in the footnotes, covering operations of Borrower, Perry Enterprises and Perry Brothers Enterprises, LLC and deliver to Bank within one hundred twenty (120) days after the end of each of Borrower’s fiscal years a combined statement of the financial condition of Borrower, Perry Enterprises and Perry Brothers Enterprises, LLC for each such fiscal year, including but not limited to, a balance sheet and profit and loss statement (which financial statements shall disclose the amount of non-refundable unearned income in the footnotes), and any other report requested by Bank relating to the Collateral and the financial condition of Borrower, prepared on an audited basis by a certified public accountant selected by Borrower and acceptable to Bank, together with a certificate signed by an authorized employee of Borrower certifying that all reports, statements, computer disk or tape files, computer printouts, computer runs, or other computer prepared information of any kind or nature relating to the foregoing or documents delivered or caused to be delivered to Bank under this subparagraph are complete, correct and thoroughly present the financial condition of Borrower and that there exists on the date of delivery to Bank no condition or event which constitutes a breach or Event of Default under this Agreement.”

3. Conditions. As conditions precedent to the effectiveness of the above amendments and waiver, Bank shall have received, in form and substance satisfactory to Bank and its counsel, and where indicated, executed by Borrower or other appropriate Persons, the following:

- (a) This Amendment, executed by Borrower, and other documents, instruments and agreements required by Bank.
- (b) Affirmation of Guaranties, executed by the guarantors of the Indebtedness;
- (c) a Closing Certificate;
- (d) payment of a nonrefundable fee in the amount of Ten Thousand Dollars (\$10,000);
- (e) all reasonable Bank Expenses incurred through the date of this Amendment, which may be debited from any of Borrower’s accounts with Bank; and
- (f) such other documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate.

4. Legal Effect.

(a) Except as specifically set forth in this Amendment, all of the terms and conditions of the Agreement remain in full force and effect. Except as expressly set forth herein, the execution, delivery, and performance of this Amendment shall not operate as a waiver of, or as an amendment of, any right, power, or remedy of Bank under the Agreement, as in effect prior to the date hereof. Borrower ratifies and reaffirms the continuing effectiveness of all promissory notes, guaranties, security agreements, mortgages, deeds of trust, environmental agreements, and all other instruments, documents and agreements entered into in connection with the Agreement.

(b) Borrower represents and warrants that each of the representations and warranties contained in the Agreement are true and correct as of the date of this Amendment, and that, except as expressly set forth above, no Event of Default has occurred and is continuing.

(c) The effectiveness of this Amendment and each of the documents, instruments and agreements entered into in connection with this Amendment is conditioned upon receipt by Bank of this Amendment and any other documents which Bank may require to carry out the terms.

5. Miscellaneous Provisions.

(a) This is an integrated Amendment and supersedes all prior negotiations and agreements regarding the subject matter hereof. All amendments hereto must be in writing and signed by the parties.


(b) This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.


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IN WITNESS WHEREOF, the parties have agreed to this Amendment as of the date first set forth above.

SAN JOAQUIN VALLEY COLLEGE, INC.

COMERICA BANK

By: 
Title: CEO

By:  T. ELIZANI
Title: SVP



**SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT
(ACCOUNTS AND INVENTORY)**

OBLIGOR # 8718043414	NOTE #	AGREEMENT DATE September 19 TH , 2012
CREDIT LIMIT \$5,000,000	INTEREST RATE See Interest Rate Addendum	OFFICER NO./INITIALS

THIS SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT is entered into as of September 19TH, 2012, between Comerica Bank, a Texas banking association ("Bank"), as secured party, and San Joaquin Valley College, Inc., a California corporation ("Borrower"), with reference to the following facts:

WHEREAS, Borrower and Bank are parties to that Amended and Restated Loan and Security Agreement (Accounts and Inventory) dated December 14, 2010 (as modified, amended, supplemented or revised from time to time, the "Prior Agreement"), pursuant to which Bank has made certain credit facilities available to Borrower. Borrower and Bank desire to amend and restate the Prior Agreement in its entirety in accordance herewith.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereof, the parties to this Agreement hereby agree that the Prior Agreement is hereby amended and restated in full as follows:

1. DEFINITIONS.

"Accounts" means and includes all presently existing and hereafter arising accounts, including without limitation all accounts receivable, contract rights and other forms of right to payment for monetary obligations or receivables for property sold or to be sold, leased, licensed, assigned or otherwise disposed of, or for services rendered or to be rendered (including without limitation all health-care-insurance receivables) owing to Borrower, and any supporting obligations, credit insurance, guaranties or security therefor, irrespective of whether earned by performance.

"Accreditation" means the status of public recognition granted by any Accrediting Body to an educational institution that meets the Accrediting Body's standards and requirements.

"Accrediting Body" means any non-governmental entity or organization that has been recognized by the DOE as a reliable authority as to the quality of training offered by a postsecondary institution, and is an "institutional accrediting agency" as defined in 34 C.F.R. Part 602, including but not limited to the Western Association of Schools & Colleges.

"Accredited" means receipt of Accreditation.

"Agreement" means and includes this Second Amended and Restated Loan and Security Agreement (Accounts and Inventory), any concurrent or subsequent rider to this Second Amended and Restated Loan and Security Agreement (Accounts and Inventory) and any extensions, supplements, amendments or modifications to this Second Amended and Restated Loan and Security Agreement (Accounts and Inventory) and/or to any such rider.

"Bank Expenses" means and includes: all costs or expenses required to be paid by Borrower under this Agreement which are paid or advanced by Bank; taxes and insurance premiums of every nature and kind of Borrower paid by Bank; filing, recording, publication and search fees, appraiser fees, auditor fees and costs, and title insurance premiums paid or incurred by Bank in connection with Bank's transactions with Borrower; costs and expenses incurred by Bank in collecting the Accounts (with or without suit) to correct any default or enforce any provision of this Agreement, or in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, disposing of, preparing for sale and/or advertising to sell the Collateral, whether or not a sale is consummated; costs and expenses of suit incurred by Bank in enforcing or defending this Agreement or any portion hereof, including, but not limited to, expenses incurred by Bank in attempting to obtain relief from any stay, restraining order, injunction or similar process which prohibits Bank from exercising any of its rights or remedies; and reasonable attorneys' fees and expenses incurred by Bank in advising, structuring, drafting, reviewing, amending, terminating, enforcing, defending or concerning this Agreement, or any portion hereof or any agreement related hereto, whether or not suit is brought. Bank Expenses shall include Bank's in-house legal charges at reasonable rates.

"Borrower's Books" means and includes all of Borrower's books and records including but not limited to minute books; ledgers; records indicating, summarizing or evidencing Borrower's assets (including, without limitation, the Accounts), liabilities, business operations or financial condition, and all information relating thereto, computer programs; computer disk or tape files; computer printouts; computer runs; and other computer prepared information and equipment of any kind.

"Borrowing Base" means the sum of: (1) seventy five percent (75%) of the sum of: (a) Borrower's unrestricted cash, plus (b) the net amount of Eligible Accounts after deducting therefrom all payments, adjustments and credits applicable thereto; plus (c) Notes Receivable owing from students enrolled in a School in an aggregate amount not to exceed \$5,000,000; less (c) Unearned Income; less (e) Deferred Income; and (2) the amount, if any, of the advances against Inventory agreed to be made pursuant to any Inventory Rider, or other rider, amendment or modification to this Agreement, that may now or hereafter be entered into by Bank and Borrower. Anything contained in the foregoing to the contrary notwithstanding, Bank may adjust the Borrowing Base percentage(s) and the definition of Eligible Accounts and Inventory eligible for advances under any such Inventory Rider, in each case as provided for under Section 6.8 hereof.

"California Education Act" means Title 5 of the California Code of Regulations, including without limitation, 5 C.C.R. § 9400 et seq. (California Private Postsecondary Education Act of 2009).

"Cash Flow" means, for any Person, for any applicable period of determination, the sum of (a) Net Income of such Person (after deduction for income taxes and other taxes of such Person, or its subsidiaries, determined by reference to income or profits of such Person, or its subsidiaries) for such period, plus interest expense for such period, plus, to the extent deducted in computation of such Net Income, the amount of depreciation and amortization expense for such period, less distributions to shareholders during such period, less non-financed capital expenditures during such period, all as determined in accordance with GAAP.

"Collateral" means and includes all personal property of Borrower, including without limitation each and all of the following: the Accounts; the Inventory; the General Intangibles; the Negotiable Collateral; Borrower's Books; all Borrower's deposit accounts; all Borrower's investment property (including without limitation securities and securities entitlements); all goods, instruments, documents, letter-of-credit- rights, policies and certificates of insurance, deposits, money or other personal property of Borrower in which Bank receives a security interest and which now or later come into the possession, custody or control of Bank; all Borrower's equipment and fixtures; all additions, accessions, attachments, parts, replacements, substitutions, renewals, interest, dividends, distributions or rights of any kind for or with respect to any of the foregoing (including without limitation any stock splits, stock rights, voting rights and preferential rights); any supporting obligations for any of the foregoing; and the products and proceeds of any of the foregoing, including, but not limited to, proceeds of insurance covering the Collateral, and any and all Accounts, General Intangibles, Negotiable Collateral, Inventory, equipment, money, deposit accounts, investment property, equipment, fixtures or other tangible and intangible property of Borrower resulting from the sale or other disposition of the Collateral and the proceeds thereof and any supporting obligations or security therefor and any right to payment thereunder, and including, without limitation, cash or other property which were proceeds and are recovered by a bankruptcy trustee or otherwise as a preferential transfer by Borrower. Notwithstanding anything to the contrary contained herein, Collateral shall not include any waste or other materials which have been or may be designated as toxic or hazardous by Bank.

"Credit" means all Indebtedness, except that Indebtedness arising pursuant to any other separate contract, instrument, note, or other separate agreement which, by its terms, provides for a specified interest rate and term.

"Credit Limit" means Five Million and 00/100 Dollars (\$5,000,000.00).

"Current Assets" means, in respect of a Person and as of any applicable date of determination, all current assets of such Person determined in accordance with GAAP.

"Current Liabilities" means, in respect of a Person and as of any applicable date of determination, all liabilities of such Person that should be classified as current in accordance with GAAP.

"Current Maturities of Long Term Indebtedness" means, in respect of a Person and as of any applicable date of determination thereof, that portion of Long Term Indebtedness that should be classified as current in accordance with GAAP.

"Daily Balance" means the amount determined by taking the amount of the Credit owed at the beginning of a given day, adding any new Credit advanced or incurred on such date, and subtracting any payments or collections which are deemed to be paid and are applied by Bank in reduction of the Credit on that date under the provisions of this Agreement.

"Debt" means, as of any applicable date of determination, all items of indebtedness, obligation or liability of a Person, whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, joint or several, that should be

classified as liabilities in accordance with GAAP. In the case of Borrower, the term "Debt" shall include, without limitation, the Indebtedness.

"Debt Service Coverage Ratio" means, for any Person, for any applicable period of determination, the ratio of (a) the sum of Cash Flow determined in accordance with GAAP for such period, to (b) Current Maturities of Long Term Indebtedness plus that portion of Capitalized Lease Obligations that should be classified as current in accordance with GAAP for such period plus interest expense for such period. With respect to Borrower, this ratio shall be calculated annually as of the end of each year and the relevant period of determination shall be the four quarter period of Borrower then ending.

"Deferred Income" shall have the meaning attributed to it in accordance with GAAP.

"DOE" means the United States Department of Education and any successor agency administering federal student financial assistance under Title IV.

