

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**ASPEN GROUP, INC.**

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

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

**8200**  
*(Primary Standard Industrial  
Classification Code Number)*

**27-1933597**  
*(I.R.S. Employer  
Identification No.)*

**1660 S Albion Street, Suite 525, Denver, CO  
(303) 333-4224**

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

**Michael Mathews  
1660 S Albion Street, Suite 525, Denver, CO  
(303) 333-4224**

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

***Copies to:***

**Michael D. Harris, Esq.  
Brian S. Bernstein, Esq.  
Elizaveta E. Ivanova, Esq.  
Nason, Yeager, Gerson, White & Lioce, P.A.  
3001 PGA Blvd., Suite 305, Palm Beach Gardens, Florida 33410  
(561) 686-3307**

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the Securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, other than securities offering only in connection with dividend or interest reinvestment plans, check the following box.

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

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

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company.

Large accelerated filer   
Non-accelerated filer

Accelerated filer   
Smaller reporting company   
Emerging growth company

If an emerging growth company, indicate by checkmark if the registrant has not elected to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

## CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered (1)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee(3)
Common Stock, par value \$0.001 per share		
Preferred Stock, par value \$0.001 per share		
Debt Securities		
Warrants		
Units		
Total	\$ 60,000,000	\$ 7,470

- (1) This registration statement includes \$60,000,000 of securities which may be issued by the registrant from time to time in indeterminable amounts and at indeterminable times. Any securities registered hereunder may be sold separately or as units with other securities registered hereunder. Including also such indeterminate amounts and numbers of securities as may be issued in primary offerings or upon exercise, or exchange of any securities registered hereunder that provide for exercise, or exchange, including pursuant to anti-dilution provisions of any such securities.
- (2) The proposed maximum offering price per share will be determined from time to time by the registrant in connection with the issuance by the registrant of the securities registered hereunder. Not specified as to each class of securities to be registered pursuant to General Instruction II.D to Form S-3 under the Securities Act of 1933.
- (3) Calculated pursuant to Rule 457(o) of the rules and regulations of the Securities Act of 1933.

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

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**The information in this prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission of which this prospectus is a part becomes effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**Subject to Completion, Dated April 11, 2018**

**PROSPECTUS**

**\$60,000,000**

**Aspen Group, Inc.**

**Common Stock  
Preferred Stock  
Debt Securities  
Warrants  
Units**

Aspen Group, Inc. intends to offer and sell from time to time the securities described in this prospectus. The total offering price of the securities described in this prospectus will not exceed a total of \$60,000,000.

This prospectus describes some of the general terms that apply to the securities. We will provide specific terms of any securities we may offer in supplements to this prospectus. You should read this prospectus and any applicable prospectus supplement carefully before you invest. We also may authorize one or more free writing prospectuses to be provided to you in connection with the offering. The prospectus supplement and any free writing prospectus also may add, update or change information contained or incorporated in this prospectus.

We may offer and sell these securities to or through one or more underwriters, dealers or agents, or directly to purchasers on a continuous or delayed basis. The prospectus supplement for each offering of securities will describe the plan of distribution for that offering. For general information about the distribution of securities offered, see "Plan of Distribution" in this prospectus. The prospectus supplement also will set forth the price to the public of the securities and the net proceeds that we expect to receive from the sale of such securities.

Our common stock is traded on The Nasdaq Capital Market under the symbol "ASPU." On April 10, 2018, the last reported sales price of our common stock on The Nasdaq Capital Market was \$7.06 per share.

**Investing in our securities involves risks. You should read carefully and consider "Risk Factors" included in our most recent Annual Report on Form 10-K and on page 3 of this prospectus and in the applicable prospectus supplement before investing in our securities.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined whether this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

**The date of this prospectus is \_\_\_\_\_, 2018**

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**You should rely only on information contained in this prospectus. We have not authorized anyone to provide you with information that is different from that contained in this prospectus. We are not offering to sell or seeking offers to buy shares of common stock in jurisdictions where offers and sales are not permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of our common stock. We are responsible for updating this prospectus to ensure that all material information is included and will update this prospectus to the extent required by law.**

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## PROSPECTUS SUMMARY

*This summary only highlights the more detailed information appearing elsewhere in this prospectus or incorporated by reference in this prospectus. It may not contain all of the information that is important to you. You should carefully read the entire prospectus and the documents incorporated by reference in this prospectus before deciding whether to invest in our securities. Unless otherwise indicated or the context requires otherwise, in this prospectus and any prospectus supplement hereto references to “AGI” “we,” “us,” and “our” refer to Aspen Group, Inc. and its consolidated subsidiaries.*

### **About This Prospectus**

This prospectus is part of a “shelf” registration statement that we have filed with the Securities and Exchange Commission or the SEC. By using a shelf registration statement, we may sell, at any time and from time to time, in one or more offerings, any combination of the securities described in this prospectus. The exhibits to our registration statement contain the full text of certain contracts and other important documents we have summarized in this prospectus. Since these summaries may not contain all the information that you may find important in deciding whether to purchase the securities we offer, you should review the full text of these documents. The registration statement and the exhibits can be obtained from the SEC as indicated under the section entitled “Incorporation of Certain Information by Reference.”

This prospectus only provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement that contains specific information about the terms of those securities. The prospectus supplement also may add, update or change information contained in this prospectus. If there is an inconsistency between the information in this prospectus and any prospectus supplement, you should rely on the information in the prospectus supplement. You should read carefully both this prospectus and any prospectus supplement together with the additional information described below under the section entitled “Incorporation of Certain Information by Reference.”

We are not making an offer of these securities in any jurisdiction where the offer is not permitted. You should not assume that the information in this prospectus or a prospectus supplement is accurate as of any date other than the date on the front of the document.

### **Our Company**

AGI is a post-secondary education company with an overarching vision of making higher education affordable again in America. Because we believe higher education should be a catalyst to our students’ long-term economic success, we exert financial prudence by offering affordable tuition that is one of the greatest values in online higher education. AGI has two subsidiaries, Aspen University Inc. (“Aspen” or “Aspen University”) and United States University Inc. (“USU”).

### **Corporate Information**

Our principal executive offices are located at 1660 S Albion Street, Suite 525, Denver, Colorado 80222 and our telephone number is (303) 333-4224. Our corporate website address is <https://ir.aspen.edu>. The information on our website is not incorporated into this prospectus.

## CAUTIONARY NOTE REGARDING FORWARD LOOKING STATEMENTS

This prospectus including the documents incorporated by reference contains forward-looking statements. All statements other than statements of historical facts, including statements regarding our future financial position, liquidity, business strategy and plans and objectives of management for future operations, are forward-looking statements. The words “believe,” “may,” “estimate,” “continue,” “anticipate,” “intend,” “should,” “plan,” “could,” “target,” “potential,” “is likely,” “will,” “expect” and similar expressions, as they relate to us, are intended to identify forward-looking statements. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs.

The results anticipated by any or all of these forward-looking statements might not occur. Important factors, uncertainties and risks that may cause actual results to differ materially from these forward-looking statements are contained in the risk factors that follow and elsewhere in this prospectus and the incorporated documents. We undertake no obligation to publicly update or revise any forward-looking statements, whether as the result of new information, future events or otherwise. For more information regarding some of the ongoing risks and uncertainties of our business, see the risk factors that follow and or that are disclosed in our incorporated documents.

## RISK FACTORS

Investing in our securities involves risks. Before purchasing the securities offered by this prospectus you should consider carefully the risk factors described below, as well as the risks, uncertainties and additional information (i) set forth in our reports on Forms 10-K, 10-Q and 8-K that we file with the SEC after the date of this prospectus and which are deemed incorporated by reference in this prospectus, and (ii) the information contained in any applicable prospectus supplement. For a description of these reports and documents, and information about where you can find them, see “Incorporation of Certain Information By Reference.” The risks and uncertainties we discuss in this prospectus and in the documents incorporated by reference in this prospectus are those that we currently believe may materially affect our company. Additional risks not presently known, or currently deemed immaterial, also could materially and adversely affect our financial condition, results of operations, business and prospects.

### **Risks Relating to Our Business**

#### **AGI’s future operating results will be adversely affected if it does not effectively manage its expanded operations and integrate USU.**

We completed the acquisition of USU on December 1, 2017 (the “Acquisition”). Following the Acquisition, the size of our business is larger and our revenues are increasing substantially. USU was a smaller institution that was losing money and not growing but offered a strategic advantage to our future plans. Our future success will depend, in part, upon our ability to integrate USU, manage this expanded business and replicate the marketing success we have had with Aspen University for USU, which will pose substantial challenges for AGI’s and USU’s management. We cannot assure you that the combined company will be successful or that the combined company will realize the expected marketing success, operating efficiencies, synergies, revenue enhancements and other benefits currently anticipated to result from the Acquisition.

#### **If we cannot manage our growth, our results of operations may suffer and could adversely affect our ability to comply with federal regulations.**

The growth that we have experienced after our new management began in 2011, as well as any future growth that we experience, may place a significant strain on our resources and increase demands on our management information and reporting systems and financial management controls. We have experienced growth at Aspen University over the last several years. Assuming we continue to grow as planned, it may impact our ability to manage our business. If growth negatively impacts our ability to manage our business, the learning experience for our students could be adversely affected, resulting in a higher rate of student attrition and fewer student referrals. Future growth will also require continued improvement of our internal controls and systems, particularly those related to complying with federal regulations under the Higher Education Act, as administered by DOE, including as a result of our participation in federal student financial aid programs under Title IV. If we are unable to manage our growth, we may also experience operating inefficiencies that could increase our costs and adversely affect our profitability and results of operations.

#### **If we are unable to raise capital, we will have to scale back our growth.**

Under our senior secured \$10 million credit facility, we drew \$5 million at closing and an additional \$2.5 million on December 4, 2017 with the understanding that we would draw the remaining \$2.5 million by the October 2018 deadline. On March 16, 2018, our lender for the first time contended that we were not entitled to borrow the second \$5 million in two installments. Consequently, we are seeking to raise additional capital. Because we expect that AGI will be cash flow negative for at least the first two quarters of the upcoming 2019 fiscal year (due to USU and our hybrid online campus program expected to open in July), we will need to raise at least \$2.5 of equity or subordinated debt by October. If we are unable to raise the capital, we will have to scale back our operations and limit our future growth.

**Because there is strong competition in the postsecondary education market, especially in the online education market, our cost of acquiring students may increase and our results of operations may be harmed.**

Postsecondary education is highly fragmented and competitive. We compete with traditional public and private two-year and four-year brick and mortar colleges as well as other for-profit schools. Public and private colleges and universities, as well as other for-profit schools, offer programs similar to those we offer. Public institutions receive substantial government subsidies, and public and private institutions have access to government and foundation grants, tax-deductible contributions that create large endowments and other financial resources generally not available to for-profit schools. Accordingly, public and private institutions may have instructional and support resources that are superior to those in the for-profit sector. In addition, some of our competitors, including both traditional colleges and universities and online for-profit schools, have substantially greater name recognition and financial and other resources than we have, which may enable them to compete more effectively for potential students. We also expect to face increased competition as a result of new entrants to the online education market, including established colleges and universities that have not previously offered online education programs. Major brick and mortar universities continue to develop and advertise their online course offerings. Purdue University's 2017 acquisition of Kaplan University is a prime example of this change.

We may not be able to compete successfully against current or future competitors and may face competitive pressures including price pressures that could adversely affect our business or results of operations and reduce our operating margins. These competitive factors could cause our enrollments, revenues and profitability to materially decrease.

**In the event that we are unable to update and expand the content of existing programs and develop new programs and specializations on a timely basis and in a cost-effective manner, our results of operations may be harmed.**

The updates and expansions of our existing programs and the development of new programs and specializations may not be accepted by existing or prospective students or employers. If we cannot respond to changes in market requirements, our business may be adversely affected. Even if we are able to develop acceptable new programs, we may not be able to introduce these new programs as quickly as students require or as quickly as our competitors introduce competing programs. To offer a new academic program, we may be required to obtain appropriate federal, state and accrediting agency approvals, which may be conditioned or delayed in a manner that could significantly affect our growth plans. In addition, a new academic program that must prepare students for gainful employment must be approved by DOE for Title IV purposes if the institution is provisionally certified. If we are unable to respond adequately to changes in market requirements due to financial constraints, regulatory limitations or other factors, our ability to attract and retain students could be impaired and our financial results could suffer.

Establishing new academic programs or modifying existing programs may require us to make investments in management and faculty, incur marketing expenses and reallocate other resources. If we are unable to increase the number of students, or offer new programs in a cost-effective manner, or are otherwise unable to manage effectively the operations of newly established academic programs, our results of operations and financial condition could be adversely affected.

**Because our future growth and profitability will depend in large part upon the effectiveness of our marketing and advertising efforts, if those efforts are unsuccessful we may not be profitable in the future.**

Our future growth and profitability will depend in large part upon our media performance, including our ability to:

- Grow our nursing programs including Aspen University's core Bachelor's and Master's Degree programs, USU's family nurse practitioner program and Aspen University's pre-licensure BSN hybrid online/campus program we expect to open in July 2018;
- Replicating the success we have had with nursing in other programs;
- Achieve the same degree of success with USU;
- Create greater awareness of our school and our programs;
- Identify the most effective and efficient level of spending in each market and specific media vehicle;
- Determine the appropriate creative message and media mix for advertising, marketing and promotional expenditures; and
- Effectively manage marketing costs (including creative and media); and increase our line of credit to support such growth.



