

Hearing Date and Time: March 23, 2017 at 10:00 a.m.

Objection Deadline: March 16, 2017 at 4:00 p.m.

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Attorneys for the Debtor and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

	:	
In re:	:	Chapter 11
	:	
CHINACAST EDUCATION CORP.,	:	Case No. 16-13121(MKV)
	:	
Debtor.	:	
	:	

**NOTICE OF HEARING ON DEBTOR’S MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTOR TO OBTAIN POST-PETITION SECURED,
SUPERPRIORITY FINANCING PURSUANT TO 11 U.S.C. §§ 105, 362, AND 364,
BANKRUPTCY RULE 4001(C) AND LOCAL BANKRUPTCY RULE 4001-2**

PLEASE TAKE NOTICE that on **March 23, 2017 at 10:00 a.m.**, a hearing will be held before United States Bankruptcy Judge Mary Kay Vyskocil at the United States Bankruptcy Court, Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, Courtroom 501, New York, New York 10004-1408, or as soon thereafter as counsel can be heard, to consider Debtor’s Motion for Entry of an Order Authorizing the Debtor to Obtain Post-Petition Secured, Superpriority Financing Pursuant to 11 U.S.C. §§ 105, 362, and 364, Bankruptcy Rule 4001(c) and Local Bankruptcy Rule 4001-2 (the “Motion”).

PLEASE TAKE FURTHER NOTICE that responding papers filed by parties with legal representation shall be filed (a)(i) through the Bankruptcy Court’s electronic filing system (in accordance with General Order M-242), which may be accessed through the Internet at the Bankruptcy Court’s website: www.nysb.uscourts.gov, and (ii) in portable document format (PDF) using Adobe Exchange software for conversion; or (b) if a party is unable to file electronically, such party shall submit the objection in PDF format on a diskette in an envelope with the case name, case number, type and title of document, document number of the document of which the objection refers, and the file name on the outside of the envelope; or (c) if a party is unable to file electronically or use PDF format, such party shall submit the objection on a diskette in either Word, WordPerfect, or DOS text (ASCII) format. An objection filed by a party with no legal representation shall comply with section (a), (b) or (c), as set forth in this

paragraph, and shall be hand delivered directly to the Chambers of Hon. Mary Kay Vyskocil. The objection shall be served in accordance with General Order M-242 or by first-class mail so as to be received **no later than 4:00 p.m. on March 16, 2017** (the "Objection Deadline") by (i) Klestadt Winters Jureller Southard & Stevens, LLP, Attorneys for the Debtor and Debtor-in-Possession, 200 West 41st Street, 17th Floor, New York, New York 10036, Attn.: Tracy L. Klestadt, Esq., (ii) Schulte Roth & Zabel LLP, Attorneys for the proposed Lenders, 919 Third Avenue, New York, New York 10022, Attn.: Michael L. Cook, (iii) the Office of the United States Trustee for the Southern District of New York, 201 Varick Street, Suite 1006, New York, New York 10014, Attn.: Serene Nakano, Esq., and (iv) those parties who have filed notices of appearance in this chapter 11 case. In the event that no answering papers are filed by this date, the relief sought shall be deemed uncontroverted and the Court may enter an appropriate order.

PLEASE TAKE FURTHER NOTICE that attendance at this hearing is not mandatory.

Dated: New York, New York
February 28, 2017

KLESTADT WINTERS JURELLER
SOUTHARD & STEVENS, LLP

By: /s/ Tracy L. Klestadt

Tracy L. Klestadt

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
CHINACAST EDUCATION CORP.,	:	Case No. 16-13121(MKV)
	:	
Debtor.	:	
	:	

**DEBTOR’S MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTOR
TO OBTAIN POST-PETITION SECURED, SUPERPRIORITY FINANCING
PURSUANT TO 11 U.S.C. §§ 105, 362, AND 364(C), BANKRUPTCY RULE 4001(C)
AND LOCAL BANKRUPTCY RULE 4001-2**

Chinacast Education Corp. (“Chinacast” or “Debtor”), as debtor and debtor-in-possession in the above-captioned chapter 11 case (the “Chapter 11 Case”) hereby moves (the “Motion”) for the entry of an order (the “Financing Order”) authorizing the Debtor to obtain post-petition financing pursuant to 11 U.S.C. §§ 105, 362, and 364(c), Bankruptcy Rule 4001(c) and Local Bankruptcy Rule 4001-2 and other related relief. In support of the Motion, the Debtor refers the Court and interested parties to the Declaration of Douglas Woodrum in Support of Debtor’s Motion for Entry of an Order Authorizing the Debtor to Obtain Post-Petition Secured, Superpriority Financing Pursuant to 11 U.S.C. §§ 105, 362, and 364, Bankruptcy Rule 4001(c) and Local Bankruptcy Rule 4001-2 (the “Woodrum Declaration”) annexed hereto as **Exhibit A**, the First Day Declaration (defined below), and further respectfully represents as follows:

JURISDICTION, VENUE AND STATUTORY PREDICATES

1. This Court has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. §157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for relief requested herein are sections 105, 362, and 364(c) of the Bankruptcy Code and Rule 4001(c) of the Bankruptcy Rules and Rule 4001-2 of the Local Bankruptcy Rules.

BACKGROUND

2. On November 9, 2016 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Court and interested parties are respectfully referred to the Declaration of Douglas Woodrum Pursuant to Local Bankruptcy Rules 1007-2 and 9007-1 (the "First Day Declaration")¹ for a detailed description of the Debtor's business and events leading to the commencement of the Chapter 11 Cases.

4. The United States Trustee has not appointed an official creditors' committee in the Chapter 11 Case. No trustee or examiner has been appointed in the Chapter 11 Case.

RELIEF REQUESTED

5. By this Motion, the Debtor seeks entry of the Financing Orders, pursuant to Sections 105(a), 362, and 364(c) of Title 11, United States Code (the "Bankruptcy Code"), Rule 4001(c) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 4001-2 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the "Local Rules");

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the First Day Declaration.

(i) authorizing the Debtor to obtain senior secured postpetition superpriority financing (the “DIP Financing”) pursuant to the terms and conditions of that certain Debtor-in-Possession Term Loan Promissory Note, by and among the Debtor and each lender party thereto (collectively, the “Lenders”), and Fir Tree Inc. in its capacity as agent (in such capacity, the “Agent”) on behalf of the Lenders, attached hereto as **Exhibit B** (as amended, supplemented, restated or otherwise modified from time to time in accordance therewith, the “Note” and together with the other documents, agreements and instruments delivered pursuant thereto or executed or filed in connection therewith, all as may be reasonably requested by the Lenders (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “Loan Documents”);²

(ii) authorizing the Debtor to execute the Loan Documents, and to perform such other acts as may be necessary or desirable in connection therewith;

(iii) granting to the Agent, for itself and for the ratable benefit of the Lenders, first priority security interests in and liens on all of the Collateral (as defined below) to secure the Financing and all obligations owing and outstanding thereunder and under the Loan Documents, and the Financing Order (collectively, the “Obligations”); and

(iv) granting allowed superpriority administrative expense claims to the Agent and the Lenders;

6. As described in greater detail in the First Day Declaration, the Debtor and its stakeholders were victims of an enormous looting of the company’s assets in 2012 that left the Debtor with very limited assets, other than claims and causes of action (the “Recovery Actions”) against the wrongdoers, people associated with the wrongdoers, and other unauthorized recipients of value from the Debtor.

7. Since then, the Debtor has pursued the Recovery Actions in courts in Hong Kong, California and Delaware. Because the Recovery Actions are the only likely source of recovery for creditors and equity holders in the Debtors most affected by the looting, certain of the Debtor’s pre-petition unsecured creditors and equity holders, including the proposed Lenders, loaned money to the Debtor to prosecute the causes on an unsecured basis. As of the Petition Date, funds on hand amount to slightly more than \$85,000.

² Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Note.

PREPETITION CAPITAL STRUCTURE

8. As described in greater detail in the First Day Declaration, as of the Petition Date, the Debtor owes unsecured creditors, consisting of vendors, professionals, and those who loaned the Debtor funds to prosecute the Recovery Actions, approximately \$22 million in the aggregate. In addition, Jayhawk Private Equity Fund II on behalf of a Certified Class has a money judgment in the amount of \$65,800,000 against the Debtor arising out of the Debtor's sale of its securities.

9. As of the Petition Date, the Debtor had no secured creditors. As such, its assets, *i.e.*, the Recovery Actions, are unencumbered.

PROPOSED DIP FINANCING AND USE OF PROCEEDS

A. The Need for DIP Financing.

10. The Debtor desires to continue prosecuting the Recovery Actions in Hong Kong, California and Delaware. The attorneys representing the Debtor in the Recovery Actions in the United States are engaged on a contingent fee basis. The Debtor's counsel in Hong Kong, Norton Rose Fulbright Hong Kong ("Norton Rose"), however, is prohibited by applicable law from representing clients on a contingent fee basis. As of the Petition Date, Norton Rose was owed \$474,215.59 (the "Norton Rose Prepetition Claim"). The Debtor and Norton Rose have been in constant negotiations since the Petition Date concerning the status of the Norton Rose Prepetition Claim, the treatment of the Norton Rose Prepetition Claim in a forthcoming Chapter 11 plan, and the terms on which Norton Rose was willing to continue its work in connection with the Recovery Actions. To that end, and as described in the *Debtor's Motion for Entry of an Order Authorizing and Approving Assumption of Engagement Agreements Between the Debtor and Norton Rose Fulbright Hong Kong* (the "Norton Rose Assumption Motion") and the *Debtor's Application for Entry of an Order Authorizing the Employment and Retention of Norton Rose Fulbright Hong Kong as Special Litigation Counsel for the Debtor and Debtor-in-Possession*

Nunc Pro Tunc to the Petition Date (the “Norton Rose Retention Application”), filed contemporaneously herewith, the Debtor and Norton Rose have agreed, subject to Court approval, that (a) Norton Rose will accept a cash payment of \$150,000 USD (the “Norton Rose Cure Cost”) to cure defaults under the Engagement Agreements (as defined in the Norton Rose Assumption Motion), while retaining the balance of the Norton Rose Prepetition Claim to be treated as a general unsecured claim in a forthcoming Chapter 11 plan; and (b) the Debtor will seek to retain Norton Rose as special litigation counsel to the Debtor pursuant to section 327(e) of the Bankruptcy Code *nunc pro tunc* to the Petition Date. Norton Rose will in exchange continue its invaluable efforts in the Recovery Actions Pending in Hong Kong.

11. In addition, the Debtor has determined that a prompt exit from Chapter 11 is necessary and is in the best interests of the Debtor, its creditors and all other stakeholders.

12. In order to pay the Norton Rose Cure Cost, and to pay other anticipated administrative expenses that must be satisfied to confirm a Chapter 11 plan, the Debtor solicited interest from certain of the Debtor’s pre-petition creditors that had previously financed the Recovery Actions in connection with a post-petition financing for the Debtor. The Lenders expressed an interest in loaning the required funds to the Debtor on a senior secured, superpriority basis, on the terms and conditions set forth in the Note.

13. Given the Debtor’s financial condition, capital structure and available collateral, the Debtor has inadequate funds to pay the Cure Cost and other administrative expenses required to be satisfied in order to confirm a Chapter 11 plan under section 1129(a) of the Bankruptcy Code, and is unable to obtain unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense.

14. The Lenders are willing to provide the DIP Financing pursuant to section 364(c)(2) of the Bankruptcy Code secured by first priority liens and security interests upon the property described in the Note, including the Recovery Actions, and provided that the Lenders be granted superpriority claims with priority over any and all administrative expenses of the kinds specified in Sections 503(b) and 507(b) of the Bankruptcy Code pursuant to section 364(c)(1) of the Bankruptcy Code (other than the carve-out).

15. Given the nature of the collateral that the Debtor has available, the uncertainty and delay in the ability to monetize the collateral, and the general financial condition of the Debtor, the Debtor believes that it would not be able to obtain post-petition financing from any other lenders or on more favorable terms.

**B. The Economic Terms of the Postpetition Financing;
DIP Liens and Superpriority Claim**

16. Under the proposed Loan Documents, the Lenders will extend credit through the Agent up to the full amount of the DIP Financing, \$324,000.00. The interest rate will be 20% per annum based upon a 360-day year, and is payable in kind by capitalizing accrued interest and adding it to the principal balance of the DIP Financing. This rate is consistent with financing obtained by the Debtor prior to the Petition Date to pay for the Recovery Actions.

17. The proceeds of the DIP Financing will be used by the Debtor for: (i) to pay the Norton Rose Cure Cost; and (ii) the costs and expenses associated with this Chapter 11 Case, including the fees, costs, expenses and disbursements of professionals retained by the Debtor, and other bankruptcy-related costs as allowed by the Court, including amounts payable pursuant to 28 U.S.C. § 1930(a)(6) and any fees payable to the Clerk of the Bankruptcy Court.

Concise Statement of the DIP Financing Terms³

Borrower	ChinaCast Education Corporation
Lenders	Columbia Pacific Opportunity Fund, L.P., Fir Tree Capital Opportunity Master Fund, LP, Fir Tree Value Master Fund, L.P., and MRMP Managers LLC
Agent	Fir Tree Inc.
<p>Grant of Priority or a Lien on Property of the Estate</p> <p><i>Bankruptcy Rule 4001(c)(1)(B)(i)</i></p>	<p><u>DIP Liens</u>: To secure the Obligations, the Agent, on behalf of itself and the Lenders, is granted valid and fully perfected, first priority liens upon and senior security interests (collectively, the “<u>DIP Liens</u>”) in all of the property, assets or interests in property or assets of the Debtor, of any kind or nature whatsoever, real or personal, now existing or hereafter acquired or created, including, without limitation, all property of the estate of the Debtor, including, without limitation, all commercial tort claims and all Avoidance Actions and Recovery Actions and the proceeds thereof, and all cash and non-cash proceeds, and profits of any of the collateral described above (collectively, the “<u>Collateral</u>”), subject only to the Carve-Out.</p> <p><u>See Financing Order ¶ 6; Note ¶ 12(a).</u></p> <p><u>Superpriority Administrative Expense Claim.</u> The Agent, on behalf of and for the benefit of itself and the Lenders, is granted an allowed superpriority administrative expense claim (the “DIP Superpriority Claim”) pursuant to section 364(c)(1) of the Bankruptcy Code in this case and in any successor chapter 7 case under the Bankruptcy Code for all Obligations with priority, except as set forth below, over any and all other claims against the Debtor, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kinds specified in or arising or ordered under sections 105(a), 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 546(c), 546(d), 726, 1113, and 1114 and any other provision of the Bankruptcy Code, subordinate only to</p>

³ The terms and conditions set forth herein are qualified in their entirety by reference to the provisions of the Loan Documents. The description of the terms of the Loan Documents set forth in this Motion is provided for the convenience of the Court and the parties-in-interest. In the event of any inconsistency between the description of the terms of the Loan Documents contained in this Motion and the actual Loan Documents, the terms of the Loan Documents shall govern. Capitalized terms not defined in this concise summary shall have the meaning ascribed to them in the Loan Documents.