"Eligible Accounts" means and includes those Accounts of Borrower which have been validly assigned to Bank and strictly comply with all of Borrower's warranties and representations to Bank, but Eligible Accounts shall not include the following: (a) Accounts with respect to which the account debtor is an officer, employee, partner, joint venturer or agent of Borrower; (b) Accounts with respect to which goods are placed on consignment, guaranteed sale or other terms by reason of which the payment by the account debtor may be conditional; (c) Accounts with respect to which the account debtor is not a resident of the United States; (d) Accounts with respect to which the account debtor is the United States or any department, agency or instrumentality of the United States; (e) Accounts with respect to which the account debtor is any State of the United States or any city, county, town, municipality or division thereof; (f) Accounts with respect to which the account debtor is a subsidiary of, related to, affiliated or has common shareholders, officers or directors with Borrower; (g) Accounts with respect to which Borrower is or may become liable to the account debtor for goods sold or services rendered by the account debtor to Borrower; (h) Accounts with respect to which account debtors dispute liability or make any claim, or have any defense, crossclaim, counterclaim, or offset; (i) Accounts with respect to which any Insolvency Proceeding is filed by or against the account debtor, or if an account debtor becomes insolvent, fails or goes out of business; and (j) Accounts owed by any single account debtor which exceed twenty percent (20%) of all of the Eligible Accounts; and (k) Accounts with a particular account debtor on which over twenty-five percent (25%) of the aggregate amount owing is greater than ninety (90) days from the date of the invoice.

"Enterprises" means Perry Brothers Enterprises, LLC, a California limited liability company.

"Event of Default" means one or more of those events described in Section 7 contained herein below.

"GAAP" means, as of any applicable period, generally accepted accounting principles in effect during such period.

"General Intangibles" means and includes all of Borrower's present and future general intangibles and other personal property (including without limitation all payment intangibles, electronic chattel paper, contract rights, rights arising under common law, statutes, or regulations, choses or things in action, goodwill, patents, trade names, trademarks, servicemarks, copyrights, blueprints, drawings, plans, diagrams, schematics, purchase orders, customer lists, monies due or recoverable from pension funds, route lists, rights to payment (including without limitation, rights to payment evidenced by chattel paper, documents or instruments) and other rights under any royalty or licensing agreements, infringement claims, software (including without limitation any computer program that is embedded in goods that consist solely of the medium in which the program is embedded), information contained on computer disks or tapes, literature, reports, catalogs, insurance premium rebates, tax refunds, and tax refund claims), other than goods, Accounts, Inventory, Negotiable Collateral, and Borrower's Books.

"Indebtedness" means and includes any and all loans, advances, overdrafts, debts, liabilities (including, without limitation, any and all amounts charged to Borrower's loan account pursuant to any agreement authorizing Bank to charge Borrower's loan account), obligations, lease payments, guaranties, covenants and duties owing by Borrower to Bank of any kind and description whether advanced pursuant to or evidenced by this Agreement; by any note or other Instrument; or by any other agreement between Bank and Borrower and whether or not for the payment of money, whether direct or indirect, absolute or contingent, due or to become due now existing or hereafter arising, including, without limitation, any interest, fees, expenses, costs and other amounts owed to Bank that but for the provisions of the United States Bankruptcy Code would have accrued after the commencement of any Insolvency Proceeding, and including, without limitation, any debt, liability, or obligations owing from Borrower to others which Bank may have obtained by assignment, participation, purchase or otherwise, and further including, without limitation, all interest not paid when due and all Bank Expenses which Borrower is required to pay or reimburse by this Agreement, by law, or otherwise.

"Ineligible Institutional Loans" means all Debt due Borrower from non-enrolled students, which have not been paid within ninety (90) days.

"Insolvency Proceeding" means and includes any proceeding or case commenced by or against Borrower, or any guarantor of Borrower's indebtedness, or any of Borrower's account debtors, under any provisions of the United States Bankruptcy Code, as amended, or any other bankruptcy or insolvency law, including, but not limited to assignments for the benefit of creditors, formal or informal moratoriums, composition or extensions with some or all creditors, any proceeding seeking a reorganization, arrangement or any other relief under the United States Bankruptcy Code, as amended, or any other bankruptcy or insolvency law.

"Interest Rate Addendum" means that Daily Adjusting LIBOR Rate Addendum to Second Amended and Restated Loan and Security Agreement between Borrower and Bank dated as of the date of this Agreement, as it may be amended, replaced or otherwise modified from time to time, in connection with this Agreement and incorporated herein by this reference.

"Inventory" means and includes all present and future inventory in which Borrower has any interest, including, but not limited to, goods held by Borrower for sale or lease or to be furnished under a contract of service and all of Borrower's present and future raw materials, work in process, finished goods (including without limitation any computer program embedded in any of the foregoing goods and any supporting information provided in connection therewith that (i) is associated with the goods in such a manner that the program customarily is considered part of the goods or that (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods), together with any advertising materials and packing and shipping materials, wherever located and any documents of title representing any of the above, and any equipment, fixtures or other property used in the storing, moving, preserving, identifying, accounting for and shipping or preparing for the shipping of inventory, and any and all other items hereafter acquired by Borrower by way of substitution, replacement, return, repossession or otherwise, and all additions and accessions thereto, and the resulting product or mass, and any documents of title respecting any of the above.

"Judicial Officer or Assignee" means and includes any trustee, receiver, controller, custodian, assignee for the benefit of creditors or any other person or entity having powers or duties like or similar to the powers and duties of trustee, receiver, controller, custodian or assignee for the benefit of creditors.

"Letter of Credit Obligations" means, as of any applicable date of determination, the sum of the undrawn amount of any letter(s) of credit issued by Bank upon the application of and/or for the account of Borrower, plus any unpaid reimbursement obligations owing by Borrower to Bank in respect of any such letter(s) of credit.

"Long Term Indebtedness" means, in respect of a Person and as of any applicable date of determination thereof, all Debt which should be classified as "funded indebtedness" or "long term indebtedness" on a balance sheet of such Person as of such date in accordance with GAAP.

"Maturity Date" means July 1, 2014.

"Net Income" means the net income (or loss) of a person for any period of determination, determined in accordance with GAAP but excluding in any event:

- a. any gains or losses on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets, and any taxes on the excluded gains and any tax deductions or credits on account on any excluded losses; and
- b. in the case of Borrower, net earnings of any Person in which Borrower has an ownership interest, unless such net earnings shall have actually been received by Borrower in the form of cash distributions.

"Negotiable Collateral" means and include all of Borrower's present and future letters of credit, advises of credit, letter-of-credit rights, certificates of deposit, notes, drafts, money, documents (including without limitation all negotiable documents), instruments (including without limitation all promissory notes), tangible chattel paper or any other similar property.

"Note Receivable" shall have the meaning attributed to it in accordance with GAAP.

"Person" or "person" means and includes any individual, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated association, joint stock company, government, municipality, political subdivision or agency or other entity.

"Profitability" means, with respect to any Person and as of any applicable date of determination, Net Income after taxes.

"School" means a postsecondary institution of higher education and its additional locations, taken together, owned or operated by Borrower.

"Subordinated Debt" means indebtedness of Borrower to any Person which has been subordinated to the Indebtedness pursuant to a Subordination Agreement in form and content satisfactory to Bank.

"Subordination Agreement" means any subordination agreement, in form and substance satisfactory to Bank, entered into by any Person in favor of Bank and that makes any or all present and future indebtedness of Borrower to any such Person subordinate to the Indebtedness.

"Tangible Effective Net Worth" means, with respect to any Person and as of any applicable date of determination, Tangible Net Worth plus Subordinated Debt.

"Tangible Net Worth" means, with respect to any Person and as of any applicable date of determination, the net book value of all assets of such Person (excluding affiliate receivables, patents, patent rights, trademarks, trade names, franchises, copyrights, licenses, goodwill, and all other intangible assets of such Person) after all appropriate deductions in accordance with GAAP (including, without limitation, reserves for doubtful receivables, obsolescence, depreciation and amortization), less all Debt of such Person at such time.

"Title IV" means Title IV of the Higher Education Act of 1965, as amended, as reauthorized by the Higher Education Opportunity Act (Public Law 110-315).

"Title IV Programs" means the programs of federal student financial assistance administered pursuant to Title IV and the regulations promulgated thereunder, including without limitation regulations under 34 CFR Part 600.

"Unearned Income" shall have the meaning attributed to it in accordance with GAAP.

Any and all terms used in the foregoing definitions and elsewhere in this Agreement shall be construed and defined in accordance with the meaning and definition of such terms under and pursuant to the California Uniform Commercial Code (hereinafter referred to as the "Uniform Commercial Code") as amended, revised or replaced from time to time. Notwithstanding the foregoing, the parties intend that the terms used herein which are defined in the Uniform Commercial Code have, at all times, the broadest and most inclusive meanings possible. Accordingly, if the Uniform Commercial Code shall in the future be amended or held by a court to define any term used herein more broadly or inclusively than the Uniform Commercial Code in effect on the date of this Agreement, then such term, as used herein, shall be given such broadened meaning. If the Uniform Commercial Code shall in the future be amended or held by a court to define any term used herein more narrowly, or less inclusively, than the Uniform Commercial Code in effect on the date of this Agreement, such amendment or holding shall be disregarded in defining terms used in this Agreement.

2. LOAN AND TERMS OF PAYMENT.

For value received, Borrower promises to pay to the order of Bank such amount, as provided for below, together with interest, as provided for below.

2.1 Upon the request of Borrower, made at any time and from time to time prior to the Maturity Date, and so long as no Event of Default has occurred, Bank shall lend to Borrower an amount equal to the Borrowing Base; provided, however, that the Daily Balance shall not exceed the lesser of either the (i) Credit Limit or (ii) the Borrowing Base. If at any time for any reason, the amount of Indebtedness owed by Borrower to Bank pursuant to this Section 2.1 is greater than the aggregate amount available to be drawn under this Section 2.1, Borrower shall immediately pay to Bank, in cash, the amount of such excess. The outstanding principal amount of all loans made under this Section 2.1, together with all accrued and unpaid interest thereon, shall in any event be due and payable in full on the earlier of the Maturity Date or the termination of this Agreement.

2.2 Except as hereinbelow provided, the Credit shall bear interest, on the Daily Balance owing, at a fluctuating rate of interest as set forth in the Interest Rate Addendum.

2.3 Bank and Borrower agree that any other loans, letters of credit or other financial accommodations which Bank in its sole discretion has made or may flow or hereafter make to Borrower including, but not limited to: (i) that \$3,000,000.00 Draw-To Note dated December 14, 2010 and (ii) that \$3,000,000 Installment Note dated December 14, 2010, each made by Borrower payable to Bank, as each may be amended, restated and/or modified from time to time (singularly or collectively, the "Notes") (sometimes hereinafter collectively referred to as the "Loans"), shall be subject to the terms and conditions of this Agreement unless otherwise agreed to in writing by Bank and Borrower. In the event there are contradictions between the provisions of this Agreement and any other written agreement with the Bank, this Agreement shall prevail. The Loans shall be subject to the terms and conditions of this Agreement, any promissory note(s), including the Notes, executed in connection therewith and/or previously or subsequently

executed, and all amendments, renewals and extensions thereof, and all those certain security agreements and/or such other security or other documents as Bank has required or may now or hereafter require in connection with the Loans (collectively, the "Loan Documents"). All such Loan(s) shall be included in the Indebtedness.

a. This Agreement supplements the terms and conditions of the other Loan Documents. Except as otherwise defined herein, all terms used in this Agreement shall have the same meaning as given in the Notes and/or the other Loan Documents which are incorporated herein by this reference.

b. The principal and interest on the Loans shall be payable on the terms set forth in the Notes and/or the other Loan Documents entered into in connection therewith. Except as specifically modified hereby, all of the terms and conditions of the Notes and/or the other Loan Documents shall remain in full force and effect.