Our marketing expenditures may not result in increased revenue or generate sufficient levels of brand name and program awareness. If our media performance is not effective, our future results of operations and financial condition will be adversely affected.

**Although our management has successfully implemented a monthly payment business model, it may not be successful long-term.**

Mr. Michael Mathews, our Chief Executive Officer, has developed a monthly payment business model designed to substantially increase our student enrollment and reduce student debt among Aspen University's and USU's student bodies. While results to date have been as anticipated, there are no assurances that this marketing campaign will continue to be successful. Among the risks are the following:

- Our ability to compete with existing online colleges which have substantially greater financial resources, deeper management and academic resources, and enhanced public reputations;
- The emergence of more successful competitors;
- Factors related to our marketing, including the costs of Internet advertising and broad-based branding campaigns;
- Limits on our ability to attract and retain effective employees because of the incentive compensation rule;
- Performance problems with our online systems;
- Our failure to maintain accreditation;
- Student dissatisfaction with our services and programs;
- Adverse publicity regarding us, our competitors or online or for-profit education generally;
- A decline in the acceptance of online education;
- A decrease in the perceived or actual economic benefits that students derive from our programs;
- Potential students may not be able to afford the monthly payments; and
- Potential USU students may not react favorably to our marketing and advertising campaigns, including our monthly payment plan.

If our monthly payment plan business model does not continue to be favorably received, our revenues may not increase.

**If the demand for the nursing workforce decreases or the educational requirements for nurses were relaxed, our business will be adversely affected.**

Aspen University's recent focus has been the continued growth of enrollment in its School of Nursing. As of January 31, 2018, approximately 73% of our active degree-seeking were enrolled in Aspen University's School of Nursing. If the demand for nurses does not continue to grow (or declines) or there are changes within the healthcare industry that make the nursing occupation less attractive to learners or reduce the benefits of a bachelors or an advanced degree, our enrollment and results of operations will be adversely affected.

**If we incur system disruptions to our online computer networks, it could impact our ability to generate revenue and damage our reputation, limiting our ability to attract and retain students.**

Since early 2011, Aspen University has made significant investments to update its computer network primarily to permit accelerated student enrollment and enhance its students' learning experience. We expect to spend approximately \$2,000,000 in capital expenditures over the next 12 months. The performance and reliability of our technology infrastructure is critical to our reputation and ability to attract and retain students. Any system error or failure, or a sudden and significant increase in bandwidth usage, could result in the unavailability of our online classroom, damaging our reputation and could cause a loss in enrollment. Our technology infrastructure could be vulnerable to interruption or malfunction due to events beyond our control, including natural disasters, terrorist activities and telecommunications failures.

**If we are unable to develop awareness among, and attract and retain, high quality learners to Aspen University, our ability to generate significant revenue or achieve profitability will be significantly impaired.**

Building awareness of Aspen University and the programs we offer among working adult professionals is critical to our ability to attract prospective learners. If we are unable to successfully market and advertise our educational programs, Aspen University's ability to attract and enroll prospective learners in such programs could be adversely affected, and consequently, our ability to increase revenue or achieve profitability could be impaired. It is also critical to our success that we convert these prospective learners to enrolled learners in a cost-effective manner and that these enrolled learners remain active in our programs. Some of the factors that could prevent us from successfully enrolling and retaining learners in our programs include:

- The emergence of more successful competitors;
- Factors related to our marketing, including the costs of Internet advertising and broad-based branding campaigns;
- Performance problems with our online systems;
- Failure to maintain accreditation;
- Learner dissatisfaction with our services and programs, including with our customer service and responsiveness;
- Adverse publicity regarding us, our competitors, or online or for-profit education in general;
- Price reductions by competitors that we are unwilling or unable to match;
- A decline in the acceptance of online education or our degree offerings by learners or current and prospective employers;
- Increased regulation of online education, including in states in which we do not have a physical presence;
  
- A decrease in the perceived or actual economic benefits that learners derive from our programs;
- Litigation or regulatory investigations that may damage our reputation; and
- Difficulties in executing on our strategy as a preferred provider to employers for the vertical markets we serve.

If we are unable to continue to develop awareness of Aspen University and the programs we offer, and to enroll and retain learners, our enrollments would suffer and our ability to increase revenues and achieve profitability would be significantly impaired.

**If we experience any interruption to our technology infrastructure, it could prevent students from accessing their courses, could have a material adverse effect on our ability to attract and retain students and could require us to incur additional expenses to correct or mitigate the interruption.**

Our computer networks may also be vulnerable to unauthorized access, computer hackers, computer viruses and other security problems. A user who circumvents security measures could misappropriate proprietary information, personal information about our students or cause interruptions or malfunctions in operations. As a result, we may be required to expend significant resources to protect against the threat of these security breaches or to alleviate problems caused by these breaches.

**Because we rely on third parties to provide services in running our operations, if any of these parties fail to provide the agreed services at an acceptable level, it could limit our ability to provide services and/or cause student dissatisfaction, either of which could adversely affect our business.**

We rely on third parties to provide us with services in order for us to efficiently and securely operate our business including our computer network and the courses we offer to students. Any interruption in our ability to obtain the services of these or other third parties or deterioration in their performance could impair the quality of our educational product and overall business. Generally, there are multiple sources for the services we purchase. Our business could be disrupted if we were required to replace any of these third parties, especially if the replacement became necessary on short notice, which could adversely affect our business and results of operations.

**If we or our service providers are unable to update the technology that we rely upon to offer online education, our future growth may be impaired.**

We believe that continued growth will require our service providers to increase the capacity and capabilities of their technology infrastructure. Increasing the capacity and capabilities of the technology infrastructure will require these third parties to invest capital, time and resources, and there is no assurance that even with sufficient investment their systems will be scalable to accommodate future growth. Our service providers may also need to invest capital, time and resources to update their technology in response to competitive pressures in the marketplace. If they are unwilling or unable to increase the capacity of their resources or update their resources appropriately and we cannot change over to other service providers efficiently, our ability to handle growth, our ability to attract or retain students, and our financial condition and results of operations could be adversely affected.

**Because we rely on third-party administration and hosting of learning management system software for our online classroom, if that third-party were to cease to do business or alter its business practices and services, it could have an adverse impact on our ability to operate.**

Beginning in June 2014, our online classroom at Aspen University began employing the Desire2Learn learning management system named Brightspace, followed by USU in 2017. The system is a web-based portal that stores and delivers course content, provides interactive communication between students and faculty, and supplies online evaluation tools. We rely on third parties to host and help with the administration of it. We further rely on third parties, the D2L agreement and our internal staff for ongoing support and customization and integration of the system with the rest of our technology infrastructure. If D2L were unable or unwilling to continue to provide us with service, we may have difficulty maintaining the software required for our online classroom or updating it for future technological changes. Any failure to maintain our online classroom would have an adverse impact on our operations, damage our reputation and limit our ability to attract and retain students.

**Because the personal information that we or our vendors collect may be vulnerable to breach, theft or loss, any of these factors could adversely affect our reputation and operations.**

Possession and use of personal information in our operations subjects us to risks and costs that could harm our business. Aspen University and USU use a third-party to collect and retain large amounts of personal information regarding our students and their families, including social security numbers, tax return information, personal and family financial data and credit card numbers. We also collect and maintain personal information of our employees in the ordinary course of our business. Some of this personal information is held and managed by certain of our vendors. Errors in the storage, use or transmission of personal information could result in a breach of student or employee privacy. Possession and use of personal information in our operations also subjects us to legislative and regulatory burdens that could require notification of data breaches, restrict our use of personal information, and cause us to lose our certification to participate in the Title IV Programs. We cannot guarantee that there will not be a breach, loss or theft of personal information that we store or our third parties store. A breach, theft or loss of personal information regarding our students and their families or our employees that is held by us or our vendors could have a material adverse effect on our reputation and results of operations and result in liability under state and federal privacy statutes and legal or administrative actions by state attorneys general, private litigants, and federal regulators any of which could have a material adverse effect on our business, financial condition, results of operations and cash flows.

**Because the CAN-SPAM Act imposes certain obligations on the senders of commercial emails, it could adversely impact our ability to market Aspen University's and USU's educational services, and otherwise increase the costs of our business.**

The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, or the CAN-SPAM Act, establishes requirements for commercial email and specifies penalties for commercial email that violates the CAN-SPAM Act. In addition, the CAN-SPAM Act gives consumers the right to require third parties to stop sending them commercial email.

The CAN-SPAM Act covers email sent for the primary purpose of advertising or promoting a commercial product, service, or Internet website. The Federal Trade Commission, a federal consumer protection agency, is primarily responsible for enforcing the CAN-SPAM Act, and the Department of Justice, other federal agencies, State Attorneys General, and Internet service providers also have authority to enforce certain of its provisions.

The CAN-SPAM Act's main provisions include:

- Prohibiting false or misleading email header information;
- Prohibiting the use of deceptive subject lines;
- Ensuring that recipients may, for at least 30 days after an email is sent, opt out of receiving future commercial email messages from the sender;
- Requiring that commercial email be identified as a solicitation or advertisement unless the recipient affirmatively permitted the message; and
- Requiring that the sender include a valid postal address in the email message.

The CAN-SPAM Act also prohibits unlawful acquisition of email addresses, such as through directory harvesting and transmission of commercial emails by unauthorized means, such as through relaying messages with the intent to deceive recipients as to the origin of such messages.

Violations of the CAN-SPAM Act's provisions can result in criminal and civil penalties, including statutory penalties that can be based in part upon the number of emails sent, with enhanced penalties for commercial email companies who harvest email addresses, use dictionary attack patterns to generate email addresses, and/or relay emails through a network without permission.

The CAN-SPAM Act acknowledges that the Internet offers unique opportunities for the development and growth of frictionless commerce, and the CAN-SPAM Act was passed, in part, to enhance the likelihood that wanted commercial email messages would be received.

The CAN-SPAM Act preempts, or blocks, most state restrictions specific to email, except for rules against falsity or deception in commercial email, fraud and computer crime. The scope of these exceptions, however, is not settled, and some states have adopted email regulations that, if upheld, could impose liabilities and compliance burdens in addition to those imposed by the CAN-SPAM Act.

Moreover, some foreign countries, including the countries of the European Union, have regulated the distribution of commercial email and the online collection and disclosure of personal information. Foreign governments may attempt to apply their laws extraterritorially or through treaties or other arrangements with U.S. governmental entities.

Because we use email marketing, our requirement to comply with the CAN-SPAM Act could adversely affect our marketing activities and increase its costs.

**If we lose the services of key personnel, it could adversely affect our business.**

Our future success depends, in part, on our ability to attract and retain key personnel. Our future also depends on the continued services of Mr. Michael Mathews, our Chief Executive Officer, Mr. Gerard Wendolowski, our Chief Operating Officer, and Dr. Cheri St. Arnauld, our Chief Academic Officer, who are critical to the management of our business and operations and the development of our strategic direction and would also be difficult to replace. We have a \$3 million key man life insurance policy on Mr. Mathews. The loss of the services of Mr. Mathews and other key individuals and the process to replace these individuals would involve significant time and expense and may significantly delay or prevent the achievement of our business objectives.

**If we are unable to attract and retain our faculty, administrators, management and skilled personnel, we may not be able to support our growth strategy.**

To execute our growth strategy, we must attract and retain highly qualified faculty, administrators, management and skilled personnel. Competition for hiring these individuals is intense, especially with regard to faculty in specialized areas. If we fail to attract new skilled personnel or faculty or fail to retain and motivate our existing faculty, administrators, management and skilled personnel, our business and growth prospects could be severely harmed. Further, we are moving to a new hybrid model focused on using full-time faculty members in addition to adjunct or part-time faculty. These efforts may not be successful resulting in the loss of faculty and difficulties in recruiting.

**If we are unable to protect our intellectual property, our business could be harmed.**

In the ordinary course of our business, we develop intellectual property of many kinds that is or will be the subject of copyright, trademark, service mark, trade secret or other protections. This intellectual property includes but is not limited to courseware materials, business know-how and internal processes and procedures developed to respond to the requirements of operating and various education regulatory agencies. We rely on a combination of copyrights, trademarks, service marks, trade secrets, domain names, agreements and registrations to protect our intellectual property. We rely on service mark and trademark protection in the U.S. to protect our rights to the marks “ASPEN UNIVERSITY” and “UNITED STATES UNIVERSITY” as well as distinctive logos and other marks associated with our services. We rely on agreements under which we obtain rights to use course content developed by faculty members and other third-party content experts. We cannot assure you that the measures that we take will be adequate or that we have secured, or will be able to secure, appropriate protections for all of our proprietary rights in the U.S. or select foreign jurisdictions, or that third parties will not infringe upon or violate our proprietary rights. Despite our efforts to protect these rights, unauthorized third parties may attempt to duplicate or copy the proprietary aspects of our curricula, online resource material and other content, and offer competing programs to ours.

In particular, third parties may attempt to develop competing programs or duplicate or copy aspects of our curriculum, online resource material, quality management and other proprietary content. Any such attempt, if successful, could adversely affect our business. Protecting these types of intellectual property rights can be difficult, particularly as it relates to the development by our competitors of competing courses and programs.