	<p>payment of the Carve-Out expenses.</p> <p><u>See Financing Order ¶ 9; Note ¶ 12(b)(ii).</u></p>
<p>Adequate Protection or Priority for Claim that arose prior to Petition Date</p> <p><i>Bankruptcy Rule 4001(c)(1)(B)(ii)</i></p>	<p>Not Applicable</p>
<p>Determination of validity, enforceability, priority or amount of Claim that arose prior to the Petition Date</p> <p><i>Bankruptcy Rule 4001(c)(1)(B)(iii)</i></p>	<p>Not Applicable</p>
<p>Waiver or modification of Code provisions or rules related to automatic stay</p> <p><i>Bankruptcy Rule 4001(c)(1)(B)(iv)</i></p>	<p>Yes.</p> <p><u>See Financing Order ¶ 13; Note ¶ 17.</u></p>
<p>Waiver or modification of right to file a plan, seek extension of exclusive periods, use cash collateral or request authority to obtain financing</p> <p><i>Bankruptcy Rule 4001(c)(1)(B)(v)</i></p>	<p>None.</p>
<p>Establishment of deadline for filing plan, approval of disclosure statement, a hearing on confirmation or entry of a confirmation order</p> <p><i>Bankruptcy Rule 4001(c)(1)(B)(vi)</i></p>	<p>Deadline to confirm plan of May 3, 2017, subject to extension on agreement between Debtor and Lenders.</p> <p><u>See Note ¶ 19, definition of “Case Milestone Target Date.”</u></p>
<p>Waiver or modification of applicable nonbankruptcy law relating to perfection of lien or on the foreclosure or other enforcement of lien</p> <p><i>Bankruptcy Rule 4001(c)(1)(B)(vii)</i></p>	<p>None.</p>
<p>Release, waiver or limitation on any claim belonging to estate</p> <p><i>Bankruptcy Rule 4001(c)(1)(B)(viii)</i></p>	<p>None.</p>
<p>Indemnification of any entity</p> <p><i>Bankruptcy Rule 4001(c)(1)(B)(ix)</i></p>	<p>The Debtor shall indemnify and hold harmless the Agent and each of the Lenders and each of their respective affiliates, members, officers, directors, employees, attorneys, agents and representatives (each, an "<u>Indemnified Person</u>"), from and against any and all suits, actions, proceedings, claims, damages, losses,</p>

	<p>liabilities and expenses (including reasonable attorneys' fees and disbursements and other costs of investigation or defense, including those incurred upon any appeal) that may be instituted or asserted against or incurred by any such Indemnified Person as the result of credit having been extended, suspended or terminated under this Note and the other Loan Documents.</p> <p><u>See Note ¶ 9.</u></p>
<p>Release, waiver or limitation of any right under section 506(c)</p> <p><i>Bankruptcy Rule 4001(c)(1)(B)(x)</i></p>	<p>None.</p>
<p>The granting of a lien on any claim or cause of action arising under sections 544, 545, 547, 548, 549, 553(b), 723(a) or 724(a)</p> <p><i>Bankruptcy Rule 4001(c)(1)(B)(xi)</i></p>	<p>Yes. <u>See</u> Financing Order ¶ 6; Note ¶ 12(a)(i).</p>
<p>The amount of credit the Debtor seeks to obtain</p> <p><i>Local Bankruptcy Rule 4001-2(a)(1)</i></p>	<p>\$324,000. <u>See</u> Financing Order, Opening Paragraph; Note Opening Paragraph.</p>
<p>Material conditions to closing and borrowing; budget</p> <p><i>Local Bankruptcy Rule 4001-2(a)(2)</i></p>	<p>(i) The Borrower, the Lenders and the Agent shall have duly executed and delivered the Note;</p> <p>(ii) The Bankruptcy Court shall have entered the Financing Order, and the Financing Order shall not have been vacated, reversed, modified or amended, and no appeal of any such order shall have been timely filed or a stay of such order pending appeal shall be presently effective;</p> <p>(iii) Any payments to be made on the Closing Date that require approval of the Bankruptcy Court shall have been approved by an order of the Bankruptcy Court in form and substance satisfactory to the Agent and each Lender; and</p> <p>(iv) Others set forth in the Note.</p> <p><u>See Note ¶ 2.</u></p>
<p>Pricing and economic terms; fees; costs and expenses of Lenders</p>	<p><u>Interest</u>: 20% Interest Paid in Kind. <u>See</u> Note ¶ 19, definition of "Interest Rate".</p>

<p><i>Local Bankruptcy Rule 4001-2(a)(3)</i></p>	<p><u>DIP Financing Fee</u>: None</p> <p><u>Fees of Lenders’ Professionals</u>: See Note ¶¶ 2(a)(3), 21(b).</p>
<p>Effect on existing liens</p> <p><i>Local Bankruptcy Rule 4001-2(a)(4)</i></p>	<p>Not Applicable.</p>
<p>Carve-outs from liens or super priorities</p> <p><i>Local Bankruptcy Rule 4001-2(a)(5)</i></p>	<p>Carve-out for Chapter 7 trustee in the amount of \$10,000; carve-out for fees due to the Clerk of the Court and the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) plus interest pursuant to 31 U.S.C. § 3717.</p> <p><u>See Financing Order ¶ 11; Note ¶ 12(b).</u></p>
<p>Cross-collateralization</p> <p><i>Local Bankruptcy Rule 4001-2(a)(6)</i></p>	<p>None.</p>
<p>Roll-up</p> <p><i>Local Bankruptcy Rule 4001-2(a)(7)</i></p>	<p>None.</p>
<p>Limitation on Court power or discretion of would interfere with exercise of fiduciary duties of Debtor, Creditors’ committee or other fiduciary</p> <p><i>Local Bankruptcy Rule 4001-2(a)(8)</i></p>	<p>None.</p>
<p>Limitation on lender’s obligation to fund certain activity of Debtor or Creditors’ committee</p> <p><i>Local Bankruptcy Rule 4001-2(a)(9)</i></p>	<p>None.</p>
<p>Termination and Default Provisions</p> <p><i>Local Bankruptcy Rule 4001-2(a)(10)</i></p>	<p>(i) The Borrower (a) shall fail to make any payment of principal or interest on, or fees owing in respect of the Loan or any of the other Obligations when due and payable, or (b) shall fail to pay or reimburse the Agent or any Lender for any expense reimbursable under the Note;</p> <p>(ii) The Case Milestone shall not be achieved by the Case Milestone Target Date;</p> <p>(iii) The Debtor shall bring a motion in the Chapter 11 Case (or fail to contest in good faith a motion brought by any other Person): (a) to obtain financing from any Person other than Lenders under Section 364(c) or</p>

	<p>364(d) of the Bankruptcy Code; (b) to grant any Lien other than Permitted Encumbrances upon or affecting any Collateral; (c) to recover from any portion of the Collateral any costs or expenses of preserving or disposing of such Collateral under Section 506(c) of the Bankruptcy Code; or (d) to authorize any other action or actions adverse to the Agent or Lenders, or their rights and remedies hereunder or their interests in the Collateral, that would, individually or in the aggregate, have a Material Adverse Effect;</p> <p>(iv) The entry by the Bankruptcy Court of an order authorizing the appointment of an interim or permanent trustee in the Chapter 11 Case or the appointment of an examiner in the Chapter 11 Case with expanded powers to operate or manage the financial affairs, business, or reorganization of the Borrower; and</p> <p>(v) others set forth in the Note.</p> <p><u>See Note ¶ 17.</u></p>
Change of Control Provisions <i>Local Bankruptcy Rule 4001-2(a)(11)</i>	None.
Deadline for sale of property of estate <i>Local Bankruptcy Rule 4001-2(a)(12)</i>	None.
Provision affecting Debtor’s right to repay the financing in full <i>Local Bankruptcy Rule 4001-2(a)(13)</i>	Prepayment Fee. <u>See Note ¶ 19</u> , definition of “Prepayment Fee”.
Joint liability of debtors in jointly administered cases <i>Local Bankruptcy Rule 4001-2(a)(14)</i>	Not Applicable.
Funding of non-debtor affiliates with proceeds of DIP Financing <i>Local Bankruptcy Rule 4001-2(a)(15)</i>	Not Applicable.

BASIS FOR RELIEF REQUESTED

18. Section 364 of the Bankruptcy Code provides, in relevant part, as follows:

(b) The court, after notice and a hearing, may authorize the trustee to obtain unsecured credit and incur unsecured debt other than under subsection (a) of this

section, allowable under section 503(b)(1) of this title as an administrative expense.

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expenses, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

19. Thus, section 364 of the Bankruptcy Code distinguishes among (a) obtaining unsecured credit in the ordinary course of business, (b) obtaining unsecured credit out of the ordinary course of business, and (c) obtaining credit with specialized priority or security. If a debtor in possession cannot obtain post-petition credit on an unsecured basis, the court may authorize the debtor to obtain credit or incur debt, repayment of which is entitled to superpriority administrative expense status or is secured by a lien on unencumbered property, a junior lien on encumbered property, or a combination of these protections. 11 U.S.C. § 364(c).

**The DIP Financing Should be Approved Under
Section 364 of the Bankruptcy Code**

20. The statutory requirement for obtaining postpetition credit under Section 364(c) is a finding, made after notice and a hearing, that the debtor in possession is “unable to obtain unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense.” 11 U.S.C. § 364(c). See e.g., In re Photo Promotion Assocs., 89 B.R. 328, 333 (Bankr. S.D.N.Y. 1988) (Section 364(c) financing is appropriate when the debtor in possession is unable to obtain unsecured credit allowable as an ordinary administrative claim.)

21. In these circumstances, “[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” Bray v. Shenandoah Fed. Sav.

& Loan Assn. (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4th Cir. 1986); see also In re 495 Cent. Park Ave. Corp., 136 B.R. 626, 630 (Bankr. S.D.N.Y. 1992). A debtor need only demonstrate “a good faith effort that credit was not available without” the protections of section 364(c) and 364(d). See e.g. In re Snowshoe, 789 F.2d. at 1088. When there are few lenders likely, able, or willing to extend the necessary credit to the debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” In re Sky Valley, Inc., 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), aff’d sub nom, Anchor Sav. Bank FSB v. Sky Valley, Inc., 99 B.R. 117,120 n.4 (N.D. Ga. 1989).

22. As described in herein and in the Woodrum Declaration, the Debtor has concluded after appropriate analysis that the Lenders’ proposal was the best, and only viable alternative available to it for post-petition financing required to facilitate an exit for Chapter 11 Case. Post-petition financing cannot realistically be procured on an unsecured basis. Negotiations with the Lenders have been arms’ length and conducted on a good faith basis. The Lenders are only willing to extend post-petition financing on the terms outlined above, including the additional protections of liens on the Collateral subject only to the Carve-Out.

23. For the reasons described in the First Day Declaration and herein, conventional financing is not available to the Debtor. The Debtor has historically obtained credit from its stakeholders that were most harmed by the looting of the Debtor’s assets on an unsecured basis. However, in the context of the Chapter 11 Case, and given that the proposed Lenders are a subset of those who had previously funded the Debtor’s Recovery Actions, the Lenders require that the DIP Financing be on a senior secured, superpriority basis. Under the circumstances, the Debtor believes that this request is a reasonable one.

**The DIP Financing is Necessary to Preserve the
Assets of the Debtor's Estate**

24. The Debtor's need for the DIP Financing is readily apparent. As described above and in the First Day Declaration, the Debtor's only significant assets are the Recovery Actions. If the Recovery Actions are not prosecuted, particularly those in Hong Kong, the likelihood of recovery for unsecured creditors and other stakeholders is low. As described above, almost one-half of the proposed DIP Financing is to pay the Norton Rose Cure Cost. The role of Norton Rose in the Recovery Actions is essential given the long-term involvement of Norton Rose in the Recovery Actions and its experience in litigating matters such as the Recovery Actions in the Hong Kong Court. The balance of the proposed DIP Financing will be used to pay administrative expenses in the Chapter 11 Case as and when allowed that are required to be satisfied to confirm a forthcoming Chapter 11 plan under section 1129 of the Bankruptcy Code. The Debtor therefore submits that the DIP Financing is clearly necessary and in the best interests of the Debtor's estate.

**The Terms of the DIP Financing are Fair, Reasonable and Appropriate
and Represent the Sound Exercise of Business Judgment**

25. In the Debtor's business judgment, the DIP Financing was the best, and only financing option available under the circumstances of the Chapter 11 Case. The proposed terms of the DIP Financing were negotiated in good faith and at arms' length among the parties. They are fair, reasonable, and adequate in that the terms do not prejudice the powers and rights that the Bankruptcy Code confers for the benefit of all creditors, and they do not abridge the rights of other parties in interest. As contemplated by the policies underlying the Bankruptcy Code, the purpose of the DIP Financing is to enable the Debtor to maintain and maximize the value of its estate while formulating a confirmable plan under Chapter 11 of the Bankruptcy Code. See generally, In re First S. Sav. Assn., 820 F.2d 700, 710-15 (5th Cir. 1987).

26. Bankruptcy courts routinely defer to the debtor's business judgment on most business decisions, including the decision to borrow money. In re Lifeguard Indus., Inc., 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983) (Business judgments should be left to the board room and not to this Court.). See also, In re Curlew Valley Assocs., 14 B.R. 506, 511-14 (Bankr. D. Utah 1981) (In general, a bankruptcy court should defer to a debtor-in-possession's business judgment regarding the need for and proposed use of funds, unless such decision is arbitrary and capricious). Courts generally will not second-guess a debtor in possession's business decisions when those decisions involve "a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the Code." Curlew Valley, 14 B.R. at 513-14 (footnotes omitted).

27. The Debtor submits that it has exercised its sound business judgment in determining the merits and necessity of the DIP Financing and has aptly demonstrated that its terms are fair and reasonable and are in the best interests of the Debtor's estate. Accordingly, the Debtor should be granted the requested relief to borrow funds from the Lenders on a senior secured, superpriority basis, pursuant to sections 364(c) of the Bankruptcy Code.

Modification of the Automatic Stay is Warranted

28. As set forth more specifically in the Financing Order, the proposed DIP Financing contemplates a modification of the automatic stay pursuant to Section 362 of the Bankruptcy Code to permit the Lenders, in their sole discretion, (a) to file financing statements or other documents to evidence their respective security interests under the DIP Financing, and the Financing Order, (b) subject to certain notice requirements, to execute upon such security interests or exercise other remedies under the Loan Documents following an Event of Default under, or other termination of, the DIP Financing, and (c) to take other actions required or permitted by the Loan Documents.

NOTICE

29. No trustee, examiner or creditors' committee has been appointed in this Chapter 11 Case. Notice of this Motion will be given to (a) United States Trustee; (b) the holders of the 20 largest unsecured claims; and (c) all other parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that no other notice need be given.

NO PRIOR APPLICATION

30. No previous application for the relief sought herein has been made to this or to any other court.

WHEREFORE, the Debtor respectfully request that the Court (a) enter the Financing Order, substantially in the form annexed hereto as **Exhibit C** (i) authorizing the Debtor to obtain the DIP Financing; (ii) granting the DIP Liens and Superpriority Claims; and (iii) modifying the automatic stay to allow certain actions with respect to the Debtor's postpetition indebtedness; and (b) grant such other and further relief as the Court may deem just and proper.