2.4 Borrower shall pay to Bank each of the following:

a. Unused Facility Fee. A quarterly unused facility fee equal to one quarter of one percent (0.25%) per annum of the difference between the Credit Limit and the average outstanding principal balance of the Credit during the applicable quarter, which fee shall be payable within five (5) days of the last day of each such quarter and shall be nonrefundable; and

b. Bank Expenses. Concurrently with the execution of this Agreement, all Bank Expenses incurred through the date of this Agreement, and, thereafter, all Bank Expenses, as and when they become due.

3. TERM.

3.1 This Agreement shall remain in full force and effect until the Maturity Date, unless earlier terminated by notice by Borrower, provided, however, that notwithstanding any such notice of termination by Borrower, this Agreement shall remain in full force and effect until the later of (i) the latest maturity date upon which the Indebtedness or any portion thereof shall be due and payable hereunder and (ii) the date upon which all Indebtedness is paid in full. Notice of such termination by Borrower shall be effectuated by mailing of a registered or certified letter not less than thirty (30) days prior to the effective date of such termination, addressed to Bank at the address set forth herein and the termination shall be effective as of the date so fixed in such notice. Any commitment of Bank, pursuant to the terms of this Agreement, to make loans under this Agreement or any other document, instrument Or agreement entered into by Borrower with or in favor of Bank (unless specifically provided to the contrary in any other such document, instrument or agreement) shall expire on the Maturity Date, subject to Bank's right to renew said commitment in its sole and absolute discretion at Borrower's request. Any such renewal of said commitment shall not be binding upon Bank unless it is in writing and signed by an officer Of Bank.

3.2 Notwithstanding the foregoing, should Borrower be in default of one or more of the provisions of this Agreement, Bank may terminate this Agreement at any time without notice. Notwithstanding the foregoing, should either Bank or Borrower become insolvent or unable to meet its debts as they mature, or fail, suspend, or go out of business, the other party shall have the right to terminate this Agreement at any time without notice. On the date of termination all Indebtedness shall become immediately due and payable without notice or demand; provided, however, that no such notice of termination by Borrower shall be effective until the payment in full in cash of all Indebtedness to Bank (including without limitation the expiration or cash collateralization of all Letter of Credit Obligations in accordance with the terms and conditions of this Agreement). Any notice of termination given by Borrower shall be irrevocable unless Bank otherwise agrees in writing, and Bank shall have no obligation to make any loans or issue any letters of credit on or after the termination date stated in such notice. Borrower may elect to terminate this Agreement in its entirety only. No section of this Agreement or type of loan available hereunder may be terminated singly.

3.3 All undertakings, agreements, covenants, warranties, and representations of Borrower contained in this Agreement or any other document, instrument or agreement entered into with or in favor of Bank in connection herewith shall survive any such termination, and Bank shall retain its security interest in and to all existing Collateral and Collateral arising thereafter, any and all liens thereon, and all of its rights and remedies under this Agreement or any other document, instrument or agreement entered into with or in favor of Bank in connection herewith notwithstanding such termination until the payment in full in cash of all Indebtedness to Bank (including, without limitation, the expiration or cash collateralization of all Letter of Credit Obligations in accordance with the terms and conditions of this Agreement and the payment in full of all applicable termination charges, if any). Notwithstanding the satisfaction in full of the Indebtedness, Bank shall not be required to terminate its security interests in the Collateral unless, with respect to any loss or damage Bank may incur as a result of dishonored checks or other items of payment received by Bank and applied to the Indebtedness, Bank shall, at its option, (a) have received a written agreement, executed by Borrower and by any Person whose loans or other advances to Borrower are used in whole or in part to satisfy the Indebtedness, indemnifying Bank from any such loss or damage, or (b) have retained such monetary reserves and liens on the Collateral for such period of time as Bank, in its reasonable discretion, may deem necessary to protect Bank from any such loss or damage.

3.4 After termination and when Bank has received payment in full of Borrower's Indebtedness to Bank, Bank shall reassign to Borrower all Collateral held by Bank, and shall execute and/or file a termination of all security agreements and security interests given by Borrower to Bank.

3.5 Bank's rights under the Loan Documents shall be reinstated and revived, and the enforceability of the Agreement and the other Loan Documents shall continue, with respect to any amount at any time paid on account of the Indebtedness which thereafter shall be required to be restored or returned by Bank, all as though such amount had not been paid. The rights of Bank created or granted herein and the enforceability of the Agreement and the other Loan Documents at all times shall remain effective to cover the full amount of all the Indebtedness even though the Indebtedness, including any part thereof or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against any Borrower and whether or not any other Borrower shall have any personal liability with respect thereto.

4. CREATION OF SECURITY INTEREST.

4.1 Borrower hereby grants to Bank a continuing security interest in all presently existing and hereafter arising Collateral in order to secure prompt repayment of any and all Indebtedness owed by Borrower to Bank and in order to secure prompt performance by Borrower of each and all of its covenants and obligations under this Agreement and otherwise created. Bank's security interest in the Collateral shall attach to all Collateral without further act on the part of Bank or Borrower. In the event that any Collateral, including proceeds, is evidenced by or consists of Negotiable Collateral, Borrower, immediately upon the request of Bank, shall (a) endorse or assign such Negotiable Collateral to Bank, (b) deliver actual physical possession of such Negotiable Collateral to Bank, and (c) mark conspicuously all of its records pertaining to such Negotiable Collateral with a legend, in form and substance satisfactory to Bank (and in the case of Negotiable Collateral consisting of tangible chattel paper, immediately mark all such tangible chattel paper with a conspicuous legend in form and substance satisfactory to Bank), indicating that the Negotiable Collateral is subject to the security interest granted to Bank hereunder.

4.2 Bank's security interest in the Accounts shall attach to all Accounts without further act on the part of Bank or Borrower. Upon request from Bank, Borrower shall provide Bank with schedules describing all Accounts created or acquired by Borrower (including without limitation agings listing the names and addresses of, and amounts owing by date by account debtors), and shall execute and deliver written assignments of all Accounts to Bank all in a form acceptable to Bank; provided, however, Borrower's failure to execute and deliver such schedules and/or assignments shall not affect or limit Bank's security interest and other rights in and to the Accounts. Together with each schedule, Borrower shall furnish Bank with copies of Borrower's customers' invoices or the equivalent, and original shipping or delivery receipts for all merchandise sold, and Borrower warrants the genuineness thereof. Upon the occurrence Of an Event of Default, Bank or Bank's designee may notify customers or account debtors of Bank's security interest in the Collateral and direct such customers or account debtors to make payments directly to Bank, but unless and until Bank does so or gives Borrower other written instructions, Borrower shall collect all Accounts for Bank, receive in trust all payments thereon as Bank's trustee, and, if so requested to do so from Bank, Borrower shall immediately deliver said payments to Bank in their original form as received from the account debtor and all letters of credit, advices of credit, instruments, documents, chattel paper or any similar property evidencing or constituting Collateral. Notwithstanding anything to the contrary contained herein, if sales of Inventory are made for cash, Borrower shall immediately deliver to Bank, in identical form, all such cash, checks, or other forms of payment which Borrower receives. The receipt of any check or other item of payment by Bank shall not be considered a payment on account until such check or other item of payment is honored when presented for payment, in which event, said check or other item of payment shall be deemed to have been paid to Bank two (2) calendar days after the date Bank actually receives such check or other item of payment.

4.3 Bank's security interest in Inventory shall attach to all Inventory without further act on the part of Bank or Borrower. Borrower will at Borrower's expense pledge, assemble and deliver such Inventory to Bank or to a third party as Bank's bailee; or hold the same in trust for Bank's account or store the same in a warehouse in Bank's name; or deliver to Bank documents of title representing said Inventory; or evidence of Bank's security interest in some other manner acceptable to Bank. Until a default by Borrower under this Agreement or any other Agreement between Borrower and Bank, Borrower may, subject to the provisions hereof and consistent herewith, sell the Inventory, but only in the ordinary course of Borrower's business. A sale of Inventory in Borrower's ordinary course of business does not include an exchange or a transfer in partial or total satisfaction of a debt owing by Borrower.

4.4 Concurrently with Borrower's execution of this Agreement, and at any time or times hereafter at the request of Bank, Borrower shall (a) execute and deliver to Bank security agreements, mortgages, assignments, certificates of title, affidavits, reports, notices, schedules of accounts, letters of authority and all other documents that Bank may reasonably request, in form satisfactory to Bank, to perfect and maintain perfected Bank's security interest in the Collateral and in order to fully consummate all of the transactions contemplated under this Agreement, (b) cooperate with Bank in obtaining a control agreement in form and substance satisfactory to Bank with respect to all deposit accounts, electronic chattel paper, investment property, and letter-of-credit rights, and (c) in the event that any Collateral is in the possession of a third party, Borrower shall join with Bank in notifying such third party of

Bank's security interest and obtaining an acknowledgment from such third party that it is holding such Collateral for the benefit of Bank. By authenticating or becoming bound by this Agreement, Borrower authorizes the filing of initial financing statement(s), and any amendment(s) covering the Collateral to perfect and maintain perfected Bank's security interest in the Collateral. Upon the occurrence of an Event of Default, Borrower hereby irrevocably makes, constitutes and appoints Bank (and any of Bank's officers, employees or agents designated by Bank) as Borrower's true and lawful attorney-in-fact with power to sign the name of Borrower on any security agreement, mortgage, assignment, certificate of title, affidavit, letter of authority, notice of other similar documents which must be executed and/or filed in order to perfect or continue perfected Bank's security interest in the Collateral, and to take such actions in its own name or in Borrower's name as Bank, in its sole discretion, deems necessary or appropriate to establish exclusive possession or control (as defined in the Uniform Commercial Code) over any Collateral of such nature that perfection of Bank's security interest may be accomplished by possession or control.

4.5 Borrower shall make appropriate entries in Borrower's Books disclosing Bank's security interest in the Accounts. Bank (through any of its officers, employees or agents) shall have the right at any time or times hereafter, provided that reasonable notice is provided, during Borrower's usual business hours, or during the usual business hours of any third party having control over the records of Borrower, to inspect and verify Borrower's Books in order to verify the amount or condition of, or any other matter, relating to, said Collateral and Borrower's financial condition.

4.6 Effective only upon the occurrence of an Event of Default, Borrower appoints Bank or any other person whom Bank may designate as Borrower's attorney-in-fact, with power: to endorse Borrower's name on any checks, notes, acceptances, money order, drafts or other forms of payment or security that may come into Bank's possession; to sign Borrower's name on any invoice or bill of lading relating to any Accounts, on drafts against account debtors, on schedules and assignments of Accounts, on verifications of Accounts and on notices to account debtors; to establish a lock box arrangement and/or to notify the post office authorities to change the address for delivery of Borrower's mail addressed to Borrower to an address designated by Bank, to receive and open all mail addressed to Borrower, and to retain all mail relating to the Collateral and forward all other mail to Borrower; to send, whether in writing or by telephone, requests for verification of Accounts; and to do all things necessary to carry out this Agreement. Borrower ratifies and approves all acts of the attorney-in-fact. Neither Bank nor its attorney-in-fact will be liable for any acts or omissions or for any error of judgment or mistake of fact or law. This power being coupled with an interest, is irrevocable so long as any Accounts in which Bank has a security interest remain unpaid and until the Indebtedness has been fully satisfied.