We may encounter disputes from time to time over rights and obligations concerning intellectual property, and we may not prevail in these disputes. Third parties may raise a claim against us alleging an infringement or violation of the intellectual property of that third-party.

**If we are subject to intellectual property infringement claims, it could cause us to incur significant expenses and pay substantial damages.**

Third parties may claim that we are infringing or violating their intellectual property rights. Any such claims could cause us to incur significant expenses and, if successfully asserted against us, could require that we pay substantial damages and prevent us from using our intellectual property that may be fundamental to our business. Even if we were to prevail, any litigation regarding the intellectual property could be costly and time-consuming and divert the attention of our management and key personnel from our business operations.

**If we incur liability for the unauthorized duplication or distribution of class materials posted online during our class discussions, it may affect our future operating results and financial condition.**

In some instances, our faculty members or our students may post various articles or other third-party content on class discussion boards. We may incur liability for the unauthorized duplication or distribution of this material posted online for class discussions. Third parties may raise claims against us for the unauthorized duplication of this material. Any such claims could subject us to costly litigation and impose a significant strain on our financial resources and management personnel regardless of whether the claims have merit. As a result we may be required to alter the content of our courses or pay monetary damages.

**Because we are an almost exclusively online provider of education, we are substantially dependent on continued growth and acceptance of online education and, if the recognition by students and employers of the value of online education does not continue to grow, our ability to grow our business could be adversely impacted.**

We believe that continued growth in online education will be largely dependent on additional students and employers recognizing the value of degrees and courses from online institutions. If students and employers are not convinced that online schools are an acceptable alternative to traditional schools or that an online education provides necessary value, or if growth in the market penetration of exclusively online education slows, growth in the industry and our business could be adversely affected. Because our business model is based on online education, if the acceptance of online education does not grow, our ability to continue to grow our business and our financial condition and results of operations could be materially adversely affected.

**If our data or our users' content is hacked, including through privacy and data security breaches, our business could be damaged, and we could be subject to liability.**

Our business is and we expect it will continue to be almost exclusively reliant upon the Internet. Although there are growing reports of cybersecurity incidents affecting larger companies, if our systems are hacked and our students' confidential information is misappropriated we could be subject to liability.

We may fail to detect the existence of a breach of user content and be unable to prevent unauthorized access to user and company content. The techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems change frequently and are often not recognized until launched against a target. They may originate from less regulated third world countries where lax local enforcement and poverty create opportunities for hacking. If our security measures are breached, or our students' content is otherwise accessed through unauthorized means, or if any such actions are believed to occur, Aspen University and USU may lose existing students and or fail to enroll new students.

**Our business could be harmed by any significant disruption of service on our websites.**

Because of the importance of the Internet to our business, in addition to cybersecurity we face the risk that our systems will fail to function in a robust manner. Our reputation, and ability to attract, retain, and serve our students are dependent upon the reliable performance of our websites, including our underlying technical infrastructure. Our technical infrastructure may not be adequately designed with sufficient reliability and redundancy to avoid performance delays or outages that could be harmful to our business. If our websites are unavailable when students and professors attempt to access them, or if they experience frequent slowdowns or disruptions, we may lose students and professors.

**As Internet commerce develops, federal and state governments may draft and propose new laws to regulate Internet commerce, which may negatively affect our business.**

The increasing popularity and use of the Internet and other online services have led and may lead to the adoption of new laws and regulatory practices in the U.S. and to new interpretations of existing laws and regulations. These new laws and interpretations may relate to issues such as online privacy, copyrights, trademarks and service marks, sales taxes, fair business practices and the requirement that online education institutions qualify to do business as foreign corporations or be licensed in one or more jurisdictions where they have no physical location or other presence. New laws, regulations or interpretations related to doing business over the Internet could increase our costs and materially and adversely affect our enrollments, revenues and results of operations.

**If there is new tax treatment of companies engaged in Internet commerce, this may adversely affect the commercial use of our marketing services and our financial results.**

Due to the growing budgetary problems facing state and local governments, it is possible that governments might attempt to tax our activities. New or revised tax regulations may subject us to additional sales, income and other taxes. We cannot predict the effect of current attempts to impose taxes on commerce over the Internet. New or revised taxes and, in particular, sales or use taxes, would likely increase the cost of doing business online which could have an adverse effect on our business and results of operations.

**Risks Related to the Regulation of Our Industry**

**If we fail to comply with the extensive regulatory requirements for our business, we could face penalties and significant restrictions on our operations, including loss of access to Title IV Program funds.**

We are subject to extensive regulation by (1) the federal government through DOE under the Higher Education Act, (2) state regulatory bodies and (3) accrediting agencies recognized by DOE, including the Distance Education Accrediting Commission (the "DEAC"), a "national accrediting agency" recognized by DOE, and WSCUC, a "regional accrediting agency" recognized by DOE. In addition, the U.S. Department of Defense and the U.S. Department of Veterans Affairs regulate our participation in the military's tuition assistance program and the VA's veterans' education benefits program, respectively. The laws, regulations, standards and policies of these agencies cover the vast majority of our operations, including our educational programs, facilities, instructional and administrative staff, administrative procedures, marketing, recruiting, financial operations and financial condition. These regulatory requirements can also affect our ability to add new or expand existing educational programs and to change our corporate structure and ownership.

Institutions of higher education that grant degrees, diplomas, or certificates must be authorized by an appropriate state education agency or agencies. In addition, in certain states, as a condition of continued authorization to grant degrees, a school must be accredited by an accrediting agency recognized by the U.S. Secretary of Education. Accreditation is a non-governmental process through which an institution submits to qualitative review by an organization of peer institutions, based on the standards of the accrediting agency and the stated aims and purposes of the institution. Accreditation is also required in order to participate in various federal programs, including tuition assistance programs of the United States Armed Forces and the federal programs of student financial assistance administered pursuant to Title IV of the Higher Education Act. The Higher Education Act and its implementing regulations require accrediting agencies recognized by DOE to review and monitor many aspects of an institution's operations and to take appropriate action when the institution fails to comply with the accrediting agency's standards.

Our operations are also subject to regulation due to our participation in Title IV Programs. Title IV Programs, which are administered by DOE, include loans made directly to students by DOE and several grant programs for students with economic need as determined in accordance with the Higher Education Act and DOE regulations. To participate in Title IV Programs, a school must receive and maintain authorization by the appropriate state education agencies, be accredited by an accrediting agency recognized by the U.S. Secretary of Education, and be certified as an eligible institution by DOE. Our growth strategy is partly dependent on being able to offer financial assistance through Title IV Programs as it may increase the number of potential students who may choose to enroll in our programs.

The laws, regulations, standards, and policies of DOE, state education agencies, and our accrediting agencies change frequently. Recent and impending changes in, or new interpretations of, applicable laws, regulations, standards, or policies, or our noncompliance with any applicable laws, regulations, standards, or policies, could have a material adverse effect on our accreditation, authorization to operate in various states, activities, receipt of funds under tuition assistance programs of the United States Armed Forces, our ability to participate in Title IV Programs, receipt of veterans education benefits funds, or costs of doing business. Findings of noncompliance with these laws, regulations, standards and policies also could result in our being required to pay monetary damages, or subjected to fines, penalties, injunctions, limitations on our operations, termination of our ability to grant degrees, revocation of our accreditation, restrictions on or loss of our access to Title IV Program funds or other censure that could have a material adverse effect on our business.

**If we do not maintain authorization in Colorado and California, our operations would be curtailed, and we may not grant degrees.**

Aspen is headquartered in Colorado and is authorized by the Colorado Commission on Higher Education to grant degrees, diplomas or certificates. USU is headquartered in California and is authorized by the California Bureau for Private Postsecondary Education to grant degrees, diplomas or certificates. If Aspen were to lose its authorization from the Colorado Commission on Higher Education, Aspen would be unable to provide educational services in Colorado and would lose its eligibility to participate in the Title IV Programs. If USU were to lose its authorization from the California Bureau for Private Postsecondary Education, it would be unable to provide educational services in California and would lose its eligibility to participate in the Title IV Programs.

**Our failure to comply with regulations of various states could have a material adverse effect on our enrollments, revenues, and results of operations.**

Various states impose regulatory requirements on education institutions operating within their boundaries. Several states assert jurisdiction over online education institutions that have no physical location or other presence in the state but offer education services to students who reside in the state or advertise to or recruit prospective students in the state. State regulatory requirements for online education are inconsistent among states and not well developed in many jurisdictions. As such, these requirements change frequently and, in some instances, are not clear or are left to the discretion of state regulators.

State laws typically establish standards for instruction, qualifications of faculty, administrative procedures, marketing, recruiting, financial operations, and other operational matters. To the extent that we have obtained, or obtain in the future, state authorizations or licensure, changes in state laws and regulations and the interpretation of those laws and regulations by the applicable regulators may limit our ability to offer educational programs and award degrees. Some states may also prescribe financial regulations that are different from those of DOE. If we fail to comply with state licensing or authorization requirements, we may be subject to the loss of state licensure or authorization. If we fail to comply with state requirements to obtain licensure or authorization, we may be the subject of injunctive actions or other penalties or fines. Loss of licensure or authorization or the failure to obtain required licensures or authorizations could prohibit us from recruiting or enrolling students in particular states, reduce significantly our enrollments and revenues and have a material adverse effect on our results of operations.

In addition, DOE's new distance education rule is scheduled to go into effect on July 1, 2018. The new rule requires us to (i) obtain authorization to offer our programs from each state where authorization is required or through participation in a reciprocity agreement, and (ii) provide specific consumer disclosures regarding our educational programs. If we fail to obtain required state authorization to provide postsecondary distance education in a specific state before the effective date for the new distance education rule, we could lose our ability to award Title IV aid to students within that state or be required to refund Title IV funds related to jurisdictions in which we failed to have state authorization. We must be able to document state approval for distance education if requested by DOE. In addition, the consumer disclosures required pursuant to the distance education rule are detailed and include disclosures regarding licensure and certification requirements, state authorization, student complaints, adverse actions by state and accreditation agencies, and refund policies. These disclosure requirements will require a considerable amount of data gathering needed to support such disclosures and will require our institutions to closely track where students enrolled in online programs reside during the course of their studies. These various disclosure requirements could subject us to financial penalties from DOE and heighten the risk of potential federal and private misrepresentation claims.

Moreover, in the event we are found not to be in compliance with a state's new or existing requirements for offering distance education within that state, the state could seek to restrict one or more of our business activities within its boundaries, we may not be able to recruit students from that state, and we may have to cease providing service to students in that state. In addition, a state may impose penalties on an institution for failure to comply with state requirements related to an institution's activities in a state, including the delivery of distance education to persons in that state.

**If DOE determines that borrowers of federal student loans who attended our institution have a defense to repayment of their federal student loans based on a state law claim against our institution, our institution's repayment liability to DOE could have a material adverse effect on our enrollments, revenues and results of operations.**

DOE's current regulations provide borrowers of loans under the William D. Ford Federal Direct Loan ("FDL") program a defense against an attempt to collect such loans based on any act or omission of the institution that would give rise to a cause of action under applicable state law. In the event the borrower's defense against repayment is successful, DOE has the authority to discharge all or part of the student's obligation to repay the loan, and may require the institution to repay the amount of the loan to which the defense applies.

In addition to the current regulation, the new Borrower Defense to Repayment (BDTR) Rule was published November 1, 2016, with an anticipated July 1, 2017 effective date. In mid-June of 2017, DOE announced an "indefinite delay" in the implementation of the rule due to a lawsuit brought by the California Association for Private Postsecondary Schools (CAPPS) challenging elements of the rule. In a second notice on the same day, DOE announced that, in addition to the legal challenge, DOE's own internal analysis indicated that the rule needed "further work," and a new negotiated rulemaking panel would be convened to draft a new version.

In October of 2017, DOE issued two new notices, the first rescinding DOE's earlier indefinite delay of the effective date for BDTR, replacing it with a new effective date of July 1, 2018 and the second extending the delay to July 1, 2019. The reason articulated by DOE for the first delay was to align the new effective date with DOE's master calendar; the justification for the second delay is to allow the BDTR negotiated rulemaking process to be completed before requiring schools to comply. The now-postponed rule is also the subject of multiple lawsuits – including the CAPPS suit noted above and another from a coalition of state attorneys general who argue that DOE does not have the authority to delay the effective date of an existing regulation. It also argues that by not implementing the rule, DOE is amending the regulation without required rulemaking, notice and comment periods in violation of the Administrative Procedures Act.

DOE has indicated in the notices that it will continue to process borrower claims under the current regulation until replaced by a new rule.