Dated: New York, New York
February 28, 2017

KLESTADT WINTERS JURELLER
SOUTHARD & STEVENS, LLP

By: /s/ Tracy L. Klestadt

Tracy L. Klestadt
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200 West 41st Street, 17th Floor
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jcorneau@klestadt.com

Attorneys for the Debtor and Debtor-in-Possession

Exhibit A

Woodrum Declaration

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: : Chapter 11
: :
CHINACAST EDUCATION CORP., : Case No. 16-13121(MKV)
: :
: :
Debtor. :
: :

**DECLARATION OF DOUGLAS WOODRUM IN SUPPORT OF DEBTOR'S
MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTOR TO
OBTAIN POST-PETITION SECURED, SUPERPRIORITY FINANCING
PURSUANT TO 11 U.S.C. §§ 105, 362, AND 364, BANKRUPTCY RULE
4001(C) AND LOCAL BANKRUPTCY RULE 4001-2**

Douglas Woodrum, declares as follows pursuant to 28 U.S.C. § 1746:

1. I am the Chief Financial Officer and a member of the Board of Directors of ChinaCast Education Corp. ("ChinaCast" "Debtor").

2. I submit this declaration in support of the Debtor's Motion for Entry of an Order Authorizing the Debtor to Obtain Post-Petition Secured, Superpriority Financing Pursuant to 11 U.S.C. §§ 105, 362, and 364, Bankruptcy Rule 4001(c) and Local Bankruptcy Rule 4001-2 (the "DIP Financing Motion").

3. I am familiar with the business and financial condition of the Debtor. In making this Declaration, I am relying on my own personal knowledge of the Debtor's assets and liabilities and personal familiarity with the Debtor's pre-petition debt and financing activities.

4. If I were called to testify, I would testify competently to the facts set forth in this Declaration and I am authorized to submit this Declaration on behalf of the Debtor.

The Need for the DIP Financing

5. By the DIP Financing Motion, the Debtor seeks authority to obtain post-petition, secured, superpriority financing from the Lenders¹ in the amount of \$324,000 (the “DIP Financing”). As set forth in the DIP Financing Motion, the DIP Financing is required to pay (a) the Norton Rose Cure Cost; and (b) the expected administrative costs associated with the administration of the Chapter 11 Case that must be satisfied in order to confirm a forthcoming plan under Chapter 11 of the Bankruptcy Code.

6. Other than the Norton Rose Cure Cost, which was the product of substantial arms-length negotiations between the Debtor and Norton Rose, the amount of the DIP Financing is a good-faith estimate of professional fees (as and when allowed), fees that are or will be owed to the United States Trustee pursuant to 28 U.S.C. § 1930, and miscellaneous other administrative expenses that have accrued or are expected to accrue prior to confirmation of a forthcoming plan under Chapter 11 of the Bankruptcy Code, after taking into account the modest amount of cash on hand.

7. If the Debtor does not obtain authorization to obtain the DIP Financing from the DIP Lenders, the Debtor’s ability to exit from Chapter 11 in the short or long term is questionable. The Debtor’s modest cash on hand, amounting to slightly more than \$85,000, is insufficient to pay the Norton Rose Cure Cost, and is inadequate to pay the other administrative expenses that have been incurred and are expected to be incurred by the time of confirmation of a forthcoming plan under Chapter 11 of the Bankruptcy Code.

The Terms of the DIP Financing

8. As described in greater detail in the First Day Declaration, the Debtor and all of its stakeholders are victims of a massive looting perpetrated by the Debtor’s former Chairman

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the DIP Financing Motion.

and CEO and others in concert with him. As a result of the looting, the Debtor was left with very limited assets, consisting primarily of the Recovery Actions. As such, it has very limited collateral to pledge as security for the DIP Financing. Further, although the Debtor believes that the Recovery Actions have significant merit, it will take significant time to litigate the Recovery Actions to judgment, and even then, time to collect on such judgments from the defendants therein. As with any litigation, there is risk in the Recovery Actions, and in collectability.

9. Given the Debtor's financial condition and the nature of the collateral the Debtor has available to pledge to secure any financing, the Debtor does not have access to conventional financing from commercial lenders.

10. Prior to the Petition Date, the Debtor had financed the Recovery Actions by borrowing funds from creditors and equity owners of the Debtor pursuant to various types of litigation funding agreements, including unsecured promissory notes and an instrument called a "Contingent Value Rights" agreement, pursuant to which counterparties would receive a multiple of the amount loaned to the Debtor on account of a particular Recovery Action, payment of which was contingent on the recovery of money in such Recovery Action. These litigation funding agreements had an effective rate of interest of approximately 20-24%, which took into account, among other things, the risk inherent in the Recovery Actions and the likely delay in repayment.

11. During the period following the looting of the Debtor, although somewhat variable, the same core parties were the pre-petition funders of the Debtor's Recovery Actions. The Lenders were among those parties.

12. Against this backdrop, the Lenders' proposal for DIP Financing is reasonable. The rate is substantially similar to the pre-petition litigation funding agreements from similar

parties. That the Lenders are requiring senior liens and superpriority claims is also reasonable considering that the Debtor is now in Chapter 11 and that the Lenders are a small subset of the Debtor's pre-petition lenders. Moreover, I am informed that such provisions are customary in post-petition financings in Chapter 11.

13. Although I did not canvas the market for alternative sources of financing, based on the facts herein and the Debtor's history in raising funds, it is my belief that no alternative source of financing on superior terms exists.

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I declare under penalty of perjury that the foregoing is true and correct.

Dated: Mill Valley, California
February 28, 2017

/s/ Douglas Woodrum
Douglas Woodrum
Chief Financial Officer

Exhibit B

Note

**DEBTOR-IN-POSSESSION
TERM LOAN PROMISSORY NOTE**

\$324,000.00

New York, New York
Dated as of March [___], 2017

On November 9, 2016 (the "Petition Date"), ChinaCast Education Corporation ("ChinaCast" or the "Borrower"), filed a voluntary petition for liquidation (the "Chapter 11 Case") under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The Borrower is also sometimes referred to herein as the "Debtor". The Borrower has requested that the lenders party hereto (each a "Lender" and collectively, the "Lenders") make a term loan on the date hereof in the aggregate original principal amount of \$324,000 (the original principal amount of such term loan is referred to herein as the "Funded Loan" and the Funded Loan, as increased by the addition thereto of PIK Interest (as hereinafter defined), is referred to herein as the "Loan") evidenced by this Debtor-in-Possession Term Loan Promissory Note (as the same may be amended, modified, renewed, restated or supplemented from time to time, this "Note"). The Lenders have appointed Fir Tree Inc. as administrative agent for the Lenders (together with any successor in such capacity, the "Agent") pursuant to Section 22 of this Note. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in Section 19 of this Note.

1. Term Loan.

(a) Subject to the terms and conditions hereof, the Lenders agree, severally and not jointly and severally, to make the Funded Loan available to the Borrower on the Funding Date. Each Lender shall fund a portion of the Funded Loan in accordance with its Pro Rata Share thereof. Any portion of the Loan that is repaid or prepaid may not be reborrowed. Subject to Section 2 of this Note and the other conditions set forth herein, the Funded Loan shall be made on notice by the Borrower to the Agent (which shall provide a copy to the Lenders) at the address specified in Section 21(a) hereof (the "Notice of Borrowing"). The Notice of Borrowing must be given no later than 11:00 a.m. (New York time) on the date that is at least two (2) Business Days prior to the proposed Funding Date. The Notice of Borrowing shall be given in writing (by electronic transmission or overnight courier) specifying (i) the amount of the Funded Loan, (ii) the proposed Funding Date, which must be a Business Day, and (iii) such other information as may be reasonably required by the Agent or any Lender. Upon receipt of a Notice of Borrowing, subject to the satisfaction of the conditions set forth in this Note, the Lenders shall simultaneously and proportionately to their respective Pro Rata Shares, make the proceeds of the Funded Loan available to the Borrower on the applicable date of funding of the Funded Loan (the "Funding Date") by transferring immediately available funds equal to such proceeds to the Borrower's Designated Account; it being understood that no Lender shall be responsible for any default by any other Lender in that other Lender's obligation to make the Funded Loan requested hereunder, nor shall any Lender's Pro Rata Share be increased or decreased as a result of the default by any other Lender in that other Lender's obligation to fund a portion of the Funded Loan, and each Lender shall be obligated to make the portion of the Funded Loan required to be made by it by the term of this Note regardless of the failure by any

other Lender. The entire unpaid balance of the Loan, inclusive of PIK Interest, all accrued interest thereon, and all other Obligations shall be immediately due and payable in full in immediately available funds on the Maturity Date.

(b) The Agent and each Lender shall be entitled to rely upon, and shall be fully protected in relying upon, the Notice of Borrowing or similar notice believed by it to be genuine. The Agent and each Lender may assume that each Person executing and delivering any such notice was duly authorized, unless the responsible individual acting thereon has actual knowledge to the contrary.

(c) The Borrower shall utilize the proceeds of the Loan (i) on the Funding Date and (ii) thereafter, with the agreement of the Lenders and subject to approval of the Bankruptcy Court, to pay certain legal expenses incurred by the Debtor during the Chapter 11 Case.

2. Certain Conditions to the Loan. The Lenders shall not be obligated to fund the Loan, as of the date thereof:

(a) unless each of the following conditions precedent shall have been satisfied in a manner reasonably satisfactory to the Agent and the Lenders:

(1) the Borrower, the Lenders and the Agent shall have duly executed and delivered this Note;

(2) the Borrower shall have delivered corporate resolutions, incumbency certificates and similar documents, in form and substance satisfactory to Lenders with respect to this Note and the other Loan Documents and the transactions contemplated hereby and thereby;

(3) the Borrower shall have duly paid any and all fees, costs and expenses then payable hereunder or under any other Loan Document (including, without limitation, the fees, costs and expenses of counsel to the Agent and each Lender), or such amounts shall be paid from the proceeds of the Funded Loan, and shall have fully performed all of its obligations hereunder or under any other Loan Document;

(4) (i) the Bankruptcy Court shall have entered the Financing Order, and (ii) the Financing Order shall not have been vacated, reversed, modified or amended, and no appeal of any such order shall have been timely filed or a stay of such order pending appeal shall be presently effective;

(5) any payments to be made on the Closing Date that require approval of the Bankruptcy Court shall have been approved by an order of the Bankruptcy Court in form and substance satisfactory to the Agent and each Lender;

(6) the Agent and the Lenders shall have reviewed and be satisfied with the Borrower's corporate records, and documents from public officials and officers' certificates shall have been delivered, and the Agent and the Lenders are

satisfied with due diligence, including but not limited to lien searches and legal review, as to the Borrower;

(7) no event or circumstance shall have occurred since the Petition Date that could reasonably be expected to have a Material Adverse Effect, as determined by the Agent and the Lenders in their sole discretion;

(8) no Bankruptcy Court order has been entered (i) authorizing the Borrower to obtain financing or credit pursuant to section 364 of the Bankruptcy Code from any Person other than the Lenders secured by a security interest in any of the Collateral or administrative claim; or (ii) providing adequate protection to any Person under sections 361 through 364 of the Bankruptcy Code by granting a security interest in any of the Collateral or an administrative claim; and

(9) all pleadings filed by the Debtor that could affect the Facility, the Collateral or the rights or remedies of the Lenders and are of the types to be agreed, and all orders entered by the Bankruptcy Court, shall be in form and substance acceptable to the Lenders;

(b) if any representation or warranty by the Borrower contained herein or in any other Loan Document shall be untrue or incorrect as of such date in any material respect, except to the extent that such representation or warranty expressly relates to an earlier date;

(c) except as occasioned by the commencement of the Chapter 11 Case and the actions, proceedings, investigations and other matters related thereto, if any event or circumstance having a Material Adverse Effect shall have occurred since the date hereof and the Lenders shall have determined not to make the Funded Loan so long as such Material Adverse Effect is continuing;

(d) if (i) any Event of Default shall have occurred and be continuing or would result after giving effect to the Funded Loan; or (ii) any Default shall have occurred and be continuing or would result after giving effect to the Loan, and the Agent shall have determined not to make the Funded Loan so long as such Default is continuing; or

(e) if after giving effect to the Funded Loan, the outstanding principal amount of the Funded Loan would exceed the lesser of (i) the Maximum Amount, or (ii) the amount then authorized by the Financing Order.

The request and acceptance by the Borrower of the proceeds of the Funded Loan shall be deemed to constitute, as of the date of such request, acceptance or incurrence, (i) a representation and warranty by the Borrower that the conditions in this Section 2 have been satisfied and (ii) a reaffirmation by Borrower of the granting and continuance of the Agent's Liens in the Collateral for the benefit of the Lenders.

3. Payment of Principal. FOR VALUE RECEIVED, the Borrower promises to pay to the Lenders, in the manner and at the place hereinafter provided, the unpaid principal amount of the Funded Loan made by the Lenders pursuant to this Note to the Borrower, all PIK Interest

added to such principal amount, all accrued and unpaid interest on the Loan, the Prepayment Fee (if applicable) and all other Obligations on the Maturity Date.

4. Payment of Interest.

(a) The Borrower promises to pay interest on the unpaid principal amount of the Loan (inclusive of PIK Interest) from the date the Funded Loan is made until the Loan is paid in full, payable in cash in arrears on each applicable Interest Payment Date, at a rate per annum equal to the Interest Rate, provided that, at Borrower's option if no Default or Event of Default has occurred and is continuing and the Maturity Date has not yet occurred, such interest may instead be payable in kind as capitalized interest by being added to the then outstanding principal amount of the Loan on such Interest Payment Date ("PIK Interest").

(b) If any payment of any of the Obligations becomes due and payable on a day other than a Business Day, the maturity thereof will be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension.

(c) All computations of fees and interest shall be made by the Agent on the basis of a 360-day year, in each case for the actual number of days occurring in the period for which such fees or interest are payable. Each determination by the Agent of an interest rate hereunder shall be final, binding and conclusive on the Borrower (absent manifest error).

(d) So long as an Event of Default shall have occurred and be continuing, and at the election of the Lenders confirmed by written notice from the Agent to the Borrower, the interest rate applicable to the Obligations shall be increased by three percentage points (3.00%) per annum above the rate of interest otherwise applicable hereunder (the "Default Rate"), and all outstanding Obligations shall bear interest at the Default Rate applicable to such Obligations. Interest at the Default Rate shall accrue from the date of such Event of Default until such Event of Default is cured or waived, shall be payable upon demand and, unless paid in cash prior thereto, shall be capitalized as PIK Interest on each Interest Payment Date.

(e) Notwithstanding anything to the contrary set forth in this Section 4, if a court of competent jurisdiction determines in a final order that the rate of interest payable hereunder exceeds the highest rate of interest permissible under law (the "Maximum Lawful Rate"), then so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable hereunder shall be equal to the Maximum Lawful Rate.