4.7 In order to protect or perfect any security interest which Bank is granted hereunder, Bank may, in its sole discretion, discharge any lien or encumbrance or bond the same, pay any insurance, maintain guards, warehousemen, or any personnel to protect the Collateral, pay any service bureau, or, obtain any records, and all costs for the same shall be added to the Indebtedness and shall be payable on demand.

4.8 Borrower agrees that Bank may provide information relating to this Agreement or relating to Borrower to Bank's parent, affiliates, subsidiaries and service providers.

5. CONDITIONS PRECEDENT.

5.1 As conditions precedent to the making of the loans and the extension of the financial accommodations hereunder, Borrower shall execute, or cause to be executed, and deliver to Bank, in form and substance satisfactory to Bank and its counsel, the following:

- a. This Agreement and other documents, instruments and agreements required by Bank;
- b. Certified copies of all actions taken by Borrower, any grantor of a security interest to Bank to secure the Indebtedness, and any guarantor of the Indebtedness, authorizing the execution, delivery and performance of this Agreement and any other documents, instruments or agreements entered into in connection herewith, and authorizing specific officers to execute and deliver any such documents, instruments and agreements;
- c. A certificate of good standing showing that Borrower is in good standing under the laws of the State California and certificates indicating that Borrower is qualified to transact business and is in good standing in any other state in which it conducts business;
- d. UCC searches and financing statements, tax lien and litigation searches, fictitious business statement filings, insurance certificates, notices or other similar documents which Bank may require and in such form as Bank may require, in order to reflect, perfect or protect Bank's first priority security interest in the Collateral and in order to fully consummate all of the transactions contemplated under this Agreement;

- e. Evidence that Borrower has obtained insurance and acceptable endorsements;
- f. Such control agreements from each Person as Bank may require;
- g. Duly executed certificates of title with respect to that portion of the Collateral that is subject to certificates of title;
- h. Such collateral access agreements from each lessor, warehouseman, bailee, and other Person as Bank may require, duly executed by each such Person;
- i. Warranties and representations of officers; and
- j. No change in the financial condition of Borrower that would represent a material adverse change from that reflected in its most recent financial statements delivered to Bank.

6. WARRANTIES, REPRESENTATIONS AND COVENANTS.

6.1 If so requested by Bank, Borrower shall, at such intervals designated by Bank, during the term hereof execute and deliver a Report of Accounts Receivable or similar report, in form customarily used by Bank. The aggregate amount of the Borrowing Base at all times during the effectiveness of this Agreement shall not be less than the advances made hereunder. Bank shall have the right to recompute the Borrowing Base in conformity with this Agreement.

6.2 If any warranty is breached as to any Account, or any Account is not paid in full by an account debtor within, ninety (90) days from the date of invoice, or an account debtor disputes liability or makes any claim with respect thereto, or a petition in bankruptcy or other application for relief under the United States Bankruptcy Code or any other insolvency law is filed by or against an account debtor, or an account debtor makes an assignment for the benefit of creditors, becomes insolvent, fails or goes out of business, then Bank may deem ineligible any and all Accounts owing by that account debtor, and reduce the Borrowing Base by the amount thereof Bank shall retain its security interest in the Accounts, whether eligible or ineligible, until all Indebtedness has been fully paid and satisfied and Bank shall have no further obligation to make loans or otherwise extend credit to Borrower under this Agreement or otherwise. Returns and allowances, if any, as between Borrower and its customers, will be on the same basis and in accordance with the usual customary practices of Borrower, as they exist at this time. Any merchandise which is returned by an account debtor or otherwise recovered shall be set aside, marked with Bank's name, and Bank shall retain a security interest therein. Borrower shall promptly notify Bank of all disputes and claims and settle or adjust them on terms approved by Bank. After default by Borrower hereunder, no discount, credit or allowance shall be granted to any account debtor by Borrower and no return of merchandise shall be accepted by Borrower without Bank's consent. Bank may, after default by Borrower, settle or adjust disputes and claims directly with account debtors for amounts and upon terms which Bank considers advisable, and in such cases Bank will credit Borrower's loan account with only the net amounts received by Bank in payment of the Accounts, after deducting all Bank Expenses in connection therewith.

6.3 Borrower warrants, represents, covenants and agrees that:

a. Borrower has good and marketable title to the Collateral. Bank has and shall continue to have a first priority perfected security interest in and to the Collateral. The Collateral shall at all times remain free and clear of all liens, encumbrances and security interests (except those in favor of Bank);

b. All Accounts are and will, at all times pertinent hereto, be bona fide existing obligations created by the sale and delivery of merchandise or the rendition of services to account debtors in the ordinary course of business, free of liens, claims, encumbrances and security interests (except as held by Bank and except as may be consented to, in writing, by Bank) and are unconditionally owed to Borrower without defenses, disputes, offsets counterclaims, rights of return or cancellation, and Borrower shall have received no notice of actual or imminent bankruptcy or insolvency of any account debtor at the time an Account due from such account debtor is assigned to Bank; and

c. At the time each Account is assigned to Bank, all property giving rise to such Account shall have been delivered to the account debtor or to the agent for the account debtor for immediate shipment to, and unconditional acceptance by, the account debtor. Borrower shall deliver to Bank, as Bank may from time to time require, delivery receipts, customer's purchase orders, shipping instructions, bills of lading and any other evidence of shipping arrangements. Absent such a request by Bank, copies of all such documentation shall be held by Borrower as custodian for Bank.

6.4 At the time each Eligible Account is assigned to Bank, all such Eligible Accounts will be due and payable on terms set forth in the definition of "Eligible Accounts" set forth in Section 1 above, or on such other terms approved in writing by Bank in advance of the creation of such Accounts and which are expressly set forth on the face of all invoices, copies of which shall be held by Borrower as custodian for Bank, and no such Eligible Account will then be past due.

6.5 Borrower shall comply with the regulations set forth in 34 C.F.R. §668.15 at all times.

6.6 With respect to Inventory:

a. Borrower, immediately upon demand by Bank therefor, shall now and from time to time hereafter, at such intervals as are reasonably requested by Bank, deliver to Bank, designations of Inventory specifying Borrower's cost of Inventory, the wholesale market value thereof and such other matters and information relating to the Inventory as Bank may request;

b. All of the Inventory is and shall remain free from all purchase money or other security interests, liens or encumbrances, except as held by Bank;

c. Borrower does now keep and hereafter at all times shall keep correct and accurate records itemizing and describing the kind, type, quality and quantity of the Inventory, its cost therefor and selling price thereof, and the daily withdrawals therefrom and additions thereto, all of which records shall be available upon demand to any of Bank's officers, agents and employees for inspection and copying;

d. All Inventory, now and hereafter at all times, shall be new Inventory of good and merchantable quality free from material defects;

e. Inventory is not now and shall not at any time or times hereafter be located or stored with a bailee, warehouseman or other third party without Bank's prior written consent, and, in such event, Borrower will concurrently therewith cause any such bailee, warehouseman or other third party to issue and deliver to Bank, warehouse receipts in Bank's name evidencing the storage of Inventory and/or an acknowledgment by such bailee of Bank's prior rights in the Inventory, in each case in form and substance acceptable to Bank. In any event, Borrower shall, instruct any third party to hold all such Inventory for Bank's account subject to Bank's security interests and its instructions; and

f. Bank shall have the right upon demand now and/or at all times hereafter, during Borrower's usual business hours, after reasonable notice, to inspect and examine the Inventory and to check and test the same as to quality, quantity, value and condition and Borrower agrees to reimburse Bank for Bank's reasonable costs and expenses in so doing.

6.7 Borrower represents, warrants and covenants with Bank that Borrower will not, without Bank's prior written consent:

a. Grant a security interest in or permit a lien, claim or encumbrance upon any of the Collateral to any person, association, firm, corporation, entity or governmental agency or instrumentality, except purchase money security interests in personal property set forth in Schedule 6.7, which security interests cover only the personal property so acquired;

b. Permit any levy, attachment or restraint to be made affecting any of Borrower's assets;

c. Permit any Judicial Officer or Assignee to be appointed or to take possession of any or all of Borrower's assets;

d. Sell, lease, or otherwise dispose of, move, or transfer, whether by sale or otherwise, any of Borrower's properties or assets, other than sales of Inventory in the ordinary course of Borrower's business;

e. Change its name, the location of its sole place of business, chief executive office or residence, business structure, corporate identity or structure, form of organization or the state in which it has been formed or organized; add any new fictitious names, dissolve, liquidate, merge or consolidate with or into any other corporation, entity, or other business organization, or permit another corporation, entity or other business organization to merge into it;

f. Move or relocate any Collateral;

g. Acquire any other business organization;

- h. Enter into any transaction not in the usual course of Borrower's business;
- i. Make any change in Borrower's financial structure or in any of its business objectives, purposes or operations which would materially adversely affect the ability of Borrower to repay Borrower's Indebtedness;
- j. Incur any debts outside the ordinary course of Borrower's business except for debts existing and disclosed to Bank on Borrower's financial statements submitted to Bank on or before the date of this Agreement, including without limitation all Subordinated Debt, and renewals or extensions of such existing debts, such Subordinated Debt and interest thereon;
- k. Make loans, advances or extensions of credit to any Person, except in the ordinary course of business;
- l. Except for guarantees in favor of Bank, guarantee or otherwise, directly or indirectly, in any way be or become responsible for obligations of any other Person, whether by agreement to purchase the indebtedness of any other Person, agreement for the furnishing of funds to any other Person through the furnishing of goods, supplies or services, by way of stock purchase, capital contribution, advance or loan, for the purpose of paying or discharging (or causing the payment or discharge of) the indebtedness of any other Person, or otherwise, except for the endorsement of negotiable instruments by Borrower in the ordinary course of business for deposit or collection;
- m. Make any payment on account of any Subordinated Debt except for regularly scheduled payments of interest and principal in accordance with the provisions of any Subordination Agreement executed by Bank and the subordinated debt holder, or amend any provision contained in any documentation relating to any such Subordinated Debt without Bank's prior written consent;
- n. Acquire all or substantially all the properties or assets of any other Person, enter into any reorganization or recapitalization or reclassify its capital stock, or enter into any sale-leaseback transaction;
- o. Purchase or hold beneficially any stock or other securities of, or make any investment or acquire any securities or other interest whatsoever in, any other Person, except for the common stock of the subsidiaries owned by Borrower on the date of this Agreement and except for certificates of deposit with maturities of One year or less of United States commercial banks with capital, surplus and undivided profits in excess of One Hundred Million Dollars (\$100,000,000) and the securities or other direct obligations of the United States Government maturing within one year from the date of acquisition thereof;
- p. Allow any fact, condition or event to occur or exist with respect to any employee pension or profit sharing plans established or maintained by it which might constitute grounds for termination of any such plan or for the court appointment of a trustee to administer any such plan;
- q. Use any loan or other extension of credit under this Agreement or any other document, instrument or agreement entered into by Borrower with or in favor of Bank in connection with this Agreement for any purpose other than to refinance existing revolving or term debt to Bank, to provide working capital for its operations and for other general business purposes. In no event shall the funds from any such loan or other extension of credit be used directly or indirectly by any Person for personal, family, household or agricultural purposes or for the purpose, whether immediate, incidental or ultimate, of purchasing, acquiring or carrying any "margin stock" or any "margin securities" (as such terms are defined respectively in Regulation U and Regulation G promulgated by the Board of Governors of the Federal Reserve System) or to extend credit to others directly or indirectly for the purpose of purchasing or carrying any such margin stock or margin securities. Borrower hereby represents and warrants that Borrower is not engaged principally, or as one of Borrower's important activities, in the business of extending credit to others for the purpose of purchasing or carrying such margin stock or margin securities; and
- r. Borrower shall not without Bank's prior written consent acquire or expend for or commit itself to acquire or expend for fixed assets by lease, purchase or otherwise except: (i) in the ordinary course of Borrower's business; and (ii) in an aggregate amount not to exceed \$3,500,000 from the date hereof through the Maturity Date.