The postponed regulations, which could form the basis for any new proposed regulations, open new avenues for student borrowers to assert a defense to repaying their loans, allow DOE to seek reimbursement for such claims from the affected institutions, and expand DOE's financial responsibility rules to require many more schools to post letters of credit with DOE. The postponed regulations include, among other things:

- Bases for borrowers to file claims: The postponed regulations set out three grounds for a borrower defense to repayment claim, including a favorable decision for the student in a state or federal court case involving the loan; a breach of contract by the institution; or a substantial misrepresentation by the institution about the nature of its educational program, the nature of its financial charges, or the employability of its graduates. Claims based on a court judgment or claims to assert a defense against loan payments that are still due can be made any time (with no statute of limitations), while other claims (such as to recoup loan funds already repaid to DOE) must be made within six years.
- Claim resolution process: The postponed regulations call for DOE to set up a fact-finding process to resolve claims. The contemplated structure includes providing the institution with notice and an opportunity to submit evidence; however, the exact procedures, including the opportunity to contest particular factual assertions or present in-person testimony, are not defined. In addition, DOE has also given itself authority to process claims on a group basis, and to take the initiative to create groups and include borrowers who have not filed a claim. Borrowers who file successful claims may have their loans forgiven in whole or in part, with DOE reserving the right to calculate the amount of forgiveness in various ways.
- Recovering funds: For debts relieved for individual borrowers, the postponed regulations give DOE the authority to initiate a proceeding to seek repayment from the institution for any loan amounts forgiven. The details concerning how such a proceeding would be conducted are not defined in the postponed regulations. For group relief, there is no separate proceeding. If DOE determines a group discharge is warranted, it will automatically assign liability to the institution.
- "Early warning" letter of credit triggers: DOE proposed in the postponed regulations to amend its existing financial responsibility regulations to describe at least 10 new "early warning" triggers that would allow DOE to require an institution to post a letter of credit with DOE to demonstrate its financial stability and assure DOE of the institution's ability to pay borrower claims if needed. Each trigger would authorize DOE to require an LOC in the amount of at least 10% of the Title IV funding utilized by the institution for the most recently completed fiscal year. The triggers are intended to be cumulative, and therefore could require an institution to post a very significant letter of credit, up to or even exceeding its Title IV funding level. The postponed regulations would also put an institution on provisional certification immediately upon a trigger being met. In addition, if the institution does not provide the required letter of credit within 30 days of DOE's request, DOE may offset the institution's future Title IV funds for up to nine months until DOE is able to capture the amount of the letter of credit. The proposed triggering events include, among others:
  - a. Lawsuits and other Actions – If the institution is subject to a liability based on a lawsuit or an audit, investigation or similar action by a state or federal oversight agency, including any debt or liability incurred or asserted at any time during the three most recently completed award years, with a claim or liability exceeding the lesser of 10% of the institution's current assets or \$750,000.
  - b. Successful Borrower Defense to Repayment Claims – If the institution is required to pay more than 10% of its current assets, or \$750,000, whichever is less, to satisfy successful borrower defense claims.
  - c. Accrediting Agency Actions – If the institution is required to submit a teach-out plan or is placed on probation or issued a show-cause in the three prior award years, regardless of the cause.
  - d. 90/10 Rule – Failure to meet the 90/10 Rule revenue ratio for a single year.
  - e. Gainful Employment Rates – If more than 50% of the institution's Title IV-recipient students in GE programs are enrolled in GE programs with failing or zone rates (but prior to any loss of eligibility under the multi-year triggers in the GE Rule).
  - f. Cohort Default Rates – Two consecutive years with CDRs of 30% or higher.

Required warnings to students of new repayment rate: One section of the postponed regulations applies only to for-profit institutions, requiring such institutions to disclose a new form of loan repayment rate in a variety of public materials, to serve as a warning to current and potential students, when the rate is too low. This repayment rate would be calculated based on the payment performance of an institution's students approximately five years after its students graduate or withdraw from the school.

Forbidding mandatory arbitration clauses and class action waivers: The postponed regulations would prohibit an institution from incorporating a class action waiver provision, or a mandatory arbitration clause, in any agreement with students. If an institution's contracts currently contain a pre-dispute arbitration provision or a class waiver, the institution will be required to amend the agreement or provide a specific notice to students, using language provided by DOE that explains that those provisions have been changed.

If DOE determines that borrowers of FDL program loans who attended Aspen or USU have a defense to repayment of their FDL program loans based on our acts or omissions, the repayment liability to DOE could have a material adverse effect on our financial condition, results of operations and cash flows. Cumulative letters of credit, at 10% of the amount of Title IV Program funds received by the institution during the most recently completed award year, could have a material adverse effect on our financial condition, results of operations and cash flows. Additionally, if DOE determines that our loan repayment rates are too low, having to issue warnings to current and prospective students describing the low repayment rate could have a material adverse effect on our enrollments, revenues, financial condition, results of operations and cash flows.

**If we fail to maintain our institutional accreditation, we would lose our ability to participate in the tuition assistance programs of the U.S. Armed Forces and also to participate in Title IV Programs.**

Aspen University is accredited by the DEAC, which is a national accrediting agency and USU is accredited by the Senior College and University Commission of the Western Association of Schools and Colleges (the "WSCUC"), which is a regional accrediting agency. Both DEAC and WSCUC are recognized by the U.S. Secretary of Education for Title IV purposes. Accreditation by an accrediting agency that is recognized by the Secretary of Education is required for an institution to become and remain eligible to participate in Title IV Programs as well as in the tuition assistance programs of the United States Armed Forces. DEAC or WSCUC may impose restrictions on our accreditation or may terminate our accreditation. To remain accredited we must continuously meet certain criteria and standards relating to, among other things, performance, governance, institutional integrity, educational quality, faculty, administrative capability, resources and financial stability. Failure to meet any of these criteria or standards could result in the loss of accreditation at the discretion of the accrediting agency. The loss of accreditation would, among other things, render our students and us ineligible to participate in the tuition assistance programs of the U.S. Armed Forces or Title IV Programs and have a material adverse effect on our enrollments, revenues and results of operations. In addition, although the loss of accreditation by one school would not necessarily result in the loss of accreditation by the other school, the accreditor may consider the loss of accreditation by one school as a factor in considering the on-going qualification for accreditation of the other school.

**Because we participate in Title IV Programs, our failure to comply with the complex regulations associated with Title IV Programs would have a significant adverse effect on our operations and prospects for growth.**

Aspen and USU participate in Title IV Programs. Compliance with the requirements of the Higher Education Act and Title IV Programs is highly complex and imposes significant additional regulatory requirements on our operations, which require additional staff, contractual arrangements, systems and regulatory costs. We have a limited demonstrated history of compliance with these additional regulatory requirements. If we fail to comply with any of these additional regulatory requirements, DOE could, among other things, impose monetary penalties, place limitations on our operations, and/or condition or terminate the eligibility of one or both of our schools to receive Title IV Program funds, which would limit our potential for growth and materiality and adversely affect our enrollment, revenues and results of operations. In addition, the failure to comply with the Title IV Program requirements by one institution could increase DOE scrutiny of the other institution and could impact the other institution's participation in the Title IV Programs.

**Because USU is only temporarily provisionally certified by DOE, we must reestablish our eligibility and certification to participate in the Title IV Programs, and there are no assurances that DOE will recertify us to participate in the Title IV Programs.**

An institution generally must seek recertification from DOE at least every six years and possibly more frequently depending on various factors. In certain circumstances, DOE provisionally certifies an institution to participate in Title IV Programs, such as when it is an initial participant in Title IV Programs or has undergone a change in ownership and control. On August 22, 2017, DOE recertified Aspen University to participate in the Title IV Programs, and set a subsequent program participation agreement reapplication date of March 31, 2021.

USU currently is operating under a temporary provisional certification to participate in the Title IV Programs due to the change of ownership which occurred in December of 2017. The temporary provisional certification allows the school to continue to receive Title IV funding on a month-to-month basis as it did prior to the change of ownership while DOA reviews the change of ownership. Even if DOE certifies USU following the change of ownership, such certification will be provisional as is the case for all Title IV institutions undergoing a change of ownership. Under provisional certification, an institution must obtain prior DOE approval to add an educational program or make other significant changes and may be subject to closer scrutiny by DOE. In addition, if DOE determines that a provisionally certified institution is unable to meet its responsibilities to comply with the Title IV requirements, DOE may revoke the institution's certification to participate in the Title IV Programs without advance notice or opportunity to challenge the action.

Subsequent to a compliance audit covering the period from January 1, 2015 through December 31, 2015, USU recognized that it had not fully complied with all requirements for calculating and making timely returns of Title IV funds (R2T4). USU was required to post an irrevocable letter of credit in the amount of 25% of the 2015 Title IV returns. An irrevocable letter of credit was established in favor of the Secretary of Education in the amount of \$71,634 as a result of this finding. In the 2016 compliance audit, USU had a material finding related to the same issue and was required to maintain the irrevocable letter of credit in the same amount. USU will be required to maintain the letter of credit until it has experienced two consecutive audit periods without a repeat finding. As a result of the change of ownership, the previous letter of credit established by USU has been replaced by one provided by AGI. The amount remains unchanged.

If DOE does not ultimately approve USU's certification to participate in Title IV Programs, USU students would no longer be able to receive Title IV Program funds, which would have a material adverse effect on our enrollments, revenues and results of operations. In addition, regulatory restraints related to the addition of new programs or substantive change of existing programs or imposition of a letter of credit could impair our ability to attract and retain students and could negatively affect our financial results.

**Because DOE may conduct compliance reviews of us, we may be subject to adverse actions and future litigation which could affect our ability to offer Title IV student loans.**

Because we operate in a highly regulated industry, we are subject to compliance reviews and claims of non-compliance and lawsuits by government agencies, regulatory agencies, and third parties, including claims brought by third parties on behalf of the federal government. If the results of compliance reviews or other proceedings are unfavorable to us, or if we are unable to defend successfully against lawsuits or claims, we may be required to pay monetary damages or be subject to fines, limitations, loss of Title IV funding, injunctions or other penalties, including the requirement to make refunds. Even if we adequately address issues raised by any compliance review or successfully defend a lawsuit or claim, we may have to divert significant financial and management resources from our ongoing business operations to address issues raised by those reviews or to defend against those lawsuits or claims. Claims and lawsuits brought against us may damage our reputation, even if such claims and lawsuits are without merit.

**If the percentage of our revenues derived from Title IV Programs is too high, we could lose our ability to participate in Title IV Programs.**

Under the Higher Education Act, an institution is subject to loss of eligibility to participate in the Title IV Programs if, on a cash accounting basis, it derives more than 90% of its fiscal year revenue from Title IV Program funds, for two consecutive fiscal years. This rule is known as the 90/10 rule. An institution whose rate exceeds 90% for any single fiscal year is placed on provisional certification for at least two fiscal years and may be subject to other conditions specified by the U.S. Secretary of Education. We must monitor compliance with the 90/10 rule by both Aspen and USU. Failure to comply with the 90/10 rule for one fiscal year may result in restrictions on the amounts of Title IV funds that may be distributed to students; restrictions on expansion; requirements related to letters of credit or any other restrictions imposed by DOE. Additionally, if we fail to comply with the 90/10 rule for two consecutive years, we will be ineligible to participate in Title IV Programs and any disbursements of Title IV Program funds made while ineligible must be repaid to DOE.

Further, due to scrutiny of the sector, legislative proposals have been introduced in Congress that would revise the requirements of the 90/10 rule to be stricter, including proposals that would reduce the 90% maximum under the rule to 85% and/or prohibit tuition derived from military benefit programs to be considered when determining whether the institution has adequate non-Title IV revenue to meet the requirements of the rule.

**If our competitors are subject to further regulatory claims and adverse publicity, it may affect our industry and reduce our future enrollment.**

We are one of a number of for-profit institutions serving the postsecondary education market. In recent years, regulatory investigations and civil litigation have been commenced against several companies that own for-profit educational institutions. These investigations and lawsuits have alleged, among other things, deceptive trade practices and non-compliance with DOE regulations. These allegations have attracted adverse media coverage and have been the subject of federal and state legislative hearings. Although the media, regulatory and legislative focus has been primarily on the allegations made against specific companies, broader allegations against the overall for-profit school sector may negatively affect public perceptions of other for-profit educational institutions, including Aspen University and USU. In addition, in recent years, reports on student lending practices of various lending institutions and schools, including for-profit schools, and investigations by a number of state attorneys general, Congress and governmental agencies have led to adverse media coverage of postsecondary education. For example a large competitor, Corinthian Colleges, sold or shut down its schools due to substantial regulatory investigations and DOE actions. Other significant school groups have likewise been closed in light of significant DOE actions. Adverse media coverage regarding other companies in the for-profit school sector or regarding Aspen or USU directly could damage our reputation, could result in lower enrollments, revenues and operating profit, and could have a negative impact on our stock price. Such allegations could also result in increased scrutiny and regulation by DOE, Congress, accrediting bodies, state legislatures or other governmental authorities with respect to all for-profit institutions, including Aspen and USU.

**Due to new regulations or congressional action or reduction in funding for Title IV Programs, our future enrollment may be reduced and costs of compliance increased.**

The Higher Education Act comes up for reauthorization by Congress approximately every five to six years. When Congress does not act on complete reauthorization, there are typically amendments and extensions of authorization. Additionally, Congress reviews and determines appropriations for Title IV Programs on an annual basis through the budget and appropriations process. There is no assurance that Congress will not in the future enact changes that decrease Title IV Program funds available to students, including students who attend our institutions. Any action by Congress that significantly reduces funding for Title IV Programs or the ability of our schools or students to participate in these programs would require us to arrange for other sources of financial aid and would materially decrease our enrollment. Such a decrease in enrollment would have a material adverse effect on our revenues and results of operations. Congressional action may also require us to modify our practices in ways that could result in increased administrative and regulatory costs and decreased profit margin.

Further, there has been growing regulatory action and investigations of for-profit companies that offer online education. We are not in position to predict with certainty whether any legislation will be passed by Congress or signed into law in the future. The reallocation of funding among Title IV Programs, material changes in the requirements for participation in such programs, or the substitution of materially different Title IV Programs could reduce the ability of students to finance their education at our institutions and adversely affect our revenues and results of operations.