5. Payments. All payments of principal and interest in respect of this Note shall be made in Dollars in same day funds to the Lenders in accordance with their respective Pro Rata Shares at their accounts set forth in Exhibit C hereto or to such other account as shall be designated in a written notice delivered by such Lender to the Borrower at least two (2) Business Days prior to the payment date. Each payment made hereunder shall be credited first, to fees and reimbursable expenses of the Agent and the Lenders then due and payable pursuant to any of the Loan Documents; second, to interest then due and payable on the Loan (inclusive of interest accrued on the PIK Interest portion of the Loan); third, to the principal balance of the Loan other

than PIK Interest; fourth, to the principal balance of the PIK Interest; fifth, to the payment of the Prepayment Fee (if applicable); and sixth, to all other Obligations.

The Borrower hereby authorizes the Agent to, and the Agent may, from time to time, charge the Loan Account of the Borrower with any amount due and then payable by the Borrower under any Loan Document. The Borrower agrees that the Agent shall have the right to make such charges whether or not any Default or Event of Default shall have occurred and be continuing. Any amount charged to the Loan Account of the Borrower shall be deemed an Obligation hereunder owing to the Lenders or the Agent (as applicable) by the Borrower. The Borrower confirms that any charges that the Agent may so make to the Loan Account of the Borrower as herein provided will be made as an accommodation to Borrower and solely at the Agent's discretion.

6. Optional Prepayments. The Borrower shall have the right at any time and from time to time, upon not less than two (2) Business Days' prior written notice to the Agent, to prepay the principal of this Note in whole or in part without premium or penalty other than the Prepayment Fee. Each such prepayment shall be made together with accrued interest thereon and the Prepayment Fee (if applicable).

7. Mandatory Prepayments.

(a) If at any time the aggregate outstanding principal amount of the Loan exceeds the Maximum Amount or the amount permissible pursuant to an order of the Bankruptcy Court, the Borrower shall immediately repay the aggregate outstanding Loan to the extent required to eliminate such excess.

(b) Immediately upon receipt by the Borrower of cash proceeds of any asset disposition, unless the Lenders agree otherwise, the Borrower shall prepay the Loan, together with accrued interest thereon and the Prepayment Fee (if applicable), in an amount equal to 100% of such proceeds, net of (A) reasonable commissions and other reasonable and customary transaction costs, fees and expenses properly attributable to such transaction and payable by the Borrower in connection therewith (in each case, paid to non-affiliates), (B) transfer or sales taxes, and (C) other payments from the proceeds as authorized by the Bankruptcy Court and approved by the Lenders in writing. Any such prepayment shall be applied in accordance with Section 7(f).

(c) If the Borrower issues Stock or any debt securities or incurs any other Indebtedness, no later than the Business Day following the date of receipt of the cash proceeds thereof, the Borrower shall prepay the Loan, together with accrued interest thereon and the Prepayment Fee (if applicable), in an amount equal to 100% of such proceeds, net of underwriting discounts, reasonable commissions and other reasonable costs paid to non-affiliates in connection therewith. Any such prepayment shall be applied in accordance with Section 7(f).

(d) Upon the receipt by the Borrower of any Extraordinary Receipts, the Borrower shall prepay the outstanding principal of the Loan, together with accrued interest thereon and the Prepayment Fee (if applicable), in an amount equal to 100% of such

Extraordinary Receipts, net of any reasonable expenses incurred in collecting such Extraordinary Receipts. Any such prepayment shall be applied in accordance with Section 7(f).

(e) Reduction of Maximum Amount. The Maximum Amount shall be permanently reduced by the amount of all prepayments of principal made pursuant to Section 7(b), (c), or (d) above.

(f) Application of Mandatory Prepayments. Any prepayments made by the Borrower pursuant to Sections 7(b), (c) or (d) above shall be applied pursuant to Section 5 hereof.

(g) No Implied Consent. Nothing in this Section 7 shall be construed to constitute the Lenders' consent to any transaction that is not permitted by other provisions of this Note or the other Loan Documents. For the avoidance of doubt, no reinvestment of the proceeds of any Extraordinary Receipts, asset sales or other proceeds of Collateral shall be permitted without the prior written consent of the Lenders in their sole and absolute discretion.

8. Prepayment Fee. In the event any portion of the principal amount of this Note (other than PIK Interest) is prepaid or repaid prior to the Stated Maturity Date or becomes due prior to the Stated Maturity Date (whether as a result of notice of prepayment by the Borrower, required prepayment pursuant to the terms hereof, acceleration of the Obligations or otherwise), the Borrower shall be obligated to pay the applicable Prepayment Fee on the principal amount of this Note prepaid or repaid or otherwise becoming due on such date, payable in cash in immediately available funds to the Lenders in accordance with their respective Pro Rata Shares.

9. Indemnity.

(a) The Borrower shall indemnify and hold harmless the Agent and each Lender and each of their respective affiliates, members, officers, directors, employees, attorneys, agents and representatives (each, an "Indemnified Person"), from and against any and all suits, actions, proceedings, claims, damages, losses, liabilities and expenses (including reasonable attorneys' fees and disbursements and other costs of investigation or defense, including those incurred upon any appeal) that may be instituted or asserted against or incurred by any such Indemnified Person as the result of credit having been extended, suspended or terminated under this Note and the other Loan Documents and the administration of such credit, and in connection with or arising out of the transactions contemplated hereunder and thereunder and any actions or failures to act in connection therewith, and legal costs and expenses arising out of or incurred in connection with disputes between or among any parties to any of the Loan Documents (collectively, "Indemnified Liabilities"); provided, that the Borrower shall not be liable for any indemnification to an Indemnified Person to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense results solely from that Indemnified Person's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. **NO INDEMNIFIED PERSON SHALL BE RESPONSIBLE OR LIABLE TO ANY OTHER PARTY, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OF SUCH PERSON OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES THAT MAY BE ALLEGED AS A RESULT OF**

CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER ANY LOAN DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

10. Adjustments for Withholding, Capital Adequacy Etc. Notwithstanding anything to the contrary contained herein, all payments by the Borrower under this Note shall be made free and clear of and without deduction or withholding for any and all taxes, duties, levies, imposts, deductions, charges or withholdings and all related liabilities, including interest, penalties and additions to tax with respect thereto, excluding taxes imposed on the net income of the Agent or any Lender by the jurisdiction in which such Lender is organized or has its principal lending office (all such taxes, duties, levies, imposts, deductions, charges, withholdings and liabilities being referred to as "Taxes"). If the Borrower shall be required by applicable law to deduct or withhold any such Taxes from or in respect of any amount payable under this Note, then (i) the amount payable shall be increased as may be necessary so that after making all required deductions or withholdings, (including deductions or withholdings applicable to any additional amounts paid under this Note) each Lender receives an amount equal to the amount it would have received if no such deduction or withholding had been made, (ii) the Borrower shall make such deductions or withholdings, and (iii) the Borrower shall immediately pay the full amount deducted or withheld to the relevant governmental entity in accordance with applicable law.

If the effect of the adoption, effectiveness, phase-in or applicability after the date hereof of any law, rule or regulation (including without limitation any tax, duty, charge or withholding on or from payments due from the Borrower (but excluding taxation on the overall net income of any Lender)), or any change therein or in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, is to reduce the rate of return on the capital of each Lender with respect to this Note or to increase the cost to each Lender of making or maintaining amounts available under this Note, the Borrower agrees to pay each Lender such additional amount or amounts as will compensate such Lender on an after-tax basis for such reduction or increase.

The Borrower agrees to immediately pay any present or future stamp or documentary taxes or any other excise or property taxes, charges, financial institutions duties, debits taxes or similar levies (all such taxes, charges, duties and levies being referred to as "Other Taxes") which arise from any payment made by the Borrower under this Note or from the execution, delivery or registration of, or otherwise with respect to, this Note.

The Borrower shall indemnify each Lender for the full amount of Taxes or Other Taxes (including, without limitation, any Taxes or Other Taxes imposed by any jurisdiction on amounts payable by the Borrower hereunder) paid by each Lender and any liability (including penalties, interest and expenses) arising from or with respect to such Taxes or Other Taxes, whether or not they were correctly or legally asserted. Payment under this indemnification shall be made upon demand. A certificate as to the amount of such Taxes or Other Taxes submitted to the Borrower by each Lender shall be conclusive evidence, absent manifest error, of the amount due from the Borrower to each Lender.

Borrower shall furnish to each Lender the original or a certified copy of a receipt evidencing payment of Taxes or Other Taxes made by the Borrower within thirty (30) days after the date of any payment of Taxes or Other Taxes.

11. Securitization. Each Lender may at any time pledge or grant a security interest in all or any portion of its rights under this Note, the other Loan Documents and the Loan made by it as collateral security to secure obligations of such Lender, affiliates of such Lender or funds or accounts managed by such Lender or an affiliate of such Lender.

12. Grant of Lien and Security Interest; Priority of Obligations and Lenders' Liens.

(a) Grant of Lien and Security Interest.

(i) As security for the full and timely payment and performance of all of the Obligations, the Borrower hereby, as of the date the Financing Order is entered, assigns, pledges and grants (or causes the assignment, pledge and grant in respect of any indirectly owned assets) to the Agent, for the benefit of the Lenders, a security interest in and to, and Liens on, all of the property, assets or interests in property or assets of the Borrower, of any kind or nature whatsoever, real or personal, now existing or hereafter acquired or created, including, without limitation, all "property of the estate" (within the meaning of the Bankruptcy Code) of the Borrower, and all of the following (each of the following terms being used herein as defined in the UCC unless otherwise defined in this Note): accounts, inventory, goods, contract rights, instruments, documents, chattel paper, patents, trademarks, copyrights and licenses therefor, general intangibles, payment intangibles, letters of credit, letter-of-credit rights, supporting obligations, machinery and equipment, real property, fixtures, leases, all of the Stock of any Subsidiary the Borrower, all of the Stock of all other Persons directly owned by the Borrower, money, investment property, deposit accounts, any and all claims and causes of action of the Borrower, including, without limitation, all commercial tort claims and all Avoidance Actions and the proceeds thereof, and all cash and non-cash proceeds, rents, products and profits of any of collateral described above (all property of the Borrower subject to the security interest referred to in this Section 12(a) being hereafter collectively referred to as the "Collateral"); provided, however, that for the avoidance of doubt, the Collateral shall not include any retainers held by the Debtor's retained counsel.

(ii) Upon entry of the Financing Order, the Liens and security interests in favor of the Agent referred to in Section 12(a) shall be valid and perfected Liens on, and security interests in, the Collateral, prior to all other Liens on, and security interests in, the Collateral. Such Liens and security interests and their priority shall remain in effect until the commitment of each Lender in respect of the Funded Loan shall have been terminated and all Obligations shall have been repaid in cash in full.

(iii) The Liens and security interests referred to herein shall be deemed valid and perfected by entry of the Financing Order, and entry of the Financing Order shall have occurred on or before the date of the Funded Loan is made. The Agent shall not be required to file any financing statements, mortgages, certificates of title, notices of Lien or similar instruments in any jurisdiction or filing office or to take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this Note, the Financing Order or

any other Loan Document; provided, that the Agent shall be permitted to file any financing statements, mortgages, certificates of title, notices of Lien or similar instruments in any jurisdiction or filing office or to take any other action with respect to the Lien and security interest granted by or pursuant to this Note.

(iv) The Liens, lien priority, administrative priorities and other rights and remedies granted to the Agent and the Lenders pursuant to this Note, the Financing Order and the other Loan Documents (specifically including, but not limited to, the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by the Borrower (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of the Chapter 11 Case, or by any other act or omission whatsoever.

(b) Priority of Obligations and Lender's Liens

(i) To secure all of Borrower's Obligations now existing or hereafter arising, the Agent is granted for the benefit of Lenders, subject to the Carve-Out, (i) a superpriority administrative claim against Borrower pursuant to Section 364(c)(1) of the Bankruptcy Code, having a priority over any and all administrative expenses of the kind specified in Sections 503(b), 507(b) and 546(c) of the Bankruptcy Code and (ii) pursuant to Section 364(c)(2) of the Bankruptcy Code, a first priority Lien on, and security interest in, the Collateral. The security interest and Liens granted to Collateral Agent for the benefit of Lenders hereunder pursuant to Section 364(c)(2) shall not be (i) subject to any Lien or security interest which is avoided and preserved for the benefit of the Borrower's estate under Section 551 of the Bankruptcy Code, or (ii) subordinated to or made pari passu with any other Lien or security interest under Section 364(d) of the Bankruptcy Code or otherwise.

(ii) The Obligations shall have superpriority administrative priority equivalent to a claim under Section 364(c) of the Bankruptcy Code. Subject only to the Carve-Out, such superpriority administrative claim shall have priority over all other costs and expenses of the kinds specified in, or ordered pursuant to, Sections 105, 326, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1114 or any other provision of the Bankruptcy Code and shall at all times be senior to the rights of Borrower, Borrower's estate, and any successor trustee or estate representative in the Chapter 11 Case or any subsequent proceeding or case under the Bankruptcy Code.

(iii) The Agent's Liens on the Collateral and the superpriority administrative claim under Section 364(c) of the Bankruptcy Code afforded the Obligations shall, following the occurrence and during the continuation of an Event of Default, be subject to (i) professional fees and expenses of Borrower paid after such Event of Default (irrespective of when incurred or accrued) by Borrower, as and when allowed on a final basis pursuant to Section 330 of the Bankruptcy Code, in an aggregate amount not to exceed \$10,000, (ii) the costs and expenses of any Chapter 7 trustee appointed for the Borrower in an aggregate amount not to exceed \$10,000, and (iii) fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) plus unpaid interest pursuant to 31 U.S.C. § 3717 (such payments, collectively, the "Carve-Out"); provided that such fees and disbursements identified in item (i) in the immediately

foregoing shall not include any professional fees or expenses arising after the conversion of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code. Nothing contained herein shall be construed (A) to exempt those persons hereafter receiving interim compensation payments or reimbursement of expenses pursuant to any such Bankruptcy Court approved procedure from the applicable provisions of bankruptcy law, including the requirements that such compensation or reimbursement be allowed on a final basis after the filing of appropriate fee applications, and, when applicable, any subsequent order of the Bankruptcy Court requiring that such payments be disgorged, and (B) as consent to the allowance of any fees and expenses referred to above and shall not affect any right of any Lender to object to the reasonableness of such amounts; provided further that the professional expenses referred to in clause (i) above shall not include, and proceeds of the Funded Loan shall not be used for the payment or reimbursement of, any fees or disbursements of the Borrower or any committees or trustee appointed in the Chapter 11 Case incurred in connection with the assertion and prosecution of, or joinder in, any claim, counterclaim, action, proceeding, application, motion, objection, defenses or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief (each of the following, a "Challenge"): (I) commencing or prosecuting any Avoidance Action or other cause of action (whether arising under state law, the Bankruptcy Code or other federal law) against the Agent or any Lender with respect to (x) the validity and extent of the Obligations, (y) the validity, extent and priority of liens and security interests securing the Obligations of Borrower, or (z) the validity and extent of any claims of the Lenders filed in the Chapter 11 Case against the Borrower; (II) invalidating, setting aside, avoiding or subordinating, in whole or in part, the Agent's Liens and security interests in the Collateral; or (III) preventing, hindering or delaying (whether, directly or indirectly) the Agent in respect of its liens and security interests in the Collateral. Notwithstanding anything herein to the contrary no Person entitled to payments from the Carve-Out shall be entitled to sell or otherwise dispose, or seek or object to the sale or other disposition, of any Collateral.