6.8 Borrower shall permit representatives of Bank to (i) conduct audits of Borrower's Books relating to the Accounts and other Collateral and make extracts therefrom, with results satisfactory to Bank, provided that Bank shall use its best efforts to not interfere with the conduct of Borrower's business, and (ii) arrange for verification of the Accounts directly with the account debtors obligated thereon or otherwise, in each case under reasonable procedures acceptable to Bank and at Borrower's sole expense; provided, however, that, prior to an Event of Default, Borrower shall not be responsible for more than one (1) such audit in each calendar year. Notwithstanding any of the provisions contained in Section 2.1 of this Agreement or otherwise, Borrower hereby

acknowledges and agrees that upon completion of any such audit Bank shall have the right to adjust the Borrowing Base percentage or the definition of Eligible Accounts and Inventory eligible for advances under any Inventory Rider or other rider, amendment or modification to this Agreement, that may now or hereafter be entered into by Bank and Borrower, in its sole and reasonable discretion, based on its review of the results of such audit.

6.9 Borrower represents, warrants, covenants and agrees that:

a. Borrower's true and correct legal name is that set forth on the signature page to this Agreement. Except as disclosed in writing to Bank on or before the date of this Agreement, Borrower has not done business under any name other than that set forth on the signature page to this Agreement; and

b. Borrower's form of organization and the state in which it has been organized are those set forth immediately following Borrower's name on the signature page to this Agreement.

6.10 Borrower will not make any distribution or declare or pay any dividend (in stock or in cash) to any shareholder or on any of its capital stock, of any class, whether now or hereafter outstanding, or purchase, acquire, repurchase, or redeem or retire any such capital stock; provided, however, so long as no Event of Default has occurred or is continuing hereunder or would occur as a result therefrom, Borrower may make distributions to its shareholders in an aggregate annual amount not to exceed seventy five percent (75%) of Borrower's cumulative Net Income for Borrower's then current fiscal year;

6.11 The execution of and performance by Borrower of all of the terms and provisions contained in this Agreement are not in contravention of or in conflict with, and shall not result in a breach of or constitute an event of default under any agreement, contract, indenture, instrument or undertaking to which Borrower is now or hereafter becomes a party, or by which Borrower or any of its property may be bound or affected, and do not cause any lien, charge or other encumbrance to be created or imposed upon any such property by reason thereof.

6.12 Borrower shall promptly notify Bank in writing of its acquisition by purchase, lease or otherwise of any after acquired property of the type included in the Collateral, with the exception of purchases of Inventory in the ordinary course of business.

6.13 All assessments and taxes, whether real, personal or otherwise, due or payable by, or imposed, levied or assessed against, Borrower or any of its property have been paid, and shall hereafter be paid in full, before delinquency. Borrower shall make due and timely payment or deposit of all federal, state and local taxes, assessments or contributions required of it by law, and will execute and deliver to Bank, on demand, appropriate certificates attesting to the payment or deposit thereof. Borrower will make timely payment or deposit of all F.I.C.A. payments and withholding taxes required of it by applicable laws, and will upon request furnish Bank with proof satisfactory to it that Borrower has made, such payments or deposit. If Borrower fails to pay any such assessment, tax, contribution, or make such deposit, or furnish the required proof, Bank may, in its sole and absolute discretion and without notice to Borrower, (i) make payment of the same or any part thereof, or (ii) set up such reserves in Borrower's loan account as Bank deems necessary to satisfy the liability therefor, or both. Bank may conclusively rely on the usual statements of the amount owing or other official statements issued by the appropriate governmental agency. Each amount so paid or deposited by Bank shall constitute a Bank Expense and an additional advance to Borrower.

6.14 There are no actions or proceedings pending by or against Borrower or any guarantor of Borrower before any court or administrative agency and Borrower has no knowledge of any pending, threatened or imminent litigation, governmental investigations or claims, complaints, actions or prosecutions involving Borrower or any guarantor of Borrower, except as heretofore specifically disclosed in writing to Bank. If any of the foregoing arise during the term of the Agreement, Borrower shall immediately notify Bank in writing.

6.15 Insurance.

a. Borrower, at its expense, shall keep and maintain its assets insured against loss or damage by fire, theft, explosion, sprinklers and all other hazards and risks ordinarily insured against by other owners who use such properties in similar businesses for the full insurable value thereof. Borrower shall also keep and maintain business interruption insurance and public liability and property damage insurance relating to Borrower's ownership and use of the Collateral and its other assets. All such policies of insurance shall be in such form, with such companies, and in such amounts as may be satisfactory to Bank. Borrower shall deliver to Bank certified copies of such policies of insurance and evidence of the payments of all premiums therefor. All such policies of insurance (except those of public liability and property damage) shall contain an endorsement in a form satisfactory to Bank showing Bank as a loss payee thereof, with a waiver of warranties satisfactory to Bank, and all proceeds payable thereunder shall be payable to Bank and, upon receipt by Bank, shall be applied on account of

the Indebtedness owing to Bank. To secure the payment of the Indebtedness, Borrower grants Bank a security interest in and to all such policies of insurance (except those of public liability and property damage) and the proceeds thereof, and Borrower shall direct all insurers under such policies of insurance to pay all proceeds thereof directly to Bank.

b. Borrower hereby irrevocably appoints Bank (and any of Bank's officers, employees or agents designated by Bank) as Borrower's attorney for the purpose of making, selling and adjusting claims under such policies of insurance, endorsing the name of Borrower on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect to such policies of insurance. Borrower will not cancel any of such policies without Bank's prior written consent. Each such insurer shall agree by endorsement upon the policy or policies of insurance issued by it to Borrower as required above, or by independent instruments furnished to Bank, that it will give Bank at least ten (10) days written notice before any such policy or policies of insurance shall be altered or canceled, and that no act or default of Borrower, or any other person, shall affect the right of Bank to recover under such policy or policies of insurance required above or to pay any premium in whole or in part relating thereto. Bank, without waiving or releasing any Indebtedness or any Event of Default, may, but shall have no obligation to do so, obtain and maintain such policies of insurance and pay such premiums and take any other action with respect to such policies which Bank deems advisable. All sums so disbursed by Bank, as well as reasonable attorneys' fees incurred by Bank, whether in-house or outside counsel is used, court costs, expenses and other charges relating thereto, shall constitute Bank Expenses and are payable on demand.

6.16 All financial statements and information relating to Borrower which have been or may hereafter be delivered by Borrower to Bank are true and correct and have been prepared in accordance with GAAP consistently applied and there has been no material adverse change in the financial condition of Borrower since the submission of such financial information to Bank.

6.17 Financial Reporting.

a. Borrower at all times hereafter shall maintain a standard and modern system of accounting in accordance with GAAP consistently applied with ledger and account cards and/or computer tapes and computer disks, computer printouts and computer records pertaining to the Collateral which contain information as may from time to time be requested by Bank, not modify or change its method of accounting or enter into, modify or terminate any agreement presently existing, or at any time hereafter entered into with any third party accounting firm and/or service bureau for the preparation and/or storage of Borrower's accounting records without the written consent of Bank first obtained and without said accounting firm and/or service bureau agreeing to provide information regarding the Accounts and Inventory and Borrower's financial condition to Bank; permit Bank and any of its employees, officers or agents, upon demand, during Borrower's usual business hours, or the usual business hours of third persons having control thereof, to have access to and examine all of Borrower's Books relating to the Collateral, Borrower's Indebtedness to Bank, Borrower's financial condition and the results of Borrower's operations and in connection therewith, permit Bank or any of its agents, employees or officers to copy and make extracts therefrom.

b. Borrower shall deliver to Bank within twenty (20) days after the end of each month, company-prepared combined balance sheet and profit and loss statement covering operations of Borrower and Enterprises and deliver to Bank within one hundred twenty (120) days after the end of each of Borrower's fiscal years a combined statement of the financial condition of Borrower and Enterprises for each such fiscal year, including but not limited to, a balance sheet and profit and loss statement and any other report requested by Bank relating to the Collateral and the financial condition of Borrower, prepared on an audited basis by a certified public accountant selected by Borrower and acceptable to Bank, together with a certificate signed by an authorized employee of Borrower certifying that all reports, statements, computer disk or tape files, computer printouts, computer runs, or other computer prepared information of any kind or nature relating to the foregoing or documents delivered or caused to be delivered to Bank under this subparagraph are complete, correct and thoroughly present the financial condition of Borrower and that there exists on the date of delivery to Bank no condition or event which constitutes a breach or Event of Default under this Agreement.

c. Borrower agrees to deliver such other financial data and information (including accountants/management letters, budgets, sales and cash flow projections, operating plans and transactional data and exhibits), as Bank may reasonably request from time to time.

d. In addition to the financial statements requested above, within twenty (20) days of the end of each month, Borrower agrees to provide Bank with the following schedules all in a form acceptable to Bank:

- (1) Accounts Receivable Agings;

- (2) Accounts Payable Agings;
- (3) non-enrolled payors;
- (4) Notes Receivable;
- (5) a census of enrolled students; and

(6) certificate from the chief financial officer of Borrower (or in his or her absence, a responsible senior officer of Borrower), in form and content satisfactory to the Bank, certifying, as of the date thereof (i) that no Default or Event of Default has occurred under any Loan Document which is then continuing or, if a Default or Event of Default has occurred and does continue, specifying the nature and period of existence and all actions taken or proposed to be taken by the Borrower with respect thereto, (ii) whether the Borrower is in compliance with the financial covenants contained in the Agreement and setting forth, in reasonable detail, the calculations and resultant ratios and financial tests used to assess compliance, and (iii) the Borrowing Base and Borrower's computation thereof.

e. Borrower agrees to promptly notify Bank and provide Bank with copies of the following notices within fifteen (15) days of Borrower's receipt:

- (1) The commencement of any investigation by an Accrediting Body;
- (2) Any claim of violation of standards of eligibility for Accreditation;
- (3) Any inquiry by the DOE, Western Association of Schools & Colleges or any other Accrediting Body that has Accreditation to a School; and
- (4) Evidence received from the DOE of Borrower's compliance with the DOE Composite Score.

f. Borrower agrees to deliver or cause to be delivered, by June 30th of each year, financial statements and copies of all tax returns, including all forms K-1 of each guarantor of the Indebtedness, prepared and certified as being true, correct and complete by each such guarantor.

6.18 Borrower shall maintain the following financial ratios and covenants on a consolidated and nonconsolidated basis, which shall be monitored on an annual basis, except as noted below:

- a. Debt Service Coverage Ratio of not less than 1.25:1.00, as measured as of the last day of each fiscal quarter of Borrower;
- b. a Minimum DOE Composite Score, as defined in the 34 C.F.R. §668.172, of not less than 1.50:1.00, measured as of the end of each fiscal quarter of Borrower for that portion of the current fiscal year then ending; and
- c. Profitability of not less than \$3,000,000 for each fiscal quarter, as measured on a trailing twelve month basis.

All financial covenants shall be computed in accordance with GAAP consistently applied except as otherwise specifically set forth in this Agreement. All monies due from affiliates (including officers, directors and shareholders) shall be excluded from Borrower's assets for all purposes hereunder.

6.19 Borrower shall promptly supply Bank (and cause any guarantor to supply Bank) with such other information (including tax returns) concerning its financial affairs (or that of any guarantor) as Bank may request from time to time hereafter, and shall promptly notify Bank of any material adverse change in Borrower's, financial condition and of any condition or event which constitutes a breach of or an event which constitutes an Event of Default under this Agreement.