If our efforts to comply with DOE regulations are inconsistent with how DOE interprets those provisions, either due to insufficient time to implement the necessary changes, uncertainty about the meaning of the rules, or otherwise, we may be found to be in noncompliance with such provisions and DOE could impose monetary penalties, place limitations on our operations, and/or condition or terminate the eligibility of our schools to receive Title IV Program funds. We cannot predict with certainty the effect the new and impending regulatory provisions will have on our business.

**Because we are subject to sanctions if we fail to calculate correctly and return timely Title IV Program funds for students who stop participating before completing their educational program, our future operating results may be adversely affected.**

A school participating in Title IV Programs must correctly calculate the amount of unearned Title IV Program funds that have been disbursed to students who withdraw from their educational programs before completion and must return those unearned funds in a timely manner, generally within 45 days after the date the school determines that the student has withdrawn. Under recently effective DOE regulations, institutions that use the last day of attendance at an academically-related activity must determine the relevant date based on accurate institutional records (not a student's certificate of attendance). For online classes, "academic attendance" means engaging in an academically-related activity, such as participating in class through an online discussion or initiating contact with a faculty member to ask a question; simply logging into an online class does not constitute "academic attendance" for purposes of the return of funds requirements. Under DOE regulations, late return of Title IV Program funds for 5% or more of students sampled in connection with the institution's annual compliance audit or a program review constitutes material non-compliance. If unearned funds are not properly calculated and timely returned, we may have to repay Title IV funds, post a letter of credit in favor of DOE or otherwise be sanctioned by DOE, which could increase our cost of regulatory compliance and adversely affect our results of operations. This may have an impact on our systems, our future operations and cash flows.

**If we fail to demonstrate “financial responsibility,” Aspen and USU may lose their eligibility to participate in Title IV Programs or be required to post a letter of credit in order to maintain eligibility to participate in Title IV Programs.**

To participate in Title IV Programs, an eligible institution must satisfy specific measures of financial responsibility prescribed by DOE, or post a letter of credit in favor of DOE and possibly accept other conditions, such as additional reporting requirements or regulatory oversight, on its participation in Title IV Programs. DOE may also apply its measures of financial responsibility to the operating company and ownership entities of an eligible institution and, if such measures are not satisfied by the operating company or ownership entities, require the institution to meet alternative standards for continued participation in the Title IV Programs. Any of these alternative standards would increase our costs of regulatory compliance. If we were unable to meet these alternative standards, we would lose our eligibility to participate in Title IV Programs. If we fail to demonstrate financial responsibility and thus lose our eligibility to participate in Title IV Programs, our students would lose access to Title IV Program funds for use in our institution, which would limit our potential for growth and adversely affect our enrollment, revenues and results of operations.

**If we fail to demonstrate “administrative capability,” we may lose eligibility to participate in Title IV Programs.**

DOE regulations specify extensive criteria an institution must satisfy to establish that it has the requisite “administrative capability” to participate in Title IV Programs. If an institution fails to satisfy any of these criteria or comply with any other DOE regulations, DOE may require the repayment of Title IV funds, transfer the institution from the “advance” system of payment of Title IV funds to cash monitoring status or to the “reimbursement” system of payment, place the institution on provisional certification status, or commence a proceeding to impose a fine or to limit, suspend or terminate the participation of the institution in Title IV Programs. If we are found not to have satisfied DOE’s “administrative capability” requirements we could be limited in our access to, or lose, Title IV Program funding, which would limit our potential for growth and adversely affect our enrollment, revenues and results of operations.

**Because we rely on a third-party to administer our participation in Title IV Programs, its failure to comply with applicable regulations could cause our schools to lose our eligibility to participate in Title IV Programs.**

We rely on third-party assistance to comply with the complex administration of participation in Title IV Programs for each of our schools. A third-party assists us with administration of our participation in Title IV Programs, and if it does not comply with applicable regulations, we may be liable for its actions and we could lose our eligibility to participate in Title IV Programs. In addition, if the third-party servicer is no longer able to provide the services to us, we may not be able to replace it in a timely or cost-efficient manner, or at all, and we could lose our ability to comply with the requirements of Title IV Programs, which would limit our potential for growth and adversely affect our enrollment, revenues and results of operation.

**If we pay impermissible commissions, bonuses or other incentive payments to individuals involved in recruiting, admissions or financial aid activities, we will be subject to sanctions.**

A school participating in Title IV Programs may not provide any commission, bonus or other incentive payment based, directly or indirectly, on success in enrolling students or securing financial aid to any person involved in student recruiting or admission activities or in making decisions regarding the awarding of Title IV Program funds. If we pay a bonus, commission, or other incentive payment in violation of applicable DOE rules, we could be subject to sanctions, which could have a material adverse effect on our business. The incentive payment rule and related uncertainty as to how it will be interpreted also may influence our approach, or limit our alternatives, with respect to employment policies and practices and consequently may affect negatively our ability to recruit and retain employees, and as a result our business could be materially and adversely affected.

In addition, the General Accounting Office, or the GAO, has issued a report critical of DOE’s enforcement of the incentive payment rule, and DOE has undertaken to increase its enforcement efforts. If DOE determines that an institution violated the incentive payment rule, it may require the institution to modify its payment arrangements to DOE’s satisfaction. DOE may also fine the institution or initiate action to limit, suspend, or terminate the institution’s participation in the Title IV Programs. DOE may also seek to recover Title IV funds disbursed in connection with the prohibited incentive payments. In addition, third parties may file “qui tam” or “whistleblower” suits on behalf of DOE alleging violation of the incentive payment provision. Such suits may prompt DOE investigations. Particularly in light of the uncertainty surrounding the incentive payment rule, the existence of, the costs of responding to, and the outcome of, qui tam or whistleblower suits or DOE investigations could have a material adverse effect on our reputation causing our enrollments to decline and could cause us to incur costs that are material to our business, among other things. As a result, our business could be materially and adversely affected.

**If their student loan default rates are too high, our schools may lose eligibility to participate in Title IV Programs.**

DOE regulations provide that an institution's participation in Title IV Programs ends when historical default rates reach a certain level in a single year or for a number of years. Because of our limited experience enrolling students who are participating in these programs, we have limited historical default rate information. Relatively few students are expected to enter the repayment phase in the near term, which could result in defaults by a few students having a relatively large impact on our default rate. If Aspen University or USU loses its eligibility to participate in Title IV Programs because of high student loan default rates, our students would no longer be eligible to use Title IV Program funds in our institution, which would significantly reduce our enrollments and revenues and have a material adverse effect on our results of operations.

**If either institutional accrediting agency loses recognition by the U.S. Secretary of Education or we fail to maintain institutional accreditation for Aspen and USU, we may lose our ability to participate in Title IV Programs.**

Increased regulatory scrutiny of accrediting agencies and their accreditation of universities is likely to continue. While Aspen University and USU are each accredited by a DOE-recognized accrediting body, if DOE were to limit, suspend, or terminate either accreditor's recognition, that institution could lose its ability to participate in the Title IV Programs. If we were unable to rely on accreditation in such circumstances, among other things, our students and our institution would be ineligible to participate in the Title IV Programs, and such consequence would have a material adverse effect on enrollments, revenues and results of operations. In addition, increased scrutiny of accrediting agencies by the Secretary of Education in connection with DOE's recognition process may result in increased scrutiny of institutions by accrediting agencies.

Furthermore, based on continued scrutiny of the for-profit education sector, it is possible that accrediting bodies will respond by adopting additional criteria, standards and policies that are intended to monitor, regulate or limit the growth of for-profit institutions like Aspen and USU. Actions by, or relating to, an accredited institution, including any change in the legal status, form of control, or ownership/management of the institution, any significant changes in the institution's financial position, or any significant growth or decline in enrollment and/or programs, could open up an accredited institution to additional reviews by the applicable accreditor.

**If Aspen University or USU fails to meet standards regarding "gainful employment," it may result in the loss of eligibility to participate in Title IV Programs.**

In 2014, DOE issued a new gainful employment rule (GE Rule) which went into effect on July 1, 2015. Under the GE Rule, programs with high debt-to-earnings ratios would lose Title IV Program eligibility for three years based on a variety of specific scenarios outlined by DOE. We anticipate that under the GE Rule, the continuing eligibility of our educational programs for Title IV Program funding may be at risk due to factors beyond our control, such as changes in the actual or deemed income level of our graduates, changes in student borrowing levels, increases in interest rates, changes in the federal poverty income level relevant for calculating discretionary income, changes in the percentage of our former students who are current in repayment of their student loans, and other factors. In addition, even though deficiencies in the metrics may be correctible on a timely basis, the disclosure requirements to students following a failure to meet the standards may adversely impact enrollment in that program and may adversely impact the reputation of our educational institutions. In addition, there is significant continued activity around the specifics of the GE Rule requirements. DOE issued the first set of GE rates in January 2017. DOE has now announced that it plans to release the draft "completers lists" later this spring in preparation for the second round of GE rates. Under the existing rule, this second round of rates could result in the loss of eligibility for any program that failed in the first and second years. Preparing the completers lists is the first step in the process for DOE to issue the next set of debt-to-earnings (D/E) rates for gainful employment programs. This step is followed by a challenge period, DOE's release of draft debt data, another corresponding challenge period and finally, the second round of GE rates, followed by their own appeal period. The recently concluded negotiated rulemaking should lead DOE to publish a new rule no later than November 1, 2018. Without consensus, DOE is free to write its own GE Rule. If the proposals discussed at the final rulemaking session are indications of DOE's intent, we will likely see a rule that could significantly change both the scope and impact of the GE Rule.

The GE Rule implementation may also be impacted by a lawsuit brought by 18 state attorneys general alleging that DOE has violated both the Higher Education Act and the Administrative Procedures Act by delaying implementation of various requirements of the GE Rule, which the AG's argue is a "de facto rescission." In response, the Department of Justice argues that DOE's electronic announcements and other notices postponing the effective date of certain aspects of the GE Rule are not "final agency action," so it is premature for the states to seek relief in federal court.

**If we fail to obtain required DOE approval for new programs that prepare students for gainful employment in a recognized occupation, it could materially and adversely affect our business.**

Under the gainful employment regulation that went into effect on July 1, 2015, an institution may establish a new program's Title IV eligibility by updating the list of the institution's programs maintained by DOE. Significantly, an institution is prohibited from updating its list of eligible programs to include a gainful employment program, or a gainful employment program that is substantially similar to a failing or zone program that the institution voluntarily discontinued or became ineligible, that was subject to the three-year loss of eligibility until that three-year period expires. Depending on our program offerings, compliance with the GE Rule could cause delay or an inability to offer certain new programs and put our business at a competitive disadvantage. Compliance could also adversely affect our ability to timely offer programs of interest to our students and potential students and adversely affect our ability to increase our revenues. As a result, our business could be materially and adversely affected.

**If we fail to comply with DOE's substantial misrepresentation rules, it could result in sanctions against our schools.**

DOE may take action against an institution in the event of substantial misrepresentation by the institution concerning the nature of its educational programs, its financial charges or the employability of its graduates. DOE has expanded the activities that constitute a substantial misrepresentation. Under DOE regulations, an institution engages in substantial misrepresentation when the institution itself, one of its representatives, or an organization or person with which the institution has an agreement to provide educational programs, marketing, advertising, or admissions services, makes a substantial misrepresentation directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency, a state agency, or to the Secretary of Education. The regulations define misrepresentation as any false, erroneous or misleading statement, and they define a misleading statement as any statement that has the likelihood or tendency to deceive or confuse. The regulations define substantial misrepresentation as any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to the person's detriment. If DOE determines that an institution has engaged in substantial misrepresentation, DOE may revoke an institution's program participation agreement, impose limitations on an institution's participation in the Title IV Programs, deny participation applications made on behalf of the institution, or initiate a proceeding against the institution to fine the institution or to limit, suspend or termination the institution's participation in the Title IV Programs. We expect that there could be an increase in our industry of administrative actions and litigation claiming substantial misrepresentation, which at a minimum would increase legal costs associated with defending such actions, and as a result our business could be materially and adversely affected.

**If we fail to comply with DOE's credit hour requirements, it could result in sanctions against our schools.**

DOE has defined "credit" hour for Title IV purposes. The credit hour is used for Title IV purposes to define an eligible program and an academic year and to determine enrollment status and the amount of Title IV aid that an institution may disburse in a payment period. The regulations define credit hour as an institutionally established equivalency that reasonably approximates certain specified time in class and out of class and an equivalent amount of work for other academic activities. The final regulations also require institutional accreditors to review an institution's policies, procedures, and administration of policies and procedures for assignment of credit hours. An accreditor must take appropriate actions to address an institution's credit hour deficiencies and to notify DOE if it finds systemic noncompliance or significant noncompliance in one or more programs. DOE has indicated that if it finds an institution to be out of compliance with the credit hour definition for Title IV purposes, it may require the institution to repay the amount of Title IV awarded under the incorrect assignment of credit hours and, if it finds significant overstatement of credit hours, it may fine the institution or limit, suspend, or terminate its participation in Title IV Programs, as a result of which our business could be materially and adversely affected.