13. Further Assurances. The Borrower agrees that it shall, at the Borrower's expense and upon request of the Agent, duly execute and deliver or cause to be duly executed and delivered, to the Agent such further instruments and do and cause to be done such further acts as may be reasonable and necessary to carry out more effectively the provisions and purposes of this Note or any other Loan Document, including, upon the Agent's written request and in form and substance reasonably satisfactory to the Agent, security agreements, UCC-1 financing statements and other Collateral Documents granting to the Agent, for the benefit of itself and each Lender, first priority Liens in the Collateral to secure the Obligations.

14. Reports and Notices.

(a) The Borrower hereby agrees to deliver, or cause to be delivered to the Agent, each of the following, which shall be in form and detail reasonably acceptable to the Agent:

(1) immediately after any officer of the Borrower obtains knowledge of the occurrence of any Default or Event of Default under any Loan Document, notice of such occurrence, together with a detailed statement by a responsible officer of the Borrower of the steps being taken by Borrower to cure the effect of such Default or Event of Default;

(2) immediately upon any officer of the Borrower obtaining knowledge thereof, notice of any loss of or material damage to any Collateral or of any substantial adverse change in any Collateral or the prospect of payment thereof, or of the occurrence or existence of any other event or circumstance which has had or could reasonably be expected to have a Material Adverse Effect;

(3) promptly upon receipt, or if filed by the Borrower, promptly upon filing, all motions, notices, reports, applications, objections, responses or other papers filed or served in the Chapter 11 Case;

(4) (A) promptly after submission to any governmental authority, (I) all documents and information furnished to such governmental authority in connection with any investigation of the Borrower, other than routine inquiries by such governmental authority, and (II) copies of any periodic or special reports filed by the Borrower with any governmental authority, and (B) as soon as available and in any event within five days of the execution, receipt or delivery thereof, copies of material notices and other material communications received from or sent to any governmental authority which specifically relate to the Borrower; and

(5) promptly upon request, such other information concerning the condition or operations, financial or otherwise, of the Borrower as the Agent or any Lender may reasonably request.

(b) The Borrower authorizes the Agent and each Lender to communicate directly with their independent certified public accountants and advisors and authorizes and shall instruct those accountants and advisors to disclose and make available to the Agent and the Lenders as reasonably requested by the Agent or any Lender any and all financial statements and other supporting financial documents, schedules and information relating to the Borrower or its Subsidiaries, if any (including copies of any issued management letters), with respect to the business, financial condition and other affairs of the Borrower or any of its subsidiaries, which information the Agent and each Lender, and their respective officers, directors, members, partners, shareholders, employees, professionals and representatives shall treat as confidential.

15. Affirmative Covenants.

The Borrower agrees that:

(a) It shall take all steps necessary to achieve the Case Milestone by the Case Milestone Target Date.

(b) The Borrower shall at all times have unrestricted cash on hand of not less than \$10,000, unless waived by the Lenders.

(c) The Borrower will keep accurate records pertaining to the Collateral and, upon request of the Agent or any Lender, will permit any officer, employee, attorney or accountant or agent of the Agent or such Lender to audit, review, make extracts from or copy, at the Borrower's expense, any and all corporate and financial and other books and records of the Borrower at all times during ordinary business hours.

(d) (i) The Borrower will, except as disclosed to and agreed by the Agent, (A) comply with all requirements of law, the non-compliance with which could reasonably be expected to have a Material Adverse Effect and (B) use and keep the Collateral, and require that others use and keep the Collateral, only for lawful purposes, without violation of any federal, state or local law, statute or ordinance, and (ii) the Borrower will obtain, maintain in effect and comply with all permits, licenses and similar approvals necessary for the operation of its business as now or hereafter conducted.

(e) The Borrower will pay or discharge, when due (except for any pre-petition taxes and then in conjunction with the confirmation of a plan or Bankruptcy Court order), (i) all taxes, assessments and governmental charges levied or imposed upon it or upon its income or profits, upon any properties of the Borrower (including, without limitation, the Collateral) or upon or against the creation, perfection or continuance of the security interest, prior to the date on which penalties attach thereto (ii) all federal, state and local taxes required to be withheld by it, and (iii) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon any properties of the Borrower.

(f) (i) The Borrower will keep and maintain the Collateral and all of its other properties necessary or useful in its business in good condition, repair and working order (normal wear and tear excepted), (ii) the Borrower will defend the Collateral against all claims or demands of all Persons (other than the Agent and the Lenders) claiming the Collateral or any interest therein, and (iii) the Borrower will keep all Collateral free and clear of all security interests, liens and encumbrances, except Permitted Encumbrances.

(g) Subject to the actions of the Bankruptcy Court in connection with the Chapter 11 Case, the Borrower will preserve and maintain its existence and all of its rights, privileges and franchises necessary or desirable in the normal conduct of its business and shall conduct its business in an orderly, efficient and regular manner.

(h) The Borrower shall comply with all terms, conditions, requirements and obligations set forth in the Financing Order.

(i) The Borrower will obtain and at all times maintain insurance with responsible and reputable insurers, in such amounts and against such risks as may from time to time be reasonably required by Lenders, but in all events in such amounts and against such risks as is usually carried by companies owning similar properties as the Borrower.

16. Negative Covenants.

The Borrower agrees that, without the prior written consent of the Lenders:

(a) The Borrower shall not directly or indirectly merge or consolidate with or otherwise combine with any Person.

(b) The Borrower shall not create, incur, assume or permit to exist any Indebtedness, other than the Obligations.

(c) The Borrower shall not make any changes in its capital structure or amend

its charter or bylaws in a manner that would adversely affect Lenders.

(d) The Borrower shall not create, incur, assume or permit to exist any Lien on or with respect to any of its properties or assets (whether now owned or hereafter acquired) except for Permitted Encumbrances. In addition, Borrower shall not become a party to any agreement, note, indenture or instrument or take any other action that would prohibit the creation of a Lien on any of its properties or other assets in favor of Agent or Lenders, as collateral for the Obligations.

(e) The Borrower shall not make any Restricted Payment and shall not make any investment (other than holding cash).

(f) The Borrower will not convey, sell, lease, assign, transfer or otherwise dispose of any of its property, business or assets, whether now owned or hereinafter acquired other than pursuant to an Acceptable Plan.

(g) The Borrower shall not enter into any material contractual agreement or any amendment thereto after the Funding Date, other than the Loan Documents, unless approved by the Lenders.

(h) The Borrower shall not maintain any deposit account or securities account that is not subject to a first priority security interest in favor of the Agent for the benefit of the Lenders pursuant to the Financing Order.

(i) The Borrower shall not consent to any amendment, supplement or other modification of any of the terms or provisions contained in, or applicable to, the Financing Order.

(j) The Borrower shall not cancel any claim or debt owing to it.

(k) The Borrower shall not permit the outstanding Loan at any time to exceed (i) the Maximum Amount, or (ii) the amount then authorized by the Financing Order.

17. Events of Default; Rights and Remedies. Notwithstanding the provisions of Section 362 of the Bankruptcy Code and without application or motion to the Bankruptcy Court, the occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an "Event of Default" hereunder:

A. The Borrower (i) shall fail to make any payment of principal or interest on, or fees owing in respect of the Loan or any of the other Obligations when due and payable, or (ii) shall fail to pay or reimburse the Agent or any Lender for any expense reimbursable hereunder or under any other Loan Document within three (3) Business Days following the Agent's or such Lender's demand for such reimbursement or payment.

B. The Borrower shall fail or neglect to perform, keep or observe any of the provisions of this Note or the Financing Order.

C. The Borrower shall fail or neglect to perform, keep or observe any provision of any of the other Loan Documents.

D. Any representation or warranty herein or in any other Loan Document or in any written statement, report, financial statement or certificate made or delivered to the Agent or any Lender by the Borrower is untrue or incorrect in any material respect as of the date when made or deemed made.

E. The Case Milestone shall not be achieved by the Case Milestone Target Date.

F. The occurrence of any postpetition judgments, liabilities or events that remain unabated and, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

G. Any provision of any Loan Document shall for any reason cease to be valid, binding and enforceable in accordance with its terms (or the Borrower shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any Loan Document has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms), or any Lien created under any Loan Document shall cease to be a valid and perfected first priority Lien (except as otherwise permitted herein or therein) in any of the Collateral purported to be covered thereby.

H. Any event occurs that has a Material Adverse Effect on the business, assets, operations or financial condition of the Borrower, other than those customarily caused by the filing of a Chapter 11 Case.

I. A Termination Event occurs.

J. Any of the following shall occur:

(a) The Borrower shall bring a motion in the Chapter 11 Case (or fail to contest in good faith a motion brought by any other Person): (i) to obtain financing from any Person other than Lenders under Section 364(c) or 364(d) of the Bankruptcy Code; (ii) to grant any Lien other than Permitted Encumbrances upon or affecting any Collateral; (iii) to recover from any portion of the Collateral any costs or expenses of preserving or disposing of such Collateral under Section 506(c) of the Bankruptcy Code; or (iv) to authorize any other action or actions adverse to the Agent or Lenders, or their rights and remedies hereunder or their interests in the Collateral, that would, individually or in the aggregate, have a Material Adverse Effect.

(b) The allowance of any claim or claims under Section 506(c) of the Bankruptcy Code against or with respect to any Collateral.

(c) The entry by the Bankruptcy Court of an order authorizing the appointment of an interim or permanent trustee in the Chapter 11 Case or the

appointment of an examiner in the Chapter 11 Case with expanded powers to operate or manage the financial affairs, business, or reorganization of the Borrower.

(d) The entry of an order in the Chapter 11 Case avoiding or requiring repayment of any portion of the payments made on account of the Obligations owing under this Note or the other Loan Documents.

(e) The entry of an order in the Chapter 11 Case granting any other superpriority administrative claim or Lien equal to or superior to that granted to Lenders, unless consented to by Lenders.

(f) The entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (i) to allow any creditor (other than Agent) to execute upon or enforce a Lien on any Collateral, or (ii) with respect to any Lien of or the granting of any Lien on any Collateral to any state or local environmental or regulatory agency or authority that could reasonably be expected to have a Material Adverse Effect.

(g) There shall commence any suit or action against the Agent or Lenders by or on behalf of (i) the Borrower or (ii) any official committee in the Chapter 11 Case, in each case, that constitutes a Challenge or that asserts a claim or seeks a legal or equitable remedy that would have the effect of subordinating the claim or Lien of the Agent and, if such suit or action is commenced by any Person other than Borrower, such suit or action shall not have been dismissed or stayed within 15 days after service thereof on Lenders, and, if stayed, such stay shall have been lifted.

If any Event of Default shall have occurred and be continuing, then the Agent and the Lenders may, upon written notice to the Administrative Borrower: (i) terminate the Facility with respect to any portion of the Funded Loan not yet advanced, (ii) declare all or any portion of the Obligations, including without limitation, all or any portion of the Loan or the Prepayment Fee, to be forthwith due and payable and (iii) exercise any rights and remedies under the Loan Documents, the Financing Order or at law or in equity.

Except as otherwise provided for in this Note or by applicable law, the Borrower waives: (a) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by the Agent on which Borrower may in any way be liable, and hereby ratifies and confirms whatever the Agent may do in this regard; (b) all rights to notice and a hearing prior to the Agent's taking possession or control of, or the Agent's replevy, attachment or levy upon, the Collateral or any bond or security that might be required by any court prior to allowing the Agent to exercise any of its remedies; and (c) the benefit of all valuation, appraisal, marshaling and exemption laws.

In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default, the Agent is hereby authorized at any time or from time to time, without notice

to the Borrower or to any other Person, any such notice being hereby expressly waived, to offset and to appropriate and to apply any and all balances held by it at any of its offices for the account of the Borrower (regardless of whether such balances are then due to the Borrower) and any other properties or assets at any time held or owing by the Agent to or for the credit or for the account of the Borrower against and on account of any of the Obligations that are not paid when due.

To the extent permitted by law and subject in all respects to the terms of the Financing Order, the Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under section 9-207 of the Uniform Commercial Code or otherwise, shall be to deal with it in the same manner as the Agent deals with similar securities and property as a secured lender in other transactions. The Agent's duty of care with respect to Collateral in the custody or possession of a bailee or other third person shall be deemed fulfilled if it exercises reasonable care in the selection of the bailee or other third person, and the Agent need not otherwise preserve, protect, insure or care for any Collateral, and the Agent shall not be obligated to preserve any rights the Borrower may have against prior parties.

18. Reference Agreements. This Note evidences the Loan that may be made to the Borrower on the Funding Date in the aggregate principal amount outstanding of up to \$324,000, plus PIK Interest, and is issued pursuant to and entitled to the benefits of the Financing Order to which reference is hereby made for a more complete statement of the terms and conditions under which the Loan evidenced by this Note is made and is to be repaid.

19. Definitions. The following terms used in this Note shall have the following meanings (and any of such terms may, unless the context otherwise requires, be used in the singular or the plural depending on the reference):

"Acceptable Plan" shall mean a plan approved by a final order of the Bankruptcy Court pursuant to which the assets of the Debtor are transferred to a litigation trust on terms satisfactory to the Lenders, such trust has assumed all of the Obligations under the Facility and the Loan Documents and in respect of the Loan, and the Agent, for the benefit of the Lenders, continues to have a perfected first priority security interest in such assets.

"Avoidance Actions" shall mean all causes of action arising under Sections 542, 544, 545, 547, 548, 549, 550, 551, 553(b) or 724(a) of the Bankruptcy Code and any proceeds therefrom.

"Bankruptcy Code" shall have the meaning given such term in the first paragraph of this Note.

"Borrower" shall have the meaning given such term in the first paragraph of this Note.

"Business Day" means any day other than a Saturday, Sunday or legal holiday under the laws of the State of New York or any other day on which banking institutions located in the State of New York are authorized or required by law or other governmental action to close.

"Carve-Out" shall have the meaning given such term in Section 12(b).

"Case Milestone" shall mean the Bankruptcy Court shall have issued a final order confirming the Debtor's Chapter 11 plan (which shall be an Acceptable Plan and otherwise in form and substance satisfactory to the Lenders).

"Case Milestone Target Date" shall mean May 3, 2017, unless mutually extended by the Debtor and the Lenders.

"Chapter 11 Case" shall have the meaning given such term in the first paragraph of this Note.

"Collateral" shall have the meaning given such term in Section 12(a).

"Collateral Documents" shall mean any agreement entered into pursuant to Section 13 hereof and all similar agreements entered into guaranteeing payment of, or granting a Lien upon property as security for payment of, the Obligations, including the Financing Order.

"Commitment" means, with respect to each Lender, the commitment of such Lender to make its portion of the Loan to the Borrower in the principal amount set forth in Exhibit A hereto for each Lender, as the same may be terminated or reduced from time to time in accordance with the terms of this Note.

"Contingent Obligation" means, with respect to any Person, any obligation of such Person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, (i) the direct or indirect guaranty or endorsement (other than for collection or deposit in the ordinary course of business), by such Person of the obligation of a primary obligor or (ii) any obligation of such Person, whether or not contingent, to assure or hold harmless the holder of such primary obligation against loss in respect thereof. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation with respect to which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto (assuming such Person is required to perform thereunder), as determined by such Person in good faith.