6.20 Borrower is now and shall be at all times hereafter solvent and able to pay its debts (including trade debts) as they mature.

6.21 Borrower shall immediately and without demand reimburse Bank for all sums expended by Bank in connection with any action brought by Bank to correct any default or enforce any provision of this Agreement, including all Bank Expenses; Borrower authorizes and approves all advances and payments by Bank for items described in this Agreement as Bank Expenses.

6.22 Each warranty, representation and agreement contained in this Agreement shall automatically be deemed repeated with each advance and shall be conclusively presumed to have been relied on by Bank regardless of any investigation made or information possessed by Bank. The warranties, representations and agreements set forth herein shall be cumulative and in addition to any and all other warranties, representations and agreements which Borrower shall give, or cause to be given, to Bank, either now or hereafter.

6.23 Borrower shall keep all of its principal bank accounts with Bank and shall notify Bank immediately in writing of the existence of any other bank account, deposit account, or any other account into which money can be deposited.

6.24 Borrower shall furnish to Bank: (a) as soon as possible, but in no event later than thirty (30) days after Borrower knows or has reason to know that any reportable event with respect to any deferred compensation plan has occurred, a statement of the chief financial officer of Borrower setting forth the details concerning such reportable event and the action which Borrower proposes to take with respect thereto, together with a copy of the notice of such reportable event given to the Pension Benefit Guaranty Corporation, if a copy of such notice is available to Borrower; (b) promptly after the filing thereof with the United States Secretary of Labor or the Pension Benefit Guaranty Corporation, copies of each annual report with respect to each deferred compensation plan; (c) promptly after receipt thereof, a copy of any notice Borrower may receive from the Pension Benefit Guaranty Corporation or the Internal Revenue Service with respect to any deferred compensation plan; provided, however, this subparagraph shall not apply to notice of general application issued by the Pension Benefit Guaranty Corporation or the Internal Revenue Service; and (d) when the same is made available to participants in the deferred compensation plan, all notices and other forms of information from time to time disseminated to the participants by the administrator of the deferred compensation plan.

6.25 Borrower: (i) is now and shall at all times hereafter remain in compliance in all material respects with, and its properties, business operations and leaseholds are and hereafter will remain in compliance in all material respects with, the provisions of all federal, state, municipal and other local laws, rules, regulations and ordinances applicable to Borrower or any such subsidiary, its properties or the conduct of its business, including without limitation all federal, state and municipal laws, regulations and ordinances relating to the handling, treatment and disposal of toxic substances, wastes and hazardous material; (ii) shall maintain all necessary authorizations and permits required under all such federal, state and municipal laws, regulations and ordinances; and (iii) has not received any citations, notices, or orders of noncompliance issued under any such law, rule, regulation or ordinance, in each case to the extent that failure to so comply or the existence of such noncompliance could result in a material adverse change in the business, prospects, operations, results of operations, assets, liabilities or condition (financial or otherwise) of Borrower or any such subsidiary, or would constitute an Event of Default under this Agreement. The operations of Borrower, as applicable, are in compliance with (i) the federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., and all other consumer credit laws applicable to Borrower in connection with the advancing of student loans and (ii) all statutory and regulatory requirements for authorization to provide post-secondary education in the State of California.

6.26 Borrower warrants, represents, covenants and agrees that:

a. Each School is eligible to participate in Title IV Programs and, to Borrower's knowledge, no event has occurred which could reasonably be expected to cause any such School to cease to be eligible to participate in Title IV Programs.

b. With respect to each School, cause such School to at all times maintain eligibility and certification to participate in Title IV Programs and take such action as is necessary to ensure that Title IV funding continues to be available to such School.

c. Each School is in compliance with (i) Title IV and (ii) the provisions of the California Education Act applicable to it.

d. Each School is Accredited.

e. No School has received notice from any Accrediting Body that it has failed to meet any of such Accrediting Body's standards for Accreditation.

f. No School has been subject to any adverse action by the DOE or Western Association of Schools & Colleges or any other Accrediting Body.

- g. No School has applied for Accreditation and been denied Accreditation.
- h. No Accrediting Body has notified any School that (i) it is accelerating the date of its next accreditation review of such School, (ii) such School has been placed on special monitoring status or (iii) such Accrediting Body is instituting proceedings to withdraw such School's Accreditation
- i. Neither Borrower nor any of its Schools shall, without the Bank's prior written consent, expand into a State other than California or apply for Accreditation from an Accrediting Body other than the Accrediting Body(ies) that has(have) granted Accreditation as of the date of this Agreement.
- j. Each School shall remain in compliance at all times with the standards for Accreditation of each Accrediting Body from which it has received Accreditation.

7. EVENTS OF DEFAULT.

The occurrence of any one or more of the following events shall constitute an Event of Default by Borrower under this Agreement:

- a. If Borrower fails or neglects to perform, keep or observe any term, provision, condition, covenant, agreement, warranty or representation contained in this Agreement, or any other present or future document, instrument or agreement between Borrower and Bank;
- b. If any representation, statement, report or certificate made or delivered by Borrower, or any of its officers, employees or agents to Bank is not true and correct;
- c. If Borrower fails to pay when due and payable or declared due and payable, all or any portion of Borrower's Indebtedness (whether of principal, interest, taxes, reimbursement of Bank Expenses, or otherwise);
- d. If there is any change which, in the opinion of Bank, has resulted or could result in a material adverse effect on (i) the business, prospects, operations, results of operations, assets, liabilities or condition (financial or otherwise) of Borrower, or any subsidiary or affiliate of Borrower, or any guarantor of Borrower, (ii) the ability of Borrower, or any subsidiary or affiliate of Borrower, or any guarantor of Borrower, to perform its obligations under this Agreement, or any other present or future document, instrument or agreement between Borrower and Bank, or of Bank to enforce the Indebtedness or realize upon the Collateral, (iii) the value of the Collateral or the amount that Bank would be likely to receive (after giving consideration to delays in payment and costs of enforcement) in the liquidation of such Collateral, (iv) the validity or enforceability of this Agreement, or any other present or future document, instrument or agreement between Borrower, any subsidiary or affiliate of Borrower, or any guarantor of Borrower and Bank, or the rights and remedies of Bank hereunder or thereunder, or (v) the priority of Bank's liens with respect to the Collateral;
- e. If all or any of Borrower's assets are attached, seized, subject to a writ or distress warrant, or are levied upon, or come into the possession of any Judicial Officer or Assignee and the same are not released, discharged or bonded against within ten (10) days thereafter;
- f. If any Insolvency Proceeding is filed or commenced by or against Borrower without being dismissed within ten (10) days thereafter;
- g. If any proceeding is filed or commenced by or against Borrower for its dissolution or liquidation;
- h. If Borrower is enjoined, restrained or in any way prevented by court order from continuing to conduct all or any material part of its business affairs;
- i. If a notice of lien, levy or assessment is filed of record with respect to any or all of Borrower's assets by the United States Government, or any department, agency or instrumentality thereof, or by any state, county, municipal or other government agency, or if any taxes or debts owing at any time hereafter to any one or more of such entities becomes a lien, whether inchoate or otherwise, upon any or all of Borrower's assets and the same is not paid on the payment date thereof;
- j. If a judgment or other claim becomes a lien or encumbrance upon any or all of Borrower's assets and the same is not satisfied, dismissed or bonded against within ten (10) days thereafter;

k. If Borrower's records are prepared and kept by an outside computer service bureau at the time this Agreement is entered into or during the term of this Agreement such an agreement with an outside service bureau is entered into, and at any time thereafter, without first obtaining the written consent of Bank, Borrower terminates, modifies, amends or changes its contractual relationship with said computer service bureau or said computer service bureau fails to provide Bank with any requested information or financial data pertaining to Bank's Collateral, Borrower's financial condition or the results of Borrower's operations;

l. If Borrower permits a default in any material agreement, contract, indenture, instrument or undertaking to which Borrower is a party with any one or more third parties or by which it may be otherwise bound so as to result in an acceleration of the maturity of Borrower's indebtedness to others, whether under any such agreement, contract, indenture, instrument or undertaking or otherwise, or which default could result in a material adverse effect on the business, prospects, operations, results of operations, assets, liabilities or condition (financial or otherwise) of Borrower, or the ability of Borrower to perform its obligations under this Agreement, or any other present or future document, instrument or agreement between Borrower and Bank, or of Bank to enforce the Indebtedness or realize upon the Collateral;

m. If Borrower makes any payment on account of indebtedness which has been subordinated to Borrower's Indebtedness to Bank except as otherwise permitted under the terms of this Agreement;

n. If any misrepresentation exists now or thereafter in any warranty or representation made to Bank by any officer or director of Borrower, or if any such warranty or representation is withdrawn by any officer or director;

o. If any party subordinating its claims to that of Bank's or any guarantor of Borrower's Indebtedness dies, terminates, rescinds or revokes its subordination or guaranty, violates the terms of the subordination or guaranty, becomes insolvent, or an Insolvency Proceeding is commenced by or against any such subordinating party or guarantor;

p. Should there occur a sale, conveyance, transfer, disposition or encumbrance, either voluntary or involuntary, or should an agreement be entered into to accomplish any thereof, with respect to more than ten percent (10%) of the issued and outstanding capital stock of Borrower;

q. If any reportable event, which Bank determines constitutes grounds for the termination of any deferred compensation plan by the Pension Benefit Guaranty Corporation or for the appointment by the appropriate United States District Court of a trustee to administer any such plan, shall have occurred and be continuing thirty (30) days after written notice of such determination shall have been given to Borrower by Bank, or any such Plan shall be terminated within the meaning of Title IV of the Employment Retirement Income Security Act ("ERISA"), or a trustee shall be appointed by the appropriate United States District Court to administer any such plan, or the Pension Benefit Guaranty Corporation shall institute proceedings to terminate any plan and in case of any event described in this Section 7, the aggregate amount of Borrower's liability to the Pension Benefit Guaranty Corporation under Sections 4062, 4063 or 4064 of ERISA shall exceed five percent (5%) of Borrower's Tangible Effective Net Worth; or

r. If any School's Accreditation becomes subject to any conditions or limitations which are not acceptable to Bank in the exercise of its reasonable credit judgment.

Notwithstanding anything contained in Section 7 to the contrary, Bank shall refrain from exercising its rights and remedies and Event of Default shall thereafter not be deemed to have occurred by reason of the occurrence of any of the events set forth in Sections 7.e, 7.f or 7.i of this Agreement if, within ten (10) days from the date thereof, the same is released, discharged, dismissed, bonded against or satisfied; provided, however, if the event is the institution of Insolvency Proceedings against Borrower, Bank shall not be obligated to make advances to Borrower during such cure period.