**The U.S. Congress continues to examine the for-profit postsecondary education sector which could result in legislation or additional DOE rulemaking that may limit or condition Title IV Program participation of proprietary schools in a manner that may materially and adversely affect our business.**

In recent years, the U.S. Congress has increased its focus on for-profit education institutions, including with respect to their participation in the Title IV Programs, and has held hearings regarding such matters. In addition, the GAO released a series of reports following undercover investigations critical of for-profit institutions. We cannot predict the extent to which, or whether, these hearings and reports will result in legislation, further rulemaking affecting our participation in Title IV Programs, or more vigorous enforcement of Title IV requirements. Additionally, DOE recently created a special unit for the purpose of monitoring publicly traded for-profit educational institutions. Moreover, political consideration could result in a reduction of Title IV funding. To the extent that any laws or regulations are adopted that limit or condition Title IV Program participation of proprietary schools or the amount of federal student financial aid for which proprietary school students are eligible, our business could be materially and adversely affected.

**Other Risks**

**Due to factors beyond our control, our stock price may be volatile.**

Any of the following factors could affect the market price of our common stock:

- Our failure to generate increasing material revenues;
- Our failure to become profitable or achieve positive adjusted Earnings Before Interest, Taxes, Depreciation and Amortization;
- A decline in our growth rate including new student enrollments and class starts;
- Our failure to raise working capital, if required;
- Our public disclosure of the terms of any financing which we consummate in the future;
- Disclosure of the results of our monthly payment plan;
- Actual or anticipated variations in our quarterly results of operations;
- A decline in the economy in the United States which is severe enough to impact our ability to collect our accounts receivable;
- Announcements by us or our competitors of significant contracts, new services, acquisitions, commercial relationships, joint ventures or capital commitments;
- The loss of Title IV funding or other regulatory actions;
- Our failure to meet financial analysts' performance expectations;
- Changes in earnings estimates and recommendations by financial analysts;
- The sale of large numbers of shares of common stock which we have registered;
- Short selling activities; or
- Changes in market valuations of similar companies.

In the past, following periods of volatility in the market price of a company's securities, securities class action litigation has often been instituted. A securities class action suit against us could result in substantial costs and divert our management's time and attention, which would otherwise be used to benefit our business.

**Because we may issue preferred stock without the approval of our shareholders and have other anti-takeover defenses, it may be more difficult for a third-party to acquire us and could depress our stock price.**

Our Board may issue, without a vote of our shareholders, one or more additional series of preferred stock that have more than one vote per share. This could permit our Board to issue preferred stock to investors who support us and our management and give effective control of our business to our management. Additionally, issuance of preferred stock could block an acquisition resulting in both a drop in our stock price and a decline in interest of our common stock. This could make it more difficult for shareholders to sell their common stock. This could also cause the market price of our common stock shares to drop significantly, even if our business is performing well.



**An investment in AGI may be diluted in the future as a result of the issuance of additional securities.**

Because we need to raise additional capital to meet our working capital needs, we expect to issue additional shares of common stock or securities convertible, exchangeable or exercisable into common stock from time to time, which could result in substantial dilution to investors. Investors should anticipate being substantially diluted based upon the current condition of the capital and credit markets and their impact on small companies.

**As a result of the limited number of shares outstanding, we believe that major financial institutions including mutual funds and large hedge funds may be reluctant to purchase shares of our common stock.**

We have a relatively low number of shares outstanding and our common stock does not normally trade actively. Our Chief Executive Officer believes, partly based upon conversations with potential investors that mutual funds and large hedge funds are unable to purchase our common stock due to the lack of public float and since their minimum size purchase would likely cause an artificial rise in our common stock price. Unless our public float increases, we believe our stock price will be adversely affected.

**Because we may not be able to attract the attention of major brokerage firms, it could have a material impact upon the price of our common stock.**

It is not likely that securities analysts of major brokerage firms will provide research coverage for our common stock since the firm itself cannot recommend the purchase of our common stock under the penny stock rules referenced in an earlier risk factor. The absence of such coverage limits the likelihood that an active market will develop for our common stock. It may also make it more difficult for us to attract new investors at times when we acquire additional capital.

**Since we intend to retain any earnings for development of our business for the foreseeable future, you will likely not receive any dividends for the foreseeable future.**

We have not and do not intend to pay any dividends in the foreseeable future, as we intend to retain any earnings for development and expansion of our business operations. As a result, you will not receive any dividends on your investment for an indefinite period of time.

## USE OF PROCEEDS

Unless we specify otherwise in an accompanying prospectus supplement, we intend to use the net proceeds from the sale of the securities by us to provide additional funds for working capital and other general corporate purposes. Any specific allocation of the net proceeds of an offering of securities will be determined at the time of such offering and will be described in the accompanying supplement to this prospectus.

## DESCRIPTION OF CAPITAL STOCK

We are authorized to issue 250,000,000 shares of common stock, par value \$0.001 per share, and 10,000,000 shares of preferred stock, par value \$0.001 per share.

### Common Stock

We are authorized to issue 250,000,000 shares of common stock, par value \$0.001 per share. The holders of common stock are entitled to one vote per share on all matters submitted to a vote of shareholders, including the election of directors. There is no cumulative voting in the election of directors. In the event of our liquidation or dissolution, holders of common stock are entitled to share ratably in all assets remaining after payment of liabilities and the liquidation preferences of any outstanding shares of preferred stock. Holders of common stock have no preemptive rights and have no right to convert their common stock into any other securities and there are no redemption provisions applicable to our common stock.

The holders of common stock are entitled to any dividends that may be declared by the Board of Directors out of funds legally available for payment of dividends subject to the prior rights of holders of preferred stock and any contractual restrictions we have against the payment of dividends on common stock. We have not paid dividends on our common stock since inception and do not plan to pay dividends on our common stock in the foreseeable future.

As of April 10, 2018, we had 15,131,437 shares of common stock outstanding. In addition, as of that date, there were 3,554,976 shares underlying our outstanding warrants and stock options. These numbers do not reflect conversion of our outstanding convertible debt since the number of shares issuable is, subject to a floor, based upon the future price as of each possible conversion date.

### Preferred Stock

We are authorized to issue 10,000,000 shares of “blank check” preferred stock with designations, rights and preferences as may be determined from time to time by our Board of Directors. As the date of this prospectus, we had no shares of preferred stock issued and outstanding.

Preferred stock is available for possible future financings or acquisitions and for general corporate purposes without further authorization of our shareholders unless such authorization is required by applicable law, or the rules of any securities exchange or market on which our stock is then listed or admitted or trading.

Our Board of Directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes could, under some circumstances, have the effect of delaying, deferring or preventing a change in control of the Company. For a description of how future issuances of our preferred stock could affect the rights of our shareholders, see “Certain Provisions of Delaware Law and of Our Charter and Bylaws - Issuance of “blank check” Preferred Stock,” below.

A prospectus supplement relating to any series of preferred stock being offered will include specific terms relating to the offering. Such prospectus supplement will include:

- the title and stated or par value of the preferred stock;
- the number of shares of the preferred stock offered, the liquidation preference per share and the offering price of the preferred stock;
- the dividend rate(s), period(s) and/or payment date(s) or method(s) of calculation thereof applicable to the preferred stock;
- whether dividends shall be cumulative or non-cumulative and, if cumulative, the date from which dividends on the preferred stock shall accumulate;
- the provisions for a sinking fund, if any, for the preferred stock;
- any voting rights of the preferred stock;
- the provisions for redemption, if applicable, of the preferred stock;
- any listing of the preferred stock on any securities exchange;
- the terms and conditions, if applicable, upon which the preferred stock will be convertible into our common stock, including the conversion price or the manner of calculating the conversion price and conversion period;
- if appropriate, a discussion of federal income tax consequences applicable to the preferred stock; and
- any other specific terms, preferences, rights, limitations or restrictions of the preferred stock.

## DESCRIPTION OF DEBT SECURITIES

### General

The debt securities that we may issue will constitute debentures, notes, bonds or other evidences of indebtedness of AGI, to be issued in one or more series. The particular terms of any series of debt securities we offer, including the extent to which the general terms set forth below may be applicable to a particular series, will be described in a prospectus supplement relating to such series.

Debt securities that we may issue will likely be issued under an indenture between us and a trustee qualified to act as such under the Trust Indenture Act of 1939. When we refer to the “indenture” in this prospectus, we are referring to the indenture under which debt securities are issued as supplemented by any supplemental indenture applicable to such debt securities. We will provide the name of the trustee in any prospectus supplement related to the issuance of debt securities, and we will also provide certain other information related to the trustee, including describing any relationship we have with the trustee, in such prospectus supplement.

Unless otherwise specified in a prospectus supplement, the debt securities will be direct secured or unsecured obligations of AGI. The senior debt securities will rank equally with any of our other unsecured senior and unsubordinated debt.

We may issue debt securities from time to time in one or more series, in each case with the same or various maturities, at par or at a discount. Unless indicated in a prospectus supplement, we may issue additional debt securities of a particular series without the consent of the holders of the debt securities of such series outstanding at the time of the issuance. Any such additional debt securities, together with all other outstanding debt securities of that series, will constitute a single series of debt securities under the applicable indenture and will be equal in ranking.

The following statements relating to the debt securities and the indenture are summaries and do not purport to be complete, and are subject in their entirety to the detailed provisions of the indenture.

### Information to be provided in a Prospectus Supplement

The prospectus supplement will describe the specific terms relating to the specific series of debt securities we will offer, including where applicable, the following:

- the title and denominations of the debt securities of the series;
- any limit on the aggregate principal amount of the debt securities of the series;
- the date or dates on which the principal and premium, if any, with respect to the debt securities of the series are payable or the method of determination thereof;
- the rate or rates, which may be fixed or variable, at which the debt securities of the series shall bear interest, if any, or the method of calculating and/or resetting such rate or rates of interest;
- the dates from which such interest shall accrue or the method by which such dates shall be determined and the duration of the extensions and the basis upon which interest shall be calculated;
- the interest payment dates for the series of debt securities or the method by which such dates will be determined, the terms of any deferral of interest and any right of ours to extend the interest payments periods;
- the terms and conditions upon which debt securities of the series may be redeemed, in whole or in part, at our option or otherwise;
- our obligation, if any, to redeem, purchase, or repay debt securities of the series pursuant to any sinking fund or other specified event or at the option of the holders and the terms of any such redemption, purchase, or repayment;
- the terms, if any, upon which the debt securities of the series may be convertible into or exchanged for preferred stock or common stock, including, among other things, the initial conversion or exchange price or rate and the conversion or exchange period;
- if the amount of principal, premium, if any, or interest with respect to the debt securities of the series may be determined with reference to an index or formula, the manner in which such amounts will be determined;
- if any payments on the debt securities of the series are to be made in a currency or currencies (or by reference to an index or formula) other than that in which such securities are denominated or designated to be payable, the currency or currencies (or index or formula) in which such payments are to be made and the terms and conditions of such payments;

- any changes or additions to the provisions of the indenture dealing with defeasance, including any additional covenants that may be subject to our covenant defeasance option;
- the currency or currencies in which payment of the principal and premium, if any, and interest with respect to debt securities of the series will be payable, or in which the debt securities of the series shall be denominated, and the particular provisions applicable thereto in accordance with the indenture;
- the portion of the principal amount of debt securities of the series which will be payable upon declaration of acceleration or provable in bankruptcy or the method by which such portion or amount shall be determined;
- whether the debt securities of the series will be secured and, if so, on what terms;
- any events of default with respect to the debt securities of the series;
- the identity of any trustees, authenticating or paying agents, transfer agents or registrars;
- the applicability of, and any addition to or change in, the covenants currently set forth in the indenture;
- the subordination, ranking or priority, if any, of the debt securities of the series and terms of the subordination;
- any other terms of the debt securities of the series which are not prohibited by the indenture; and
- whether securities of the series shall be issuable as registered securities or bearer securities (with or without interest coupons), and any restrictions applicable to the offering, sale or delivery of such bearer securities and the terms upon which such bearer securities of a series may be exchanged for registered securities, and vice versa.

### **Interest Rate**

Debt securities that bear interest will do so at a fixed rate or a floating rate. We may sell, at a discount below the stated principal amount, any debt securities which bear no interest or which bear interest at a rate that at the time of issuance is below the prevailing market rate. The relevant prospectus supplement will describe the special United States federal income tax considerations applicable to any discounted debt securities and any debt securities issued at par which are treated as having been issued at a discount for United States federal income tax purposes.

### **Transfer and Exchange**

We may issue debt securities that would be represented by either:

“**book-entry securities**,” which means that there will be one or more global securities registered in the name of The Depository Trust Company, as depository, or a nominee of the depository; or

“**certificated securities**,” which means that they will be represented by a certificate issued in definitive registered form.

We would specify in the prospectus supplement applicable to a particular offering whether the debt securities offered will be book-entry or certificated securities. Except as set forth under “Global Debt Securities and Book-Entry System,” below, book-entry debt securities would not be issuable in certificated form.

### **Certificated Debt Securities**

If you hold certificated debt securities that have been offered by this prospectus, you may transfer or exchange them at the trustee’s office or at the paying agency in accordance with the terms of the indenture. You would not be charged a service charge for any transfer or exchange of certificated debt securities, but may be required to pay an amount sufficient to cover any tax or other governmental charge payable in connection with the transfer or exchange.