"Default" means an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Default Rate" shall have the meaning given such term in Section 4(d) of this Note.

"Designated Account" shall mean account number [____], ABA routing number [____] maintained by the Borrower with [____] in [____], [____] or such other deposit account of the Borrower (located in the United States) that has been designated as such in writing by the Borrower to the Lenders.

"Dollars" or "\$" shall mean lawful currency of the United States of America.

"Event of Default" shall have the meaning given such term in Section 17 of this Note.

"Extraordinary Receipts" means any cash received by the Borrower not in the ordinary course of business (and not consisting of proceeds described Sections 7(b) and (c) hereof), including, without limitation, (i) foreign, United States, state or local tax refunds, (ii) proceeds of insurance, (iii) judgments or arbitration awards, proceeds of settlements or other consideration of any kind in connection with any cause of action and (iv) indemnity payments.

"Facility" means the term loan facility evidenced by this Note.

"Financing Order" shall mean the order of the Bankruptcy Court entered in the Chapter 11 Case after a final hearing pursuant to Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001, satisfactory in form and substance to the Agent and the Lenders, together with all extensions, modifications and amendments thereto, authorizing the Borrower to obtain credit, incur Indebtedness, and grant Liens under this Note and the other Loan Documents, all as set forth in such order.

"Funded Loan" shall have the meaning given in the first paragraph of this Note.

"Funding Date" shall have the meaning given such term in Section 1 of this Note.

"GAAP" shall mean generally accepted accounting principles in the United States of America.

"Indebtedness" shall mean, without duplication, with respect to any Person: (i) all indebtedness of such Person for borrowed money; (ii) all obligations of such Person for the deferred purchase price of property or services (other than trade payables, payables to vendors or other account payables incurred in the ordinary course of such Person's business and not past due for more than 90 days after the date such payable was created); (iii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or upon which interest payments are customarily made; (iv) all Contingent Obligations; (v) all other items which, in accordance with GAAP, would be included as liabilities on the liability side of the balance sheet of such Person; and (vi) all obligations referred to in clauses (i) through (v) of this definition of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien upon property owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness. The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer.

"Indemnified Person" shall have the meaning given such term in Section 9 of this Note.

"Interest Payment Date" shall mean the first Business Day of each month to occur while the Loan is outstanding; provided that, in addition to the foregoing, each of (x) the date upon which the Loan has been paid in full and (y) the Maturity Date shall be deemed to be an "Interest Payment Date" with respect to any interest that has then accrued. Any interest to be capitalized as PIK Interest shall be capitalized on the applicable Interest Payment Date and added

to the then outstanding principal amount of the Loan and, thereafter, shall bear interest as provided hereunder as if it had originally been part of the outstanding principal of the Loan.

"Interest Rate" means a fixed rate of interest per annum equal to 20.00%.

"Lenders" shall have the meaning given such term in the recital to this Note.

"Lien" shall mean any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the Uniform Commercial Code or comparable law of any jurisdiction).

"Loan" shall have the meaning given in the first paragraph of this Note.

"Loan Account" means an account maintained hereunder by the Agent on its books of account with respect to the Borrower, in which the Borrower will be charged with the Loan made to, and all other Obligations incurred by, the Borrower.

"Loan Documents" shall mean this Note, the Financing Order, the Collateral Documents and all other agreements, instruments, documents and certificates executed and delivered to, or in favor of, the Agent or any Lender and including all other pledges, powers of attorney, consents, assignments, contracts, notices, and all other written matter whether heretofore, now or hereafter executed by or on behalf of the Borrower, or any employee of the Borrower, and delivered to the Agent or any Lender in connection with this Note or the transactions contemplated thereby. Any reference in this Note or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to such Loan Document as the same may be in effect at any and all times such reference becomes operative.

"Material Adverse Effect" means a material adverse effect on (i) the operations, business assets or properties or condition (financial or otherwise) of the Borrower (other than those resulting solely from the commencement of the Chapter 11 Case), (ii) the ability of the Borrower to perform any of its obligations under any Loan Document to which it is a party (other than those resulting solely from the commencement of the Chapter 11 Case), (iii) the legality, validity or enforceability of this Note or any other Loan Document, (iv) the rights and remedies of the Agent or any Lender under any Loan Document, or (v) the validity, perfection or priority of a Lien in favor of the Agent or any Lender on any of the Collateral.

"Maturity Date" means the earliest of: (i) the Stated Maturity Date; (ii) the date specified by the Borrower in any notice of prepayment in full; (iii) the date on which the Obligations are declared to be, or otherwise become, due and payable in full due to the occurrence of an Event of Default; and (iii) the date on which a Termination Event occurs.

"Maximum Amount" shall, as of any date of determination, be an amount equal to \$324,000 plus PIK Interest.

"Note" shall have the meaning given in the first paragraph of this Note.

"Notice of Borrowing" shall have the meaning given such term in Section 1 of this Note.

"Obligations" shall mean all loans, advances, debts, liabilities and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by the Borrower to the Lenders, and all covenants and duties regarding such amounts, of any kind or nature, present or future, whether or not evidenced by any note, agreement or other instrument, arising under this Note or any of the other Loan Documents. This term includes all principal, interest, fees, charges, expenses, indemnities, attorneys' fees and any other sum chargeable to the Borrower under this Note or any of the other Loan Documents.

"Other Taxes" shall have the meaning given such term in Section 10 of this Note.

"Participant Register" shall have the meaning given such term in Section 21(m) of this Note.

"Permitted Encumbrances" shall mean the following encumbrances: (a) Liens for taxes or assessments or other governmental charges not yet due and payable; and (b) the Liens in favor of the Agent for the benefit of the Lenders securing the Obligations.

"Person" shall mean any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, other entity or government (whether federal, state, county, city, municipal, local, foreign, or otherwise, including any instrumentality, division, agency, body or department thereof).

"Petition Date" shall have the meaning given such term in the first paragraph of this Note.

"PIK Interest" shall have the meaning given such term in Section 4(a) of this Note.

"Prepayment Fee" shall mean, with respect to any portion (such portion, the "Prepayment Amount") of the principal amount of the Loan (other than PIK Interest) that is prepaid or repaid or becomes due and payable on any date, in each case, prior to the Stated Maturity Date and as further set forth in Section 8 hereof, a fee equal 20% of the Prepayment Amount, *less* the amount of interest actually accrued on the Prepayment Amount prior to such date.

"Pro Rata Share" shall mean with respect to a Lender's obligation to fund a portion of the Funded Loan to the Borrower and receive payments of interest, fees and principal with respect to the Loan, the percentage corresponding to such Lender's Allocable Percentage as set forth in Exhibit A hereto.

"Register" shall have the meaning given such term in Section 21(m) of this Note.

"Registered Loan" shall have the meaning given such term in Section 21(m) of this Note.

"Related Fund" shall mean, with respect to any Person, an affiliate of such Person, or a fund or account managed by such Person or an affiliate of such Person.

"Restricted Payment" shall mean, with respect to any Person: (a) the declaration or payment of any dividend or the incurrence of any liability to make any other payment or distribution of cash or other property or assets in respect of such Person's Stock; (b) any payment on account of subordinated debt of such Person; (c) any payment, loan, contribution, or other transfer of funds or other property to any Stockholder of such Person; and (d) any payment of management fees (or other fees of a similar nature) by such Person to any Stockholder of such Person or its affiliates.

"Stated Maturity Date" shall mean March [___], 2018.

"Stock" shall mean all shares, options, warrants, general or limited partnership interests or other equivalents (regardless of how designated) of or in a corporation, partnership or equivalent entity whether voting or nonvoting, including common stock, preferred stock or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act).

"Subsidiary" shall mean, with respect to any Person: (a) any corporation of which an aggregate of more than 50% of the outstanding Stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, Stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of 50% or more of such Stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company in which such Person or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than 50% or of which any such Person is a general partner or may exercise the powers of a general partner.

"Taxes" shall have the meaning given such term in Section 10 of this Note.

"Termination Event" shall mean:

(a) the consummation of a sale or final liquidation of all or substantially all of the Debtor's assets, including the consummation of the Debtor's liquidation plan, other than pursuant to an Acceptable Plan; or

(b) the filing of a motion by the Debtor seeking dismissal of the Chapter 11 Case or the dismissal of the Chapter 11 Case (other than pursuant to an Acceptable Plan), the filing of a motion by the Debtor seeking to convert the Chapter 11 Case to a case under

chapter 7 of the Bankruptcy Code, or the conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code.

"UCC" means the Uniform Commercial Code (or any successor statute) as adopted and in force in the State of New York or, when the laws of any other state govern the method or manner of the perfection or enforcement of any security interest in any of the Collateral, the Uniform Commercial Code (or any successor statute) of such state.

20. Representations and Warranties. The Borrower represents as follows:

(a) the Borrower is a corporation formed in the State of Delaware and with continued existence pursuant to Section 278 of the Delaware General Corporation Law;

(b) the execution and delivery of this Note and the other Loan Documents and the performance by the Borrower of the Borrower's obligations hereunder and under the other Loan Documents are within its corporate powers, have been duly authorized by all necessary corporate action of the Borrower and its members, shareholders and affiliates, have received all necessary bankruptcy, insolvency or governmental approvals, and do not and will not contravene or conflict with any provisions of applicable law or of the Borrower's or any of its shareholders or affiliates corporate charter or by-laws or of any agreements binding upon or applicable to the Borrower or any of its affiliates or any of the Borrower's properties;

(c) the Chapter 11 Case has been duly authorized by all necessary legal and corporate action by or on behalf of the Borrower and has been duly and properly commenced;

(d) this Note and each other Loan Document are the legal, valid and binding obligation, enforceable against the Borrower in accordance with its terms except as limited by equitable principles relating to enforceability;

(e) the Borrower has good and marketable title to, or valid leasehold or contractual interests in, all of its property and assets; none of the properties and assets of the Borrower are subject to any Liens other than Permitted Encumbrances, and there are no facts, circumstances conditions that may result in any Liens other than Permitted Encumbrances;

(f) no information contained in this Note, any of the other Loan Documents, any projections, financial statements or collateral reports or other reports from time to time delivered hereunder or any written statement furnished by or on behalf of the Borrower to the Agent or any Lender pursuant to the terms of this Note, any Loan Document or otherwise contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which they were made. The Liens granted to the Lenders pursuant to this Note and the Collateral Documents will at all times be fully perfected first priority Liens in and to the Collateral described therein;

(g) except for proceedings in the Chapter 11 Case, in connection with the entry of the Financing Order, no action, claim, lawsuit, demand, investigation or proceeding is now pending or, to the knowledge of the Borrower, threatened against the Borrower before any governmental authority or before any arbitrator or panel of arbitrators that (a) challenges the

Borrower's right or power to enter into or perform any of its obligations under the Loan Documents to which it is a party, or the validity or enforceability of any Loan Document or any action taken thereunder or (b) has a reasonable risk of being determined adversely to the Borrower and that, if so determined, could have a Material Adverse Effect;

(h) to the best of the Borrower's knowledge, each of its accounts, contracts, contract rights, tangible chattel paper, intangible or electronic chattel paper, documents, instruments, general intangibles, supporting obligations (each such term being used herein as defined in the UCC) and other rights, remedies, obligations or other intangibles of any kind (i) is and will be genuine, and in all respects what it purports to be, and is not and will not be evidenced by a judgment, an instrument or chattel paper (unless such judgment shall have been assigned to the Agent in such manner as the Agent shall deem necessary or appropriate to perfect and preserve its first priority security interest therein and unless, if so requested by the Agent, such instrument shall have been endorsed and delivered to or at the direction of the Agent and, in the case of tangible chattel paper, if so requested by the Agent, delivered to the Agent); (ii) represents and will represent a bona fide transaction completed or in progress in accordance with the terms and provisions contained in the invoices and purchase orders relating thereto, and the underlying transactions giving rise thereto do not and will not in any way violate any requirements of law; and (iii) is and will be in the amount shown on the Borrower's records, which amount is and will be actually and absolutely owing to the Borrower and not contingent or subject to any rights of set-off or reduction for any reason other than regular discounts, credits or adjustments allowed by the Borrower in the ordinary course of its business;

(i) except to the extent such failure would not have a Material Adverse Effect (including as a result of the protections provided by the Chapter 11 Case), all Federal, state and local tax returns and other reports required by applicable law to be filed by the Borrower have been filed, and all taxes, assessments and other governmental charges imposed upon the Borrower or any property of the Borrower and which have become due and payable on or prior to the date hereof have been paid;

(j) the execution, delivery and performance of this Note and the other Loan Documents will not (immediately or with the giving of notice or passage of time, or both) (i) violate the applicable charter documents of the Borrower, or violate any law or regulation; or (ii) result in the creation or imposition of any Lien upon any of the property of the Borrower, except in favor of the Agent; and

(k) except for the Chapter 11 Case and other matters previously disclosed to the Agent, there is no order, notice, claim, litigation, proceeding or investigation pending or threatened against or in any way affecting (i) the Borrower, whether or not covered by insurance, that would reasonably be expected to have a Material Adverse Effect or (ii) this Note or any other Loan Document.

21. Miscellaneous.

(a) All notices and other communications provided for hereunder shall be in writing (including facsimile communication) and mailed, telecopied, cabled or delivered as follows: if to the Borrower, at the notice address for the Borrower set forth in Exhibit B hereto, if

to the Agent, at the notice address of the Agent set forth in Exhibit B hereto, and if to any Lender, at its notice address set forth in Exhibit B hereto; or in each case at such other address as shall be designated by the Agent, such Lender or the Borrower. All such notices and communications shall, when mailed or sent by overnight courier, be effective when deposited in the mails or delivered to the overnight courier, as the case may be, or when sent by telecopier be effective when confirmation is received.