8. BANK'S RIGHTS AND REMEDIES.

8.1 Upon the occurrence of an Event of Default by Borrower under this Agreement, Bank may, at its election, without notice of its election and without demand, do any one or more of the following, all of which are authorized by Borrower:

a. Declare Borrower's Indebtedness, whether evidenced by this Agreement, installment notes, demand notes or otherwise, immediately due and payable to Bank;

b. Cease advancing money or extending credit to, or for the benefit of Borrower under this Agreement, or any other agreement between Borrower and Bank;

c. Terminate this Agreement as to any future liability or obligation of Bank, but without affecting Bank's rights and security interests in the Collateral, and the Indebtedness of Borrower to Bank;

d. Without notice to or demand upon Borrower or any guarantor, make such payments and do such acts as Bank considers necessary or reasonable to protect its security interest in the Collateral. Borrower agrees to assemble the Collateral if Bank so requires and to make the Collateral available to Bank as Bank may designate. Borrower authorizes Bank to enter the premises where the Collateral is located, take and maintain possession of the Collateral and the premises (at no charge to Bank), or any part thereof, and to pay, purchase, contest or compromise any encumbrance, charge or lien which in the opinion of Bank appears to be prior or superior to its security interest and to pay all expenses incurred in connection therewith;

e. Without limiting Bank's rights under any security interest, Bank is hereby granted a license or other right to use, without charge, Borrower's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks and advertising matter, or any property of a similar nature as it pertains to the Collateral, in completing production of, advertising for sale and selling any Collateral and Borrower's rights under all licenses and all franchise agreements shall inure to Bank's benefit, and Bank shall have the right and power to enter into sublicense agreements with respect to all such rights with third parties on terms acceptable to Bank;

f. Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sales and sell (in the manner provided for herein) the Inventory;

g. Sell or dispose the Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including Borrower's premises) as is commercially reasonable in the opinion of Bank. It is not necessary that the Collateral be present at any such sale. At any sale or other disposition of the Collateral pursuant to this Section, Bank disclaims all warranties which would otherwise be given under the Uniform Commercial Code, including without limitation a disclaimer of any warranty relating to title, possession, quiet enjoyment or the like, and Bank may communicate these disclaimers to a purchaser at such disposition. This disclaimer of warranties will not render the sale commercially unreasonable;

h. Bank shall give notice of the disposition of the Collateral as follows:

(1) Bank shall give Borrower and each holder of a security interest in the Collateral who has filed with Bank a written request for notice, a notice in writing of the time and place of public sale, or, if the sale is a private sale or some disposition other than a public sale is to be made of the Collateral, the time on or after which the private sale or other disposition is to be made;

(2) The notice shall be personally delivered or mailed, postage prepaid, to Borrower's address appearing in this Agreement, at least ten (10) calendar days before the date fixed for the sale, or at least ten (10) calendar days before the date on or after which the private sale or other disposition is to be made, unless the Collateral is perishable or threatens to decline speedily in value. Notice to persons other than Borrower claiming an interest in the Collateral shall be sent to such addresses as have been furnished to Bank or as otherwise determined in accordance with Section 9611 of the Uniform Commercial Code; and

(3) If the sale is to be a public sale, Bank shall also give notice of the time and place by publishing a notice one time at least ten (10) calendar days before the date of the sale in a newspaper of general circulation in the county in which the sale is to be held; and

(4) Bank may credit bid and purchase at any public sale.

i. Borrower shall pay all Bank Expenses incurred in connection with Bank's enforcement and exercise of any of its rights and remedies as herein provided, whether or not suit is commenced by Bank;

j. Any deficiency which exists after disposition of the Collateral as provided above will be paid immediately by Borrower. Any excess will be returned, without interest and subject to the rights of third parties, to Borrower by Bank, or, in Bank's discretion, to any party who Bank believes, in good faith, is entitled to the excess;

k. Without constituting a retention of Collateral in satisfaction of an obligation within the meaning of Section 9620 of the Uniform Commercial Code or an action under California Code of Civil Procedure 726, apply any and all amounts

maintained by Borrower as deposit accounts (as that term is defined under Section 9102 of the Uniform Commercial Code) or other accounts that Borrower maintains with Bank against the Indebtedness;

l. The proceeds of any sale or other disposition of Collateral authorized by this Agreement shall be applied by Bank first upon all expenses authorized by the Uniform Commercial Code and all reasonable attorney fees and legal expenses incurred by Bank, whether in-house or outside counsel is used, the balance of the proceeds of the sale or other disposition shall be applied in the payment of the Indebtedness, first to interest, then to principal, then to remaining Indebtedness and the surplus, if any, shall be paid over to Borrower or to such other person(s) as may be entitled to it under applicable law. Borrower shall remain liable for any deficiency, which it shall pay to Bank immediately upon demand. Borrower agrees that Bank shall be under no obligation to accept any noncash proceeds in connection with any sale or disposition of Collateral unless failure to do so would be commercially unreasonable. If Bank agrees in its sole discretion to accept noncash proceeds (unless the failure to do so would be commercially unreasonable), Bank may ascribe any commercially reasonable value to such proceeds. Without limiting the foregoing, Bank may apply any discount factor in determining the present value of proceeds to be received in the future or may elect to apply proceeds to be received in the future only as and when such proceeds are actually received in cash by Bank; and

m. The following shall be the basis for any finder of fact's determination of the value of any Collateral which is the subject matter of a disposition giving rise to a calculation of any surplus or deficiency under Section 9615(f) of the Uniform Commercial Code: (i) The Collateral which is the subject matter of the disposition shall be valued in an "as is" condition as of the date of the disposition, without any assumption or expectation that such Collateral will be repaired or improved in any manner; (ii) the valuation shall be based upon an assumption that the transferee of such Collateral desires a resale of the Collateral for cash promptly (but no later than 30 days) following the disposition; (iii) all reasonable closing costs customarily borne by the seller in commercial sales transactions relating to property similar to such Collateral shall be deducted including, without limitation, brokerage commissions, tax prorations, attorney's fees, whether in-house or outside counsel is used, and marketing costs; (iv) the value of the Collateral which is the subject matter of the disposition shall be further discounted to account for any estimated holding costs associated with maintaining such Collateral pending sale (to the extent not accounted for in (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the value of such Collateral must be given by persons having at least 5 years experience in appraising property similar to the Collateral and who have conducted and prepared a complete written appraisal of such Collateral taking into consideration the factors set forth above. The "value" of any such Collateral shall be a factor in determining the amount of proceeds which would have been realized in a disposition to a transferee other than a secured party, a person related to a secured party or a secondary obligor under Section 96 15(f) of the Uniform Commercial Code.

8.2 In addition to any and all other rights and remedies available to Bank under or pursuant to this Agreement or any other documents, instrument or agreement contemplated hereby, Borrower acknowledges and agrees that (i) at any time following the occurrence and during the continuance of any Event of Default, and/or (ii) termination of Bank's commitment or obligation to make loans or advances or otherwise extend credit to or in favor of Borrower hereunder, in the event that and to the extent that there are any Letter of Credit Obligations outstanding at such time, upon demand of Bank, Borrower shall deliver to Bank, or cause to be delivered to Bank, cash collateral in an amount not less than such Letter of Credit Obligations, which cash collateral shall be held and retained by Bank as cash collateral for the repayment of such Letter of Credit Obligations, together with any and all other Indebtedness of Borrower to Bank remaining unpaid, and Borrower pledges to Bank and grants to Bank a continuing first priority security interest in such cash collateral so delivered to Bank. Alternatively, Borrower shall cause to be delivered to Bank an irrevocable standby letter of credit issued in favor of Bank by a bank acceptable to Bank, in its sole discretion, in an amount not less than such Letter of Credit Obligations, and upon terms acceptable to Bank, in its sole discretion.

8.3 Bank's rights and remedies under this Agreement and all other agreements shall be cumulative. Bank shall have all other rights and remedies not inconsistent herewith as provided by law or in equity. No exercise by Bank of one right or remedy shall be deemed an election, and no waiver by Bank of any default on Borrower's part shall be deemed a continuing waiver. No delay by Bank shall constitute a waiver, election or acquiescence by Bank.

9. **TAXES AND EXPENSES REGARDING BORROWER'S PROPERTY.** If Borrower fails to pay promptly when due to another person or entity, monies which Borrower is required to pay by reason of any provision in this Agreement, Bank may, but need not, pay the same and charge Borrower's loan account therefor, and Borrower shall promptly reimburse Bank. All such sums shall become additional Indebtedness owing to Bank, shall bear interest at the rate hereinabove provided, and shall be secured by all Collateral. Any payments made by Bank shall not constitute (i) an agreement by it to make similar payments in the future, or (ii) a waiver by Bank of any default under this Agreement. Bank need not inquire as to, or contest the validity of, any such expense, tax, security interest, encumbrance or lien and the receipt of the usual official V notice of the payment thereof shall be conclusive evidence that the same was validly due and owing. Such payments shall constitute Bank Expenses and additional advances to Borrower.

10. WAIVERS.

10.1 Borrower agrees that checks and other instruments received by Bank in payment or on account of Borrower's Indebtedness constitute only conditional payment until such items are actually paid to Bank and Borrower waives the right to direct the application of any and all payments at any time or times hereafter received by Bank on account of Borrower's Indebtedness and Borrower agrees that Bank shall have the continuing exclusive right to apply and reapply such payments in any manner as Bank may deem advisable, notwithstanding any entry by Bank upon its books.

10.2 Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, documents, instruments, chattel paper, and guarantees at any time held by Bank on which Borrower may in any way be liable.

10.3 Bank shall not in any way or manner be liable or responsible for (a) the safekeeping of the Inventory; (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause; (c) any diminution in the value thereof or (d) any act or default of any carrier, warehouseman, bailee, forwarding agency or other person whomsoever. All risk of loss, damage or destruction of Inventory shall be borne by Borrower.

10.4 Borrower waives the right and the right to assert a confidential relationship, if any, it may have with any accountant, accounting firm and/or service bureau or consultant in connection with any information requested by Bank pursuant to or in accordance with this Agreement, and agrees that a Bank may contact directly any such accountants, accounting firm and/or service bureau or consultant in order to obtain such information.

10.5 Reserved.

10.6 THE UNDERSIGNED AND THE BANK ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW, EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT OR THE INDEBTEDNESS.

10.7 Judicial Reference Provision.

a. In the event the Jury Trial Waiver set forth above is not enforceable, the parties elect to proceed under this Judicial Reference Provision.

b. With the exception of the items specified in clause (c), below, any controversy, dispute or claim (each, a "Claim") between the parties arising out of or relating to this Agreement, the Indebtedness or any other document, instrument or agreement between the undersigned parties (collectively in this Section, the "Comerica Documents"), will be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("CCP"), or their successor sections, which shall constitute the exclusive remedy for the resolution of any Claim, including whether the Claim is subject to the reference proceeding. Except as otherwise provided in the Comerica Documents, venue for the reference proceeding will be in the state or federal court in the county or district where the real property involved in the action, if any, is located or in the state or federal court in the county or district where venue is otherwise appropriate under applicable law (the "Court").

c. The matters that shall not be subject to a reference are the following: (i) foreclosure of any security interests in real or personal property, (ii) exercise of self-help remedies (including, without limitation, set-off), (iii) appointment of a receiver and (iv) temporary, provisional or ancillary remedies (including, without limitation, writs of attachment, writs of possession, temporary restraining orders or preliminary injunctions). This reference provision does not limit the right of any party to exercise or oppose any of the rights and remedies described in clauses (i) and (ii) or to seek or oppose from a court of competent jurisdiction any of the items described in clauses (iii) and (iv). The exercise of, or opposition to, any of those items does not waive the right of any party to a reference pursuant to this reference provision as provided herein.

d. The referee shall be a retired judge or justice selected by mutual written agreement of the parties. If the parties do not agree within ten (10) days of a written request to do so by any party, then, upon request of any party, the referee shall be selected by the Presiding Judge of the Court (or his or her representative). A request for appointment of a

referee may be heard on an ex parte or expedited basis, and the parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP § 170.6, each party shall have one peremptory challenge to the referee selected by the Presiding Judge of the Court (or his or her representative).

e. The parties agree that time is of the essence in conducting the reference proceedings. Accordingly, the referee shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within fifteen (15) days after the date of selection of the referee, (ii) if practicable, try all issues of law or fact within one hundred twenty (120) days after the date of the conference and (iii) report a statement of decision within twenty (20) days after the matter has been submitted for decision.