The transfer of certificated debt securities and of the right to receive the principal of, premium and/or interest, if any, on your certificated debt securities can occur only by surrendering the certificate representing your certificated debt securities and having us or the trustee issue a new certificate to the new holder.

## Global Debt Securities and Book-Entry System

If we decide to issue debt securities in the form of one or more global securities, then we would register the global securities in the name of the depository for the global securities or in the nominee of the depository, and the global securities would be delivered by the trustee to the depository for credit to the accounts of the holders of beneficial interest in the debt securities. Each global security would:

- be registered in the name of a depository, or its nominee, that we would identify in a prospectus supplement;
- be deposited with the depository or nominee or custodian; and
- bear any required legends.

No global security may be exchanged in whole or in part for debt securities registered in the name of any person other than the depository or any nominee unless:

- the depository has notified us that it is unwilling or unable to continue as depository or has ceased to be qualified to act as depository;
- an event of default has occurred and is continuing with respect to the debt securities of the applicable series; or
- any other circumstance described in a prospectus supplement has occurred permitting or requiring the issuance of any such security.

As long as the depository, or its nominee, is the registered owner of a global security, the depository or nominee would be considered the sole owner and holder of the debt securities represented by the global security for all purposes under the indentures. Except in the above limited circumstances, owners of beneficial interests in a global security would not be:

- entitled to have the debt securities registered in their names;
- entitled to physical delivery of certificated debt securities; or
- considered to be holders of those debt securities under the indenture.

Payments on a global security would be made to the depository or its nominee as the holder of the global security. Some jurisdictions have laws that require that certain purchasers of securities take physical delivery of such securities in definitive form. These laws may impair the ability to transfer beneficial interests in a global security.

Institutions that have accounts with the depository or its nominee are referred to as “participants.” Ownership of beneficial interests in a global security would be limited to participants and to persons that may hold beneficial interests through participants. The depository would credit, on its book-entry registration and transfer system, the respective principal amounts of debt securities represented by the global security to the accounts of its participants.

Ownership of beneficial interests in a global security would be shown on and effected through records maintained by the depository, with respect to participants’ interests, or any participant, with respect to interests of persons held by participants on their behalf.

Payments, transfers and exchanges relating to beneficial interests in a global security would be subject to policies and procedures of the depository. The depository policies and procedures may change from time to time. Neither any trustee nor we would have any responsibility or liability for the depository’s or any participant’s records with respect to beneficial interests in a global security.

The prospectus supplement would describe the specific terms of the depository arrangement for debt securities of a series that are issued in global form. The Company and its agents, the trustee, and any of its agents would not have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in the global debt security or for maintaining, supervising or reviewing any records relating to the beneficial ownership interests.

## **Conversion or Exchange Rights**

Debt securities offered hereby may be convertible into or exchangeable for shares of our common or preferred stock. The terms and conditions of such conversion or exchange will be set forth in the applicable prospectus supplement. Such terms may include, among others, the following:

- the conversion or exchange price;
- the conversion or exchange period;
- provisions regarding our ability or that of the holder to convert or exchange the debt securities;
- events requiring adjustment to the conversion or exchange price; and
- provisions affecting conversion or exchange in the event of our redemption of such debt securities.

## **Covenants**

Unless otherwise indicated in a prospectus supplement, the debt securities would not have the benefit of any covenants that limit or restrict our business or operations, the pledging of our assets or the incurrence by us of indebtedness. We would describe in the applicable prospectus supplement any material covenants of a series of debt securities.

## **Concerning the Trustee**

We would identify the trustee with respect to any series of debt securities in the prospectus supplement relating to the debt securities. You should note that if the trustee becomes a creditor of AGI, the indenture and the Trust Indenture Act of 1939 limit the rights of the trustee to obtain payment of claims in certain cases, or to realize on certain property received in respect of certain claims, as security or otherwise. The trustee and its affiliates may engage in, and would be permitted to continue to engage in, other transactions with us and our affiliates. If, however, the trustee acquires any “conflicting interest” within the meaning of the Trust Indenture Act of 1939, it must eliminate the conflict or resign.

The holders of a majority in principal amount of the then outstanding debt securities of any series may direct the time, method and place of conducting any proceeding for exercising any remedy available to the trustee. If an event of default occurs and is continuing, the trustee, in the exercise of its rights and powers, must use the degree of care and skill of a prudent person in the conduct of his or her own affairs. Subject to this provision, the trustee would be under no obligation to exercise any of its rights or powers under the indenture at the request of any of the holders of the debt securities, unless they have offered to the trustee reasonable indemnity or security.

## DESCRIPTION OF WARRANTS

We may issue warrants for the purchase of common stock. Warrants may be issued independently or together with other securities and may be attached to or separate from any offered securities. Each series of warrants will be issued under a separate warrant agreement. The following outlines some of the general terms and provisions of the warrants that we may issue from time to time. Additional terms of the warrants and the applicable warrant agreement will be set forth in the applicable prospectus supplement.

The following descriptions, and any description of the warrants included in a prospectus supplement, may not be complete and is subject to and qualified in its entirety by reference to the terms and provisions of the applicable warrant agreement, which we will file with the SEC in connection with any offering of warrants.

### General

The prospectus supplement relating to a particular issue of warrants will describe the terms of the warrants, including the following:

- the title of the warrants;
- the offering price for the warrants, if any;
- the aggregate number of the warrants;
- the terms of the security that may be purchased upon exercise of the warrants;
- if applicable, the designation and terms of the securities that the warrants are issued with and the number of warrants issued with each security;
- if applicable, the date from and after which the warrants and any securities issued with the warrants will be separately transferable;
- the dates on which the right to exercise the warrants commence and expire;
- if applicable, the minimum or maximum amount of the warrants that may be exercised at any one time;
- if applicable, a discussion of material United States federal income tax considerations;
- anti-dilution provisions of the warrants, if any;
- redemption or call provisions, if any, applicable to the warrants; and
- any additional terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants.

### Exercise of warrants

Each warrant will entitle the holder of the warrant to purchase the securities that we specify in the applicable prospectus supplement at the exercise price that we describe in the applicable prospectus supplement. Holders may exercise warrants at any time up to the close of business on the expiration date set forth in the applicable prospectus supplement. After the close of business on the expiration date, unexercised warrants will be void. Holders may exercise warrants as set forth in the prospectus supplement relating to the warrants being offered. Until a holder exercises the warrants to purchase any securities underlying the warrants, the holder will not have any rights as a holder of the underlying securities by virtue of ownership of warrants.

### Transfer Agent

We have appointed Action Stock Transfer Corporation as our transfer agent. Their contact information is: 2469 E. Fort Union Blvd., Suite 214 Salt Lake City, UT 84121, phone number (801) 274-1088, facsimile (801) 274-1099.



## CERTAIN PROVISIONS OF DELAWARE LAW AND OF OUR CHARTER AND BYLAWS

### Anti-takeover Provisions

In general, Section 203 of the Delaware General Corporation Law, or the DGCL, prohibits a Delaware corporation with a class of voting stock listed on a national securities exchange or held of record by 2,000 or more shareholders from engaging in a “business combination” with an “interested shareholder” for a three-year period following the time that this shareholder becomes an interested shareholder, unless the business combination is approved in a prescribed manner. A “business combination” includes, among other things, a merger, asset or stock sale or other transaction resulting in a financial benefit to the interested shareholder. An “interested shareholder” is a person who, together with affiliates and associates, owns, or did own within three years prior to the determination of interested shareholder status, 15% or more of the corporation’s voting stock. Under Section 203, a business combination between a corporation and an interested shareholder is prohibited unless it satisfies one of the following conditions:

- before the shareholder became interested, the board of directors approved either the business combination or the transaction which resulted in the shareholder becoming an interested shareholder;
- upon consummation of the transaction which resulted in the shareholder becoming an interested shareholder, the interested shareholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding, shares owned by persons who are directors and also officers, and employee stock plans, in some instances; or
- at or after the time the shareholder became interested, the business combination was approved by the board of directors of the corporation and authorized at an annual or special meeting of the shareholders by the affirmative vote of at least two-thirds of the outstanding voting stock which is not owned by the interested shareholder.

The DGCL permits a corporation to opt out of, or choose not to be governed by, its anti-takeover statute by expressly stating so in its original certificate of incorporation (or subsequent amendment to its certificate of incorporation or bylaws approved by its shareholders). Our Certificate of Incorporation does not contain a provision expressly opting out of the application of Section 203 of the DGCL; therefore we are subject to the anti-takeover statute.

### Issuance of “blank check” preferred stock

Our Certificate of Incorporation authorizes the issuance of up to 10,000,000 shares of “blank check” preferred stock with designations, rights and preferences as may be determined from time to time by our Board of Directors. Our Board is empowered, without shareholder approval, to issue a series of preferred stock with dividend, liquidation, conversion, voting or other rights which could dilute the interest of, or impair the voting power of, our common shareholders. The issuance of a series of preferred stock could be used as a method of discouraging, delaying or preventing a change in control. For example, it would be possible for our Board of Directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to effect a change in control of our company.

Our Bylaws also allow our Board of Directors to fix the number of directors. Our shareholders do not have cumulative voting in the election of directors.

### Special Shareholder Meetings and Action by Written Consent

Under our Bylaws, special meetings of the shareholders shall be held when directed by the Board of Directors. Our Bylaws do not permit meetings of shareholders to be called by any other person. This could have the effect of delaying or preventing unsolicited takeovers and changes in control or changes in our management.

## **Indemnification of Directors and Officers.**

Section 145(a) of the DGCL, which AGI is subject to, provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. Section 145(b) of the DGCL provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper. To the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 145(a) and (b) of the DGCL, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Any indemnification under Section 145(a) and (b) of the DGCL (unless ordered by a court) shall be made by AGI only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 145(a) and (b). Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (4) by the shareholders. Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this section. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the corporation deems appropriate. The indemnification and advancement of expenses provided by, or granted pursuant to, Section 145 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. We have entered into Indemnification Agreements with each director and executive officer.

Section 145 of the DGCL also empowers a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under Section 145.

Article 11 of AGI's Certificate of Incorporation provides for indemnification to the fullest extent authorized by the DGCL for any person who is or was a party or threatened to be made a party to any threatened, pending or completed proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was serving as a director or officer of AGI or while a director or officer of AGI is or was serving at the request of AGI as a director, officer, employee or agent of any other enterprise.

AGI carries directors and officers liability coverages designed to insure its officers and directors and those of its subsidiaries against certain liabilities incurred by them in the performance of their duties, and also providing for reimbursement in certain cases to AGI and its subsidiaries for sums paid to directors and officers as indemnification for similar liability.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to our directors, officers and controlling persons pursuant to the foregoing provisions, or otherwise, AGI has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

## PLAN OF DISTRIBUTION

We may sell the securities offered by this prospectus from time to time in one or more transactions, including without limitation:

- through underwriters or dealers;
- directly to purchasers;
- in a rights offering;
- in “at the market” offerings, within the meaning of Rule 415(a)(4) of the Securities Act to or through a market maker or into an existing trading market on an exchange or otherwise;
- through agents;
- in block trades;
- through a combination of any of these methods; or
- through any other method permitted by applicable law and described in a prospectus supplement.

In addition, we may issue the securities as a dividend or distribution to our existing stockholders or other security holders.

The prospectus supplement with respect to any offering of securities will include the following information:

- the terms of the offering;
- the names of any underwriters or agents;
- the name or names of any managing underwriter or underwriters;
- the purchase price or initial public offering price of the securities;
- the net proceeds from the sale of the securities;
- any delayed delivery arrangements;
- any underwriting discounts, commissions and other items constituting underwriters’ compensation;
- any discounts or concessions allowed or re-allowed or paid to dealers;
- any commissions paid to agents; and
- any securities exchange on which the securities may be listed.

### **Sale through Underwriters or Dealers**

If underwriters are used in the sale, the underwriters may resell the securities from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Underwriters may offer securities to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more firms acting as underwriters. Unless we inform you otherwise in the applicable prospectus supplement, the obligations of the underwriters to purchase the securities will be subject to certain conditions, and the underwriters will be obligated to purchase all of the offered securities if they purchase any of them. The underwriters may change from time to time any initial public offering price and any discounts or concessions allowed or re-allowed or paid to dealers.

We will specify the name or names of any underwriters, dealers or agents and the purchase price of the securities in a prospectus supplement relating to the securities.

In connection with the sale of the securities, underwriters may receive compensation from us or from purchasers of the securities, for whom they may act as agents, in the form of discounts, concessions or commissions. Underwriters may sell the securities to or through dealers, and these dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agents, which is not expected to exceed that customary in the types of transactions involved. Underwriters, dealers and agents that participate in the distribution of the securities may be deemed to be underwriters, and any discounts or commissions they receive from us, and any profit on the resale of the securities they realize may be deemed to be underwriting discounts and commissions, under the Securities Act. The prospectus supplement will identify any underwriter or agent and will describe any compensation they receive from us.

Underwriters could make sales in privately negotiated transactions and/or any other method permitted by law, including sales deemed to be an “at-the-market” offering, sales made directly on The Nasdaq Capital Market, the existing trading market for our shares of common stock, or sales made to or through a market maker other than on The Nasdaq Capital Market. The name of any such underwriter or agent involved in the offer and sale of our securities, the amounts underwritten, and the nature of its obligations to take our securities will be described in the applicable prospectus supplement.