(b) The Borrower shall reimburse the Agent and the Lenders for all out-of-pocket expenses incurred in connection with the negotiation and preparation of the Loan Documents and the obtaining of approval of the Loan Documents by the Bankruptcy Court (including the fees and expenses of Schulte Roth & Zabel LLP, counsel for the Agent and the Lenders, all of its special local counsel, advisors, consultants and auditors retained in connection with the Loan Documents and advice in connection therewith). The Borrower shall reimburse the Agent and the Lenders for all reasonable fees, costs and expenses, including the reasonable fees, costs and expenses of counsel or other advisors for advice, assistance, or other representation in connection with:

(1) any amendment, modification or waiver of, consent with respect to, or termination or enforcement of, any of the Loan Documents or advice in connection with the administration of the Loan made pursuant hereto or its rights hereunder or thereunder;

(2) the review of pleadings and documents related to the Chapter 11 Case and any subsequent Chapter 7 case, attendance at meetings related to the Chapter 11 Case and any subsequent Chapter 7 case, and general monitoring of the Chapter 11 Case and any subsequent Chapter 7 case;

(3) any litigation, contest, dispute, suit, proceeding or action (whether instituted by the Agent, the Lenders, the Borrower or any other Person, and whether as a party, witness or otherwise) in any way relating to the Collateral, any of the Loan Documents or any other agreement to be executed or delivered in connection herewith or therewith, including any litigation, contest, dispute, suit, case, proceeding or action, and any appeal or review thereof, in connection with a case commenced by or against the Borrower or any other Person that may be obligated to the Agent or the Lenders by virtue of the Loan Documents, including any such litigation, contest, dispute, suit, proceeding or action arising in connection with any work-out or restructuring of the Loan during the pendency of one or more Events of Default;

(4) any attempt to enforce any remedies of the Agent or the Lenders against the Borrower or any other Person that may be obligated to the Agent or the Lenders by virtue of any of the Loan Documents, including any such attempt to enforce any such remedies in the course of any work-out or restructuring of the Loan during the pendency of one or more Events of Default;

(5) any work-out or restructuring of the Loan during the pendency of one or more Events of Default; and

(6) any efforts to (i) monitor the Loan or any of the other Obligations, (ii) evaluate, observe or assess the Borrower or its affairs, and (iii) verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of any of the Collateral;

including, as to each of clauses (1) through (6) above, all attorneys' and other professional and service providers' fees arising from such services, including those in connection with any appellate proceedings, and all expenses, costs, charges and other fees incurred by such counsel and others in connection with or relating to any of the events or actions described in this Section 21(b), all of which shall be payable, on demand, by the Borrower to the Agent. Without limiting the generality of the foregoing, such expenses, costs, charges and fees may include: fees, costs and expenses of accountants, appraisers, investment bankers, management and other consultants and paralegals; court costs and expenses; photocopying and duplication expenses; court reporter fees, costs and expenses; long distance telephone charges; air express charges; telegram or telecopy charges; secretarial overtime charges; and expenses for travel, lodging and food paid or incurred in connection with the performance of such legal or other advisory services. All expenses incurred by the Agent shall receive super priority administrative expense status per Section 364(c)(1) of the Bankruptcy Code.

(c) No failure or delay on the part of the Agent or the Lenders or any other holder of this Note (or any portion thereof) to exercise any right, power or privilege under this Note and no course of dealing between the Borrower and the Agent and Lenders shall impair such right, power or privilege or operate as a waiver of any default or an acquiescence therein, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies expressly provided in this Note are cumulative to, and not exclusive of, any rights or remedies that the Lenders would otherwise have. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the Lenders to any other or further action in any circumstances without notice or demand.

(d) The Borrower and any endorser of this Note hereby consent to renewals and extensions of time at or after the maturity hereof without notice, and hereby waive diligence, presentment, protest, demand and notice of every kind except as otherwise expressly provided herein and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

(e) If any provision in or obligation under this Note shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(f) THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF BORROWER AND THE AGENT AND THE LENDERS HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK INCLUDING WITHOUT LIMITATION SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW

OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

(g) **THE BORROWER AND, BY THEIR ACCEPTANCE OF THIS NOTE, THE LENDERS AND ANY SUBSEQUENT HOLDER OF THIS NOTE, HEREBY IRREVOCABLY AGREES TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS NOTE OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS NOTE AND THE LENDERS'/BORROWER'S RELATIONSHIP THAT IS BEING ESTABLISHED HEREBY.** The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including without limitation contract claims, tort claims, breach of duty claims and all other common law and statutory claims. The Borrower and, by their acceptance of this Note, the Lenders and any subsequent holder of this Note, each (i) acknowledges that this waiver is a material inducement to enter into a business relationship, that each has already relied on this waiver in entering into this relationship, and that each will continue to rely on this waiver in their related future dealings and (ii) further warrants and represents that each has reviewed this waiver with its legal counsel and that each knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. **THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS OF THIS NOTE.** In the event of litigation, this provision may be filed as a written consent a trial by the court.

(h) The Borrower hereby waives the benefit of any statute or rule of law or judicial decision which would otherwise require that the provisions of this Note be construed or interpreted most strongly against the party responsible for the drafting thereof.

(i) The Borrower shall not have the right to assign its obligations or liabilities under this Note without the prior written consent of the Agent. Subject to registration in accordance with paragraph (m) of this Section 21, each Lender may assign to one or more entities all or any part of, or may grant participation's to one or more entities in or to all or any part of, the amounts outstanding hereunder, and to the extent of any such assignment or participation (unless otherwise stated therein) the assignee or participant shall have the same rights and benefits hereunder as it would have it were a Lender hereunder. The Agent shall notify the Borrower of any assignment granted hereunder, provided, however, that the Agent is not required to notify the Borrower in the event that (1) the assignment is to an affiliate of a Lender or a Related Fund of a Lender or (2) the transfer of the interest is in the form of a participation.

(j) No provision of this Note may be amended or waived unless such amendment or waiver is in writing and is signed by the Borrower, the Agent and the Lenders.

(k) Any provision of this Note which is prohibited or unenforceable shall be ineffective to the extent such prohibition or unenforceability without invalidating the remaining provisions hereof.

(l) This Note, the other Loan Documents, and all Liens created hereby or pursuant to the Collateral Documents or any other Loan Document shall be binding upon the Borrower, the estate of the Borrower, and any trustee or successor in interest of the Borrower in the Chapter 11 Case or any subsequent case under Chapter 7 of the Bankruptcy Code, and shall not be subject to Section 365 of the Bankruptcy Code. This Note and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of the Lenders and each of their respective assigns. The Liens created by this Note, and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of the Chapter 11 Case or any other bankruptcy case of the Borrower to a case under Chapter 7 of the Bankruptcy Code or in the event of dismissal of the Chapter 11 Case or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Agent or the Lenders file financing statements or otherwise perfect its security interests or Liens under applicable law.

(m) The Agent shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain, or cause to be maintained at its office, a copy of each assignment delivered to and accepted by it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the principal amount of the Obligations (and stated interest thereon) (the "Registered Loans") owing to each Lender from time to time. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Note. The Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

A Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide). Any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any, evidencing the same), the Agent shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered on the Register as the owner thereof for the purpose of receiving all payments thereon, notwithstanding notice to the contrary.

In the event that any Lender sells participations in a Registered Loan, such Lender shall, acting for this purpose as a non-fiduciary agent on behalf of the Borrower, maintain, or cause to be maintained, a register, on which it enters the name of all participants in the Registered Loans held by it and the principal amount (and stated interest thereon) of the portion of the Registered Loan that is the subject of the participation (the "Participant Register"). A Registered Loan (and the registered note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall

expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. The Participant Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(n) THIS WRITTEN PROMISSORY NOTE REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS PROMISSORY NOTE AND THE TERMS OF THE FINANCING ORDER, THE TERMS OF THE FINANCING ORDER SHALL CONTROL.

22. Agent.

(a) Appointment. Each Lender (and each subsequent maker of the Loan by its making thereof) hereby irrevocably appoints and authorizes the Agent to perform the duties of the Agent as set forth in this Note including: (i) to receive on behalf of each Lender any payment of principal of or interest on the Loan outstanding hereunder and all other amounts accrued hereunder for the account of the Lenders and paid to the Agent, and to distribute promptly to each Lender its Pro Rata Share of all payments so received; (ii) to distribute to each Lender copies of all material notices and agreements received by the Agent and not required to be delivered to each Lender pursuant to the terms of this Note, provided that the Agent shall not have any liability to the Lenders for the Agent's inadvertent failure to distribute any such notices or agreements to the Lenders; (iii) to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Loan, and related matters and to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Collateral and related matters; (iv) to execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to this Note or any other Loan Document; (v) to perform, exercise, and enforce any and all other rights and remedies of the Lenders with respect to the Borrower, the Obligations, or otherwise related to any of same to the extent reasonably incidental to the exercise by the Agent of the rights and remedies specifically authorized to be exercised by the Agent by the terms of this Agreement or any other Loan Document; (vi) to incur and pay such fees necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to this Agreement or any other Loan Document; and (vii) subject to Section 22(c) of this Note, to take such action as the Agent deems appropriate on its behalf to administer the Loan and the Loan Documents and to exercise such other powers delegated to the Agent by the terms hereof or the other Loan Documents (including, without limitation, the power to give or to refuse to give notices, waivers, consents, approvals and instructions and the power to make or to refuse to make determinations and calculations) together with such powers as are reasonably incidental thereto to carry out the purposes hereof and thereof. As to any matters not expressly provided for by this Note and the other Loan Documents (including, without limitation, enforcement or collection of the Loan), the Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Lenders; provided, however, that the Agent shall not be required to

take any action which, in the reasonable opinion of the Agent, exposes the Agent to liability or which is contrary to this Agreement or any other Loan Document or applicable law.

(b) Nature of Duties. The Agent shall have no duties or responsibilities except those expressly set forth in this Note or in the other Loan Documents. The duties of the Agent shall be mechanical and administrative in nature. The Agent shall not have by reason of this Note or any other Loan Document a fiduciary relationship in respect of any Lender. Nothing in this Note or any other Loan Document, express or implied, is intended to or shall be construed to impose upon the Agent any obligations in respect of this Note or any other Loan Document except as expressly set forth herein or therein. Each Lender shall make its own independent investigation of the financial condition and affairs of the Borrower in connection with the making and the continuance of the Loan hereunder and shall make its own appraisal of the creditworthiness of the Borrower and the value of the Collateral, and the Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the Loan hereunder or at any time or times thereafter, provided that, upon the reasonable request of a Lender, the Agent shall provide to such Lender any documents or reports delivered to the Agent by the Borrower pursuant to the terms of this Note or any other Loan Document. If the Agent seeks the consent or approval of the Lenders to the taking or refraining from taking any action hereunder, the Agent shall send notice thereof to each Lender.

(c) Rights, Exculpation, Etc. The Agent and its directors, officers, agents or employees shall not be liable for any action taken or omitted to be taken by them under or in connection with this Note or the other Loan Documents, except for their own gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction. Without limiting the generality of the foregoing, the Agent (i) may treat the payee of the Loan as the owner thereof until the Agent receives written notice of the assignment or transfer thereof, pursuant to Section 21(i) hereof, signed by such payee and in form satisfactory to the Agent; (ii) may consult with legal counsel (including, without limitation, counsel to the Agent or counsel to the Borrower), independent public accountants, and other experts selected by any of them and shall not be liable for any action taken or omitted to be taken in good faith by any of them in accordance with the advice of such counsel or experts; (iii) make no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, certificates, warranties or representations made in or in connection with this Note or the other Loan Documents; (iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Note or the other Loan Documents on the part of any Person, the existence or possible existence of any Default or Event of Default, or to inspect the Collateral or other property (including, without limitation, the books and records) of any Person; (v) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Note or the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; and (vi) shall not be deemed to have made any representation or warranty regarding the existence, value or collectibility of the Collateral, the existence, priority or perfection of the Agent's Lien thereon, or any certificate prepared by the Borrower in connection therewith, nor shall the Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral. The Agent shall not be liable for any apportionment or distribution of payments made in good faith pursuant to this Note, and if any such apportionment or distribution is subsequently

determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount which they are determined to be entitled. The Agent may at any time request instructions from the Lenders with respect to any actions or approvals which by the terms of this Note or of any of the other Loan Documents the Agent is permitted or required to take or to grant, and if such instructions are promptly requested, the Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval under any of the Loan Documents until it shall have received such instructions from the Lenders.

(d) Reliance. The Agent shall be entitled to rely upon any written notices, statements, certificates, orders or other documents or any telephone message believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Note or any of the other Loan Documents and its duties hereunder or thereunder, upon advice of counsel selected by it.

(e) Indemnification. To the extent that the Agent is not reimbursed and indemnified by the Borrower, the Lenders will reimburse and indemnify the Agent from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Agent in any way relating to or arising out of this Note or any of the other Loan Documents or any action taken or omitted by the Agent under this Note or any of the other Loan Documents, in proportion to each Lender's Pro Rata Share; provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements for which there has been a final judicial determination that such liability resulted from the Agent's gross negligence or willful misconduct. The obligations of the Lenders under this section shall survive the payment in full of the Loan and the cancellation of this Note.

(f) Agent Affiliates. With respect to its Pro Rata Share of the Loan hereunder and the portion of the Funded Loan advanced by it, any affiliate of the Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or maker of the Loan. The term "Lenders" or any similar term shall, unless the context clearly otherwise indicates, include any affiliate of the Agent in its individual capacity as a Lender. The Agent and its affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with the Borrower as if Fir Tree Inc. were not acting as the Agent pursuant hereto without any duty to account to the other Lenders.

(g) Collateral Matters.

A. The Lenders hereby irrevocably authorize the Agent, at its option and in its discretion, to release any Lien granted to or held by the Agent upon any Collateral upon cancellation of the Note and indefeasible payment and satisfaction of the Loan and all other Obligations which have matured and which the Agent has been notified in writing are then due and payable; or constituting property being sold or disposed of in the ordinary course of the Borrower's business and in compliance with the terms of this Note and the other Loan Documents; or constituting property in which the Borrower owned no interest at the time the

Lien was granted or at any time thereafter; or if approved, authorized or ratified in writing by the Lenders. Upon request by the Agent at any time, the Lenders will confirm in writing the Agent's authority to release particular types or items of Collateral pursuant to this section.

B. Without in any manner limiting the Agent's authority to act without any specific or further authorization or consent by the Lenders (as set forth in Section 22(g)(A)), each Lender agrees to confirm in writing, upon request by the Agent, the authority to release Collateral conferred upon the Agent under Section 22(g)(A). Upon receipt by the Agent of confirmation from the Lenders of its authority to release any particular item or types of Collateral, and upon prior written request by the Borrower, the Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to the Agent for the benefit of the Lenders upon such Collateral; provided, however, that (i) the Agent shall not be required to execute any such document on terms which, in the Agent's opinion, would expose the Agent to liability or create any obligations or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Lien upon (or obligations of the Borrower in respect of) all interests in the Collateral retained by the Borrower.

C. The Agent shall have no obligation whatsoever to any Lender to assure that the Collateral exists or is owned by the Borrower, or is cared for, protected or insured or has been encumbered or that the Lien granted to the Agent pursuant to this Note or any other Loan Document has been properly or sufficiently or lawfully created, perfected, protected or enforced or is entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Agent in this section or in any other Loan Document, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Agent may act in any manner it may deem appropriate, in its sole discretion, given the Agent's own interest in the Collateral as one of the Lenders and that the Agent shall have no duty or liability whatsoever to any other Lender, except as otherwise provided herein.

(h) Agency for Perfection. Each Lender hereby appoints the Agent and each other Lender as agent and bailee for the purpose of perfecting the security interests in and liens upon the Collateral in assets which, in accordance with Article 9 of the Uniform Commercial Code, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest of another secured party) and the Agent and each Lender hereby acknowledges that it holds possession of or otherwise controls any such Collateral for the benefit of the Agent and the Lenders as secured party. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver such Collateral to the Agent or in accordance with the Agent's instructions. The Borrower by its execution and delivery of this Agreement hereby consents to the foregoing.

* * * * *

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed and delivered by its duly authorized officer as of the day and year and at the place first above written.

CHINACAST EDUCATION CORPORATION, as
Borrower

By: _____

Name:

Title:

FIR TREE INC., as Agent

By: _____
Name: Brian Meyer
Title: General Counsel

LENDERS:

FIR TREE VALUE MASTER FUND, L.P., as a
Lender

By: Fir Tree, L.L.C., its general partner

By: _____
Name: Brian Meyer
Title: Authorized Person

FIR TREE CAPITAL OPPORTUNITY MASTER
FUND, L.P., as a Lender

By: Camellia Partners, L.L.C., its general partner

By: _____
Name: Brian Meyer
Title: Authorized Person

FIR TREE CAPITAL OPPORTUNITY MASTER
FUND III, L.P.