f. The referee will have power to expand or limit the amount and duration of discovery. The referee may set or extend discovery deadlines or cutoffs for good cause, including a party's failure to provide requested discovery for any reason whatsoever. Unless otherwise ordered based upon good cause shown, no party shall be entitled to "priority" in conducting discovery, depositions may be taken by either party upon seven (7) days written notice, and all other discovery shall be responded to within fifteen (15) days after service. All disputes relating to discovery which cannot be resolved by the parties shall be submitted to the referee whose decision shall be final and binding.

g. Except as expressly set forth herein, the referee shall determine the manner in which the reference proceeding is conducted including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the reference proceeding. All proceedings and hearings conducted before the referee, except for trial, shall be conducted without a court reporter, except that when any party so requests, a court reporter will be used at any hearing conducted before the referee, and the referee will be provided a courtesy copy of the transcript. The party making such a request shall have the obligation to arrange for and pay the court reporter. Subject to the referee's power to award costs to the prevailing party, the parties will equally share the cost of the referee and the court reporter at trial.

h. The referee shall be required to determine all issues in accordance with existing case law and the statutory laws of the State of California. The rules of evidence applicable to proceedings at law in the State of California will be applicable to the reference proceeding. The referee shall be empowered to enter equitable as well as legal relief, enter equitable orders that will be binding on the parties and rule on any motion which would be authorized in a court proceeding, including without limitation motions for summary judgment or summary adjudication. The referee shall issue a decision at the close of the reference proceeding which disposes of all claims of the parties that are the subject of the reference. Pursuant to CCP § 644, such decision shall be entered by the Court as a judgment or an order in the same manner as if the action had been tried by the Court and any such decision will be final, binding and conclusive. The parties reserve the right to appeal from the final judgment or order or from any appealable decision or order entered by the referee. The parties reserve the right to findings of fact, conclusions of laws, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted, is also to be a reference proceeding under this provision.

i. If the enabling legislation which provides for appointment of a referee is repealed (and no successor statute is enacted), any dispute between the parties that would otherwise be determined by reference procedure will be resolved and determined by arbitration. The arbitration will be conducted by a retired judge or justice, in accordance with the California Arbitration Act § 1280 through § 1294.2 of the CCP as amended from time to time. The limitations with respect to discovery set forth above shall apply to any such arbitration proceeding.

j. THE PARTIES RECOGNIZE AND AGREE THAT ALL CONTROVERSIES, DISPUTES AND CLAIMS RESOLVED UNDER THIS REFERENCE PROVISION. WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS, HIS OR HER OWN CHOICE, EACH PARTY KNOWINGLY AND VOLUNTARILY, AND FOR THE MUTUAL BENEFIT OF ALL PARTIES, AGREES THAT THIS REFERENCE PROVISION WILL APPLY TO ANY CONTROVERSY, DISPUTE OR CLAIM BETWEEN OR AMONG THEM ARISING OUT OF OR IN ANY WAY RELATED TO, THIS AGREEMENT, THE INDEBTEDNESS OR THE OTHER COMERICA DOCUMENTS.

10.8 In the event that Bank elects to waive any rights or remedies hereunder, or compliance with any of the terms hereof, or delays or fails to pursue or enforce any term, such waiver, delay or failure to pursue or enforce shall only be effective with respect to that single act and shall not be construed to affect any subsequent transactions or Bank's right to later pursue such rights and remedies.

11. ONE CONTINUING LOAN TRANSACTION. All loans and advances heretofore, now or at any time or times hereafter made by Bank to Borrower under this Agreement or any other agreement between Bank and Borrower, shall constitute one loan

secured by Bank's security interests in the Collateral and by all other security interests, liens, encumbrances heretofore, now or from time to time hereafter granted by Borrower to Bank.

Notwithstanding the above, (i) to the extent that any portion of the Indebtedness is a consumer loan, that portion shall not be secured by any deed of trust or mortgage on or other security interest in Borrower's principal dwelling which is not a purchase money security interest as to that portion, unless expressly provided to the contrary in another place, or (ii) if Borrower (or any of them) has (have) given or give(s) Bank a deed of trust or mortgage covering real property, that deed of trust or mortgage shall not secure the loan and any other Indebtedness of Borrower (or any of them), unless expressly provided to the contrary in another place.

12. **NOTICES.** Unless otherwise provided in this Agreement, all notices or demands by either party on the other relating to this Agreement shall be in writing and sent by regular United States mail, postage prepaid, properly addressed to Borrower or to Bank at the addresses stated in this Agreement, or to such other addresses as Borrower or Bank may from time to time specify to the other in writing. Requests for information made to Borrower by Bank from time to time hereunder may be made orally or in writing, at Bank's discretion.

13. **AUTHORIZATION TO DISBURSE.** Bank is hereby authorized to make loans and advances hereunder upon telephonic or other instructions received from anyone purporting to be an officer, employee, or representative of Borrower, or at the discretion of Bank if said loans and advances are necessary to meet any Indebtedness of Borrower to Bank. Bank shall have no duty to make inquiry or verify the authority of any such party, and Borrower shall hold Bank harmless from any damage, claims or liability by reason of Bank's honor of, or failure to honor, any such instructions.

14. **PAYMENTS.** Borrower hereby authorizes Bank to deduct the full amount of any interest, fees, costs, or Bank Expenses due under this Agreement and not paid or collected when due in accordance with the terms and conditions hereof from any account maintained by Borrower with Bank. Should there be insufficient funds in any such account to pay all such sums when due, the full amount of such deficiency shall be immediately due and payable by Borrower; provided, however, that Bank shall not be obligated to advance funds to cover any such payment.

15. **DESTRUCTION OF BORROWER'S DOCUMENTS.** Any documents, schedules, invoices or other papers delivered to Bank, may be destroyed or otherwise disposed of by Bank six (6) months after they are delivered to or received by Bank, unless Borrower requests, in writing, the return of the said documents, schedules, invoices or other papers and makes arrangements, at Borrower's expense, for their return.

16. **CHOICE OF LAW.** The validity of this Agreement, its construction, interpretation and enforcement, and the rights of the parties hereunder and concerning the Collateral, shall be determined according to the laws of the State of California. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated only in the state and federal courts in California.

17. **EFFECT OF AMENDMENT AND RESTATEMENT** This Agreement is intended to and does completely amend, restate, supersede and replace, without novation, the Prior Agreement; provided, however, the execution and delivery of this Agreement shall not, in any manner or circumstance, be deemed to be a novation of or to have terminated, released, extinguished, or discharged any of the Borrower's indebtedness under the Prior Agreement or any liens granted under the Prior Agreement or its related Loan Documents, all of which shall continue under and shall hereafter be evidenced and governed by this Agreement.

18. **GENERAL PROVISIONS.**

18.1 This Agreement shall be binding and deemed effective when executed by Borrower and accepted and executed by Bank at its Western Market headquarters office.

18.2 This Agreement, shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Borrower may not assign this Agreement or any rights hereunder without Bank's prior written consent and any prohibited assignment shall be absolutely void. No consent to an assignment by Bank shall release Borrower or any guarantor from their obligations to Bank. Bank may assign this Agreement and its rights and duties hereunder. Bank reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in Bank's rights and benefits hereunder. In connection therewith, Bank may disclose all documents and information which Bank now or hereafter may have relating to Borrower or Borrower's business.

18.3 Paragraph headings and paragraph numbers have been set forth herein for convenience only; unless the contrary is compelled by the context, everything contained in each paragraph applies equally to this entire Agreement. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, and

the term "including" is not limiting. The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

18.4 Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Bank or Borrower, whether under any rule of construction or otherwise; on the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto.

18.5 Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

18.6 This Agreement cannot be changed or terminated orally. This Agreement contains the entire agreement of the parties hereto and supersedes all prior agreements, understandings, representations, warranties and negotiations, if any, related to the subject matter hereof, and none of the parties shall be bound by anything not expressed in writing.

18.7 The parties intend and agree that their respective rights, duties, powers, liabilities, obligations and discretions shall be performed, carried out, discharged and exercised reasonably and in good faith.

18.8 In addition, if this Agreement is secured by a deed of trust or mortgage covering real property, then the trustor or mortgagor shall not mortgage or pledge the mortgaged premises as security for any other indebtedness or obligations. This Agreement, together with all other indebtedness secured by said deed of trust or mortgage, shall become due and payable immediately, without notice, at the option of Bank, (a) if said trustor or mortgagor shall mortgage or pledge the mortgaged premises for any other indebtedness or obligations or shall convey, assign or transfer the mortgaged premises by deed, installment sale contract or other instrument; (b) if the title to the mortgaged premises shall become vested in any other person or party in any manner whatsoever, or (c) if there is any disposition (through one or more transactions) of legal or beneficial title to a controlling interest of said trustor or mortgagor.

18.9 Each undersigned Borrower hereby agrees that it is jointly and severally, directly, and primarily liable to Bank for payment and performance in full of all duties, obligations and liabilities under this Agreement and each other document, instrument and agreement entered into by Borrower with or in favor of Bank in connection herewith, and that such liability is independent of the duties, obligations and liabilities of any other Borrower or any other guarantor of the Indebtedness, as applicable. Each reference herein to Borrower means each and every Borrower party hereto, individually and collectively, jointly and severally.


18.10 This Agreement may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement. This Agreement, together with each other document, instrument and agreement entered into with or in favor of Bank in connection herewith constitute the entire understanding among the parties hereto with respect to the subject matter hereof and, as applicable, amends and restates in full the Prior Agreement and any other agreement, written or oral, with respect thereto. Borrower ratifies and reaffirms the continuing effectiveness of all promissory notes, guaranties, security agreements, mortgages, deeds of trust, environmental agreements, and all other instruments, documents and agreements entered into in connection with the Prior Agreement that are not amended and restated in connection with this Agreement (collectively, the "Existing Separate Documents") and hereby acknowledges and agrees that any reference to the Prior Agreement set forth in any Existing Separate Document shall be deemed to be a reference to this Agreement. The proceeds this Agreement shall be deemed first applied, to the extent necessary, to repay the existing Indebtedness of Borrower to Bank under the Prior Agreement; provided, however, that the execution and delivery by the undersigned of this Agreement shall not, in any manner or circumstance, be deemed to be a novation of or to have terminated, extinguished or discharged any of the undersigned's Indebtedness evidenced by the Prior Agreement, all of which Indebtedness shall continue under and shall hereinafter be evidenced and governed by this Agreement and each other document, instrument and agreement entered into with or in favor of Bank in connection herewith and in connection with the Prior Agreement, to the extent not amended and restated in connection herewith.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Second Amended and Restated Loan and Security Agreement (Accounts and Inventory) to be executed as of the date first hereinabove written.

BANK:

COMERICA BANK
a Texas banking association

By: 
Name: DANIKA J. GRADY
Its: VICE PRESIDENT

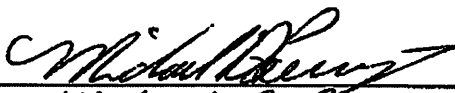
Address for Notices:
Comerica Bank
Livonia Operations Center
39200 W. Six Mile Road
Livonia, Michigan 48152
Mail Code: 7512
Attn: Credit Manager
Fax number: (734) 632-5017

With copy to:

Comerica Bank
5200 N. Palm Ste. 320
Fresno, CA 93704
Attn: Daniel Grady

BORROWER:

SAN JOAQUIN VALLEY COLLEGE, INC., a
California corporation

By: 
Name: MICHAEL O. PERRY
Its: CEO

Address for Notices:
801 South Akers
Visalia, CA 93277

Schedule 6.7

Filing No.

Filing Date

Exp. Date

Secured Party