By: Fir Tree COF III, LLC, its general partner

By: _____
Name: Brian Meyer
Title: Authorized Person

COLUMBIA PACIFIC OPPORTUNITY FUND,
L.P., as a Lender

By: [_____],
its general partner

By: _____
Name:
Title:

MRMP Managers LLC, as a Lender

By: _____
Name:
Title:

EXHIBIT A

Allocable Percentages of Lenders

<u>Lenders</u>	<u>Allocable Portion of Loan</u>	<u>Allocable Percentage</u>
Columbia Pacific Opportunity Fund, L.P.	\$108,000.00	33.333%
Fir Tree Value Master Fund, L.P.	\$90,720.00	28.000%
Fir Tree Capital Opportunity Master Fund, LP	\$13,824.00	4.266%
Fir Tree Capital Opportunity Master Fund III, LP	\$3,456.00	1.067%
MRMP Managers LLC	\$108,000.00	33.333%
Total:	\$324,000.00	100.000%

EXHIBIT B

Notice Addresses

Borrower:

ChinaCast Education Corporation
c/o Douglas Woodrum
5 Vista Real
Mill Valley, CA 94941

With a copy to Borrower's counsel:

Klestadt Winters Jureller Southard & Stevens, LLP
200 West 41st Street, 17th Floor
New York, NY 10036
Attention: Tracy L. Klestadt
Telephone: (212) 972-3000
Fax: (212) 972-2245
Email: tklestadt@klestadt.com

Agent:

Fir Tree Inc.
55 West 46th Street, 29th Floor
New York, NY 10036
Attention: _____
Telephone: _____
Fax: _____
Email: _____

With a copy to Lenders' counsel as set forth below

Lenders:

Columbia Pacific Opportunity Fund, L.P.
c/o Columbia Pacific Advisors, LLC
1910 Fairview Avenue East, Suite 200
Seattle, WA 98101
Attention: _____
Telephone: _____
Fax: _____
Email: _____

With a copy to Lenders' counsel as set forth below

Fir Tree Capital Opportunity Master Fund, LP
Fir Tree Value Master Fund, L.P.
Fir Tree Capital Opportunity Master Fund III, LP
c/o Fir Tree Partners
55 West 46th Street, 29th Floor
New York, NY 10036
Attention: _____
Telephone: _____
Fax: _____
Email: _____

With a copy to Lenders' counsel as set forth below

MRMP Managers LLC
c/o ZS Fund L.P.
340 Madison Avenue, 19th Floor
New York, NY 10173
Attention: _____
Telephone: _____
Fax: _____
Email: _____

With a copy to Lenders' counsel as set forth below

Lender's Counsel:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
Attention: Michael L. Cook
Telephone: (212) 756-2000
Fax: (212) 593-5955
Email: michael.cook@srz.com

EXHIBIT C

Payment Accounts

For Columbia Pacific Opportunity Fund, L.P.:

Bank: _____
ABA No.: _____
Account Name: _____
Account No: _____
Reference: _____

For Fir Tree Capital Opportunity Master Fund, LP:

Bank: _____
ABA No.: _____
Account Name: _____
Account No: _____
Reference: _____

For Fir Tree Value Master Fund, L.P.:

Bank: _____
ABA No.: _____
Account Name: _____
Account No: _____
Reference: _____

For Fir Tree Capital Opportunity Master Fund III, LP

Bank: _____
ABA No.: _____
Account Name: _____
Account No: _____
Reference: _____

For MRMP Managers LLC:

Bank: _____
ABA No.: _____
Account Name: _____
Account No: _____
Reference: _____

Exhibit C

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: : Chapter 11
: :
CHINACAST EDUCATION CORP., : Case No. 16-13121(MKV)
: :
: :
Debtor. :

**ORDER (A) AUTHORIZING POSTPETITION FINANCING,
(B) GRANTING LIENS AND SECURITY INTERESTS AND
PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS,
AND (C) MODIFYING AUTOMATIC STAY, PURSUANT TO 11 U.S.C. §§ 105,
362, 363 AND 364 AND FEDERAL RULES OF BANKRUPTCY PROCEDURE
2002 AND 4001(c) AND (d) AND LOCAL BANKRUPTCY RULE 4001-2(a)**

This matter having come before the Court on the motion dated February 28, 2017 (the "**Motion**") of ChinaCast Education Corp. (the "**Debtor**"), as debtor and debtor-in-possession, for an order under 11 U.S.C. §§ 105, 362, 363 and 364 and Federal Rules of Bankruptcy Procedure 2002 and 4001(c) and (d) and Local Bankruptcy Rule 4001-2(a), providing:¹

(i) authorization for the Debtor to obtain secured postpetition financing (the "**DIP Facility**") in an amount not greater than \$324,000 (the "**Maximum Borrowing**") pursuant to the terms and conditions set forth in this final order (the "**Final Order**") and that certain Debtor-In-Possession Term Loan Promissory Note (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**DIP Note**"), together with all agreements, documents, and instruments delivered in connection with the DIP Facility (collectively, and including the DIP Note, the "**DIP Loan Documents**") by and among the Debtor, Fir Tree, Inc., as administrative agent (the "**DIP Agent**"), and the lenders party thereto (the "**DIP Lenders**", together with the "DIP Agent," the "**DIP Parties**");²

(ii) authorization for the Debtor to execute the DIP Note and other DIP Loan Documents and to perform such other acts as may be necessary or desirable in connection with the DIP Facility;

¹ Unless otherwise defined, capitalized terms used herein have the meanings ascribed to them in the Motion or the DIP Note (as defined below), as applicable.

² Pursuant to Local Bankruptcy Rule 4001-2, a summary of certain material provisions of the DIP Note is set forth in Annex 1 hereto.

(iii) authorization for the Debtor to grant to the DIP Parties first priority liens upon and security interests in substantially all of their assets, to secure all obligations owing under the DIP Loan Documents (collectively, and including, without limitation, all "Obligations" as defined in the DIP Note, the "**DIP Obligations**"), subject and subordinate only to the Carve-Out (as defined in Paragraph 11 below); and

(iv) authorization to grant allowed superpriority administrative expense claims to the DIP Parties, subject and subordinate only to the Carve-Out;

and based upon all the pleadings filed with the Court and the evidence presented and the entire record herein after appropriate notice under Bankruptcy Rules 2002 and 4001; the Court having heard and resolved or overruled any objections to the relief requested in the Motion; and the Court having noted the appearances of all parties in interest; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate and creditors; and after due deliberation and consideration, and sufficient cause appearing therefor:

IT IS HEREBY FOUND:³

A. Purpose and Necessity of Financing. The Debtor requires the DIP Facility to enable it to fund continuing actions to pursue certain recoveries (the "**Recovery Actions**") as further explained in the *Declaration of Douglas Woodrum Pursuant to Local Bankruptcy Rules 1007-2 and 9077-1* [Dkt. No. 4] ("First Day Declaration") and Declaration of Douglas Woodrum attached to the Motion as Exhibit A; and is unable to obtain adequate unsecured credit allowable as an administrative expense under section 503 of the Bankruptcy Code, or other financing under sections 364(c) or (d) of the Bankruptcy Code, on equal or more favorable terms than those set forth in the DIP Loan Documents.

³ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

B. Good Cause Shown. Good cause has been shown for entry of this Final Order.

C. Good Faith. Based upon the record before the Court, the DIP Loan Documents have been negotiated in good faith and at arm's-length between the Debtor and the DIP Parties.

D. Fair Consideration & Reasonably Equivalent Value. The Debtor will receive and has received fair and reasonable consideration in exchange for access to the DIP Facility and all other financial accommodations provided under the DIP Loan Documents and this Final Order.

Based upon the foregoing findings, and upon the record made before this Court, it is hereby ordered:

1. The Motion is granted on the terms set forth in this Order; the terms and provisions of the DIP Loan Documents are approved as set forth in the Motion and in the DIP Loan Documents, which are incorporated herein; and it is further

2. The Debtor is hereby authorized to incur and perform the DIP Obligations subject to the DIP Loan Documents and this Final Order, with borrowings under the DIP Note up to the aggregate principal amount of the Maximum Borrowing; and it is further

3. The Debtor is authorized and directed to negotiate, prepare, enter into, and deliver the DIP Loan Documents, including any amendments, modifications, supplements or restatements thereto and related documents; and it is further

4. Upon the occurrence of an Event of Default, the DIP Parties shall be entitled to exercise any and all rights and remedies available under the DIP Loan Documents without further order of the Court; and it is further

5. All fees payable, plus costs reimbursable under the DIP Loan Documents (including, without limitation, the DIP Parties' attorneys' fees and expenses), are hereby approved and authorized to be paid; and it is further

6. To secure the DIP Obligations, pursuant to Section 364(c)(2) of the Bankruptcy Code, the DIP Agent, on behalf of and for the benefit of itself and the DIP Lenders, is hereby granted valid and fully perfected, first priority liens upon and senior security interests (collectively, the "**DIP Liens**") in all of the property, assets or interests in property or assets of the Debtor, of any kind or nature whatsoever, real or personal, now existing or hereafter acquired or created, including, without limitation, all property of the estate of the Debtor, including, without limitation, all commercial tort claims and all Avoidance Actions and Recovery Actions and the proceeds thereof, and all cash and non-cash proceeds, and profits of any of the collateral described above (collectively, the "**DIP Collateral**"), subject only to the Carve-Out; and it is further

7. The DIP Liens shall be effective immediately upon the entry of this Final Order and shall not at any time be made subject or subordinated to, or made *pari passu* with any other lien, security interest or claim existing as of the Petition Date, or created under sections 363 or 364(c) or (d) of the Bankruptcy Code or otherwise, other than the Carve-Out; and it is further

8. The DIP Liens are deemed fully perfected liens and security interests, upon the date of entry of this Final Order; and it is further

9. The DIP Agent, on behalf of and for the benefit of itself and the DIP Lenders, is hereby granted an allowed superpriority administrative expense claim (the "**DIP Superpriority Claim**") pursuant to section 364(c)(1) of the Bankruptcy Code in this case and in any successor chapter 7 case under the Bankruptcy Code for all DIP Obligations with priority, except as set forth below, over any and all other claims against the Debtor, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kinds specified in or arising or ordered under sections 105(a), 326, 328, 330,

331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 and any other provision of the Bankruptcy Code, subordinate only to payment of the Carve-Out expenses; and it is further

10. The DIP Liens, DIP Superpriority Claim, and other rights and remedies granted to the DIP Parties shall continue and shall be valid and enforceable against any trustee appointed in this chapter 11 case or in any chapter 7 case for the Debtor, and subject only to the Carve-Out as provided in this Final Order until all the DIP Obligations have been indefeasibly paid in full in cash; and it is further

11. The DIP Liens and the DIP Superpriority Claim shall be subject only to: (i) professional fees and expenses of the Debtor paid after such Event of Default (irrespective of when incurred or accrued) by the Debtor, as and when allowed on a final basis pursuant to section 330 of the Bankruptcy Code, in an aggregate amount not to exceed \$[10,000], (ii) the costs and expenses of any Chapter 7 trustee appointed for the Borrower in an aggregate amount not to exceed \$[10,000], and (iii) fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6) plus interest pursuant to 31 U.S.C. § 3717 (together, the "Carve-Out"); and it is further

12. Unless and until the DIP Loans are indefeasibly paid in full by cash, no proceeds from the DIP Loans or DIP Collateral, or proceeds thereof may be used by the Debtor, any committee, any party or any trustee appointed in this chapter 11 case or in any successor Chapter 7 case, for any purpose whatsoever other than the pursuit of the Recovery Actions and/or the payment of any fees, costs, expenses or other amounts authorized by this Order; and it is further

13. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified without further application to or order from the Court to the extent necessary to permit the DIP Parties, upon the occurrence of an Event of Default, and without any interference from the Debtor or any other party in interest, under Bankruptcy Code Section 105(a) or any other applicable law, to exercise all rights and remedies provided for in the DIP Loan Documents, but subject to seven (7) days' prior written notice (which may be delivered by electronic mail) (the "**Remedies Notice Period**") to the Debtor, its counsel, counsel to the twenty largest unsecured creditors, and the U.S. Trustee; and it is further

14. The DIP Liens shall be perfected by operation of law immediately upon entry of this Final Order, without any further action in order to validate and to perfect the DIP Liens in any jurisdiction; and the DIP Parties may, in their sole and absolute discretion, choose to file a true and complete copy of this Final Order in any place at which any such documents or instruments would or could be filed, together with a description of the DIP Collateral; and it is further

15. Following the occurrence of an Event of Default, all proceeds of DIP Collateral shall be applied as follows: (a) first, to fund the Carve-Out; (b) second, in the event that the DIP Parties seek payment or reimbursement of their fees and expenses, to repay all reasonable fees and expenses incurred by the DIP Parties pursuant to the DIP Loan Documents and; (c) third, to repay the DIP Obligations, and (d) fourth, thereafter, to the Debtor's estate; and it is further

16. The DIP Loan Documents and the Motion be and are incorporated herein; and it is further

17. This Final Order shall take effect immediately upon execution hereof, notwithstanding the possible application of Fed. R. Bankr. P. 6004(g), 7062, 9014, or otherwise, and the Clerk of the Court is hereby directed to enter this Final Order on the Court's docket; and it is further

18. This Court shall retain exclusive jurisdiction over all matters pertaining to the implementation, interpretation and enforcement of this Final Order and to enter any orders required by the provisions of this Final Order.

Dated: New York, New York
_____, 2017

UNITED STATES BANKRUPTCY JUDGE

ANNEX I

Summary of Material Terms of Proposed Financing

- Amount of DIP Loan: \$324,000
- Material Conditions to Loan: To be used only for continued funding of Avoidance and Recovery Litigation plus Carve-Out; administrative expenses, including Debtor's professionals.
- Pricing/Economic Terms: DIP Lender's actual legal fees up to a cap of \$30,000; 20% interest per annum, payable in kind.
- No Effect on Existing Liens: (None).
- First Priority Lien on All Assets per annum, payable in kind.
- Super-Priority Administrative Claim: Subject only to Carve-Out.
- Carve-Out: Anytime after default (a) Debtor's professional fees (\$10,000); (b) Chapter 7 trustee (\$10,000); and (c) fees payable to U.S. Trustee plus interest.
- No Cross-Collateralization
- No Roll-Up Provision
- No Restriction of Court's Power or Discretion or Limit on Fiduciary Powers.
- Sole Limitation on funding: only for Avoidance and Recovery Litigation.
- Default Provisions:
- No Change of Control Provisions.
- No Asset Sale Deadline.
- No Limit on Ability To Pay in full During Pendency of Case, subject to prepayment fee.
- No Acknowledgment of Prepetition Claims.
- Deadline for Confirmation of Plan: May 3, 2017.
- Modification of Stay: On default's or to record lien.
- No Waiver of Estate Claims.
- No Waiver or Modification of Plan Filing Exclusivity.

- No Waiver of Surcharge Right.
- No Adequate Protection Requirement.
- Termination and Default Provisions: Customary.