Unless otherwise specified in the prospectus supplement, each series of the securities will be a new issue with no established trading market, other than our shares of common stock, which are currently traded on The Nasdaq Capital Market. It is possible that one or more underwriters may make a market in a series of the securities, but underwriters will not be obligated to do so and may discontinue any market making at any time without notice. Therefore, we can give no assurance about the liquidity of the trading market for any of the securities.

Under agreements we may enter into, we may indemnify underwriters, dealers, and agents who participate in the distribution of the securities against certain liabilities, including liabilities under the Securities Act, or contribute with respect to payments that the underwriters, dealers or agents may be required to make.

Any compensation we pay underwriters or dealers will be subject to the guidelines of the Financial Industry Regulatory Authority, Inc. We will disclose the compensation in any applicable prospectus supplement or pricing supplement, as the case may be.

To facilitate the offering of securities, certain persons participating in the offering may engage in transactions that stabilize, maintain, or otherwise affect the price of the securities. This may include over-allotments or short sales of the securities, which involve the sale by persons participating in the offering of more securities than we sold to them. In these circumstances, these persons would cover such over-allotments or short positions by making purchases in the open market or by exercising their over-allotment option, if any. In addition, these persons may stabilize or maintain the price of the securities by bidding for or purchasing securities in the open market or by imposing penalty bids, whereby selling concessions allowed to dealers participating in the offering may be reclaimed if securities sold by them are repurchased in connection with stabilization transactions. The effect of these transactions may be to stabilize or maintain the market price of the securities at a level above that which might otherwise prevail in the open market. These transactions may be discontinued at any time.

From time to time, we may engage in transactions with these underwriters, dealers, and agents in the ordinary course of business.

#### **Direct Sales and Sales through Agents**

We may sell the securities directly. In this case, no underwriters or agents would be involved. We also may sell the securities through agents designated by us from time to time. In the applicable prospectus supplement, we will name any agent involved in the offer or sale of the offered securities, and we will describe any commissions payable to the agent. Unless we inform you otherwise in the applicable prospectus supplement, any agent will agree to use its reasonable best efforts to solicit purchases for the period of its appointment.

We may sell the securities directly to institutional investors or others who may be deemed to be underwriters within the meaning of the Securities Act with respect to any sale of those securities. We will describe the terms of any sales of these securities in the applicable prospectus supplement.

#### **Remarketing Arrangements**

Securities also may be offered and sold, if so indicated in the applicable prospectus supplement, in connection with a remarketing upon their purchase, in accordance with a redemption or repayment pursuant to their terms, or otherwise, by one or more remarketing firms, acting as principals for their own accounts or as agents for us. Any remarketing firm will be identified and the terms of its agreements, if any, with us and its compensation will be described in the applicable prospectus supplement.

**Delayed Delivery Contracts**

If we so indicate in the applicable prospectus supplement, we may authorize agents, underwriters or dealers to solicit offers from certain types of institutions to purchase securities from us at the public offering price under delayed delivery contracts. These contracts would provide for payment and delivery on a specified date in the future. The contracts would be subject only to those conditions described in the applicable prospectus supplement. The applicable prospectus supplement will describe the commission payable for solicitation of those contracts.

**General Information**

We may have agreements with the underwriters, dealers, agents and remarketing firms to indemnify them against certain civil liabilities, including liabilities under the Securities Act, or to contribute with respect to payments that the underwriters, dealers, agents or remarketing firms may be required to make. Underwriters, dealers, agents and remarketing firms may be customers of, engage in transactions with or perform services for us in the ordinary course of their businesses.

## LEGAL MATTERS

The validity of the securities offered hereby will be passed upon for us by Nason, Yeager, Gerson, White & Lioce, P.A., Palm Beach Gardens, Florida. A shareholder of this firm beneficially owns 126,481 shares of our common stock.

## EXPERTS

The consolidated financial statements as of April 30, 2017 and 2016 incorporated by reference in this Prospectus have been audited by Salberg & Company, P.A., an independent registered public accounting firm, as set forth in their reports thereon, and are incorporated by reference in this Prospectus in reliance on such reports given on the authority of said firm as experts in auditing and accounting.

## INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The documents listed below are incorporated by reference into this registration statement:

- Our annual report on Form 10-K for the year ended April 30, 2017 filed on July 25, 2017 (as amended by the Form 10-K/A filed on August 25, 2017);
- Our quarterly report on Form 10-Q for the quarter ended July 31, 2017, filed on September 14, 2017, our quarterly report on Form 10-Q for the quarter ended October 31, 2017, filed on December 13, 2017, and our quarterly report on Form 10-Q for the quarter ended January 31, 2018, filed on March 15, 2018;
- Our current reports on Form 8-K filed on May 16, 2017, May 18, 2017, May 30, 2017, June 15, 2017, June 26, 2017, July 28, 2017, December 1, 2017, December 6, 2017, December 21, 2017, February 9, 2018, and March 22, 2018;
- The description of our common stock in our registration statement on Form 8-A filed with the SEC on July 31, 2017, as updated by any amendments and reports filed for the purpose of updating such description; and
- All documents subsequently filed pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") prior to the termination of the offering, other than information furnished pursuant to Items 2.02 and 7.01 of Form 8-K and any related exhibits, shall be deemed to be incorporated by reference into the prospectus.

Any statement contained in a document incorporated or deemed to be incorporated by reference in this prospectus is modified or superseded for purposes of the prospectus to the extent that a statement contained in this prospectus or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement.

We will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in this prospectus but not delivered with the prospectus.

We are an Exchange Act reporting company and are required to file periodic reports on Form 10-K and 10-Q and current reports on Form 8-K. You may read and copy all or any portion of the registration statement or any other information, which we file at the SEC's public reference room at 100 F Street, N.E., Washington, DC 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference room. Also, the SEC maintains an internet site that contains reports, proxy and information statements, and other information that we file electronically with the SEC, including the registration statement. The website address is [www.sec.gov](http://www.sec.gov).

You may obtain a copy of any of our filings, at no cost, by writing or telephoning us at:

1660 S Albion Street, Suite 525  
Denver, CO  
Attention: Corporate Secretary  
(303) 333-4224

## PART II

### INFORMATION NOT REQUIRED IN PROSPECTUS

#### Other Expenses of Issuance and Distribution.

The following table sets forth the costs and expenses payable by us in connection with the issuance and distribution of the securities being registered hereunder. All of the amounts shown are estimates, except for the SEC Registration Fees.

SEC registration fees	\$	7,470
Printing expenses	\$	(1)
Accounting fees and expenses	\$	(1)
Legal fees and expenses	\$	(1)
Miscellaneous	\$	(1)
Total	\$	(1)

- (1) These fees are dependent on the type and number of securities offered and cannot be determined at this time. Additional information regarding estimated fees and expenses will be provided at the time that such information is required to be included in a prospectus supplement.

#### Indemnification of Directors and Officers.

Section 145(a) of the DGCL, which AGI is subject to, provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. Section 145(b) of the DGCL provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper. To the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 145(a) and (b) of the DGCL, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.



Any indemnification under Section 145(a) and (b) of the DGCL (unless ordered by a court) shall be made by AGI only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 145(a) and (b). Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (4) by the shareholders. Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this section. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the corporation deems appropriate. The indemnification and advancement of expenses provided by, or granted pursuant to, Section 145 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

Section 145 of the DGCL also empowers a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under Section 145.

Article 11 of AGI's Certificate of Incorporation provides for indemnification to the fullest extent authorized by the DGCL for any person who is or was a party or threatened to be made a party to any threatened, pending or completed proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was serving as a director or officer of AGI or while a director or officer of AGI is or was serving at the request of AGI as a director, officer, employee or agent of any other enterprise.

AGI carries directors and officers liability coverages designed to insure its officers and directors and those of its subsidiaries against certain liabilities incurred by them in the performance of their duties, and also providing for reimbursement in certain cases to AGI and its subsidiaries for sums paid to directors and officers as indemnification for similar liability.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to our directors, officers and controlling persons pursuant to the foregoing provisions, or otherwise, AGI has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

#### Exhibits and Financial Statement Schedules.

Exhibit No.	Description
1.1	Form of Underwriting Agreement**
3.1	<a href="#">Certificate of Incorporation, as amended</a> (incorporated by reference to Exhibit 3.1 to Quarterly Report on Form 10-Q filed March 9, 2017)
3.2	<a href="#">Bylaws</a> (incorporated by reference to Exhibit 3.2 to Current Report on Form 8-K filed on March 19, 2012)
3.2(a)	<a href="#">Amendment No. 1 to Bylaws</a> (incorporated by reference to Exhibit 3.1 to Current Report on Form 8-K filed on March 12, 2014)
4.1	Form of Certificate of Designation of Preferred Stock**
4.2	Form of Certificate for Preferred Stock**
4.3	Form of Warrant Agreement**
4.4	Form of Warrant**
4.5	<a href="#">Form of Senior Indenture*</a>
4.6	<a href="#">Form of Debt Security</a> (included in Exhibit 4.5)
5.1	<a href="#">Legal Opinion of Nason, Yeager, Gerson, White &amp; Lioce, P.A.*</a>
23.1	<a href="#">Consent of Salberg &amp; Company, P.A.*</a>
23.2	<a href="#">Consent of Nason, Yeager, Gerson, White &amp; Lioce, P.A.</a> (included in Exhibit 5.1)
25.1	Form T-1 Statement of Eligibility of Trustee**

\* Filed herewith.

\*\* To be filed by amendment or by Current Report on Form 8-K.

## Undertakings

The undersigned registrant hereby undertakes:

To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement;

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

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

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

*provided, however*, that paragraphs (i), (ii) and (iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

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

That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(A) Each prospectus filed by a registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which the prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

That, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

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

The undersigned registrant also undertakes that:

- (1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b) (1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.
- (2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

The undersigned registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of section 310 of the Trust Indenture Act ("Trust Indenture Act") in accordance with the rules and regulations prescribed by the SEC under section 305(b)(2) of the Trust Indenture Act.

## SIGNATURES

In accordance with the requirements of the Securities Act of 1933, has duly caused this registration statement to be signed on its behalf by the undersigned thereunto duly authorized, in the City of Denver, State of Colorado, on April 11, 2018.

### Aspen Group, Inc.

By: /s/ Michael Mathews  
Michael Mathews  
Chief Executive Officer

In accordance with the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Michael Mathews</u> Michael Mathews	Chief Executive Officer (Principal Executive Officer) and Director	April 11, 2018
<u>/s/ Janet Gill</u> Janet Gill	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 11, 2018
<u>Michael D'Anton</u>	Director	
<u>/s/ Norman Dicks</u> Norman Dicks	Director	April 11, 2018
<u>/s/ C. James Jenson</u> C. James Jenson	Director	April 11, 2018
<u>/s/ Andrew Kaplan</u> Andrew Kaplan	Director	April 11, 2018
<u>Malcolm MacLean IV</u>	Director	
<u>Oksana Malysheva</u>	Director	
<u>/s/ Sanford Rich</u> Sanford Rich	Director	April 11, 2018
<u>/s/ John Scheibelhoffer</u> John Scheibelhoffer	Director	April 11, 2018
<u>/s/ Rick Solomon</u> Rick Solomon	Director	April 11, 2018

## EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
4.5	<a href="#">Form of Senior Indenture</a>
4.6	<a href="#">Form of Debt Security</a> (included in Exhibit 4.5)
5.1	<a href="#">Legal Opinion of Nason, Yeager, Gerson, White &amp; Lioce, P.A.</a>
23.1	<a href="#">Consent of Salberg &amp; Company, P.A.</a>
23.2	<a href="#">Consent of Nason, Yeager, Gerson, White &amp; Lioce, P.A.</a> (included in Exhibit 5.1)

ASPEN GROUP, INC.

SENIOR

INDENTURE

Dated as of \_\_\_\_\_, 20\_\_

Providing for Issuance of Senior Debt Securities in Series

,

as Trustee

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Reconciliation and Tie Between the Trust Indenture Act of 1939 and Indenture dated as of \_\_\_\_\_, between Aspen Group, Inc. and \_\_\_\_\_, as Trustee

TIA Section	Indenture Section
310(a)(1)	7.09
310(a)(2)	7.09
310(a)(3)	N/A
310(a)(4)	
310(a)(5)	7.09
310(b)	7.03, 7.07, 7.09
311(a)	7.10
311(b)	7.10
312(a)	2.08
312(b)	2.08, 13.03
312(c)	2.08, 13.03
313(a)	7.05
313(b)	7.05
313(c)	7.05, 13.02
313(d)	7.05
314(a)	4.03, 4.04
314(b)	N/A
314(c)	4.04, 13.05
314(d)	N/A
314(e)	13.05
314(f)	N/A
315(a)	7.01
315(b)	6.10
315(c)	7.01
315(d)	7.01
315(e)	6.13
316(a)(1)	6.09
316(a)(2)	N/A
316(a) last sentence	2.11
316(b)	6.06
317(a)	6.04, 6.07

\* Note: This reconciliation and tie shall not, for any purpose, be deemed to be a part of this Indenture.

INDENTURE dated as of \_\_\_\_\_ between Aspen Group, Inc., a Delaware corporation, and \_\_\_\_\_, as Trustee.

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its secured or unsecured debentures, notes, bonds or other evidences of indebtedness (“*Securities*”) to be issued in one or more series as herein provided.

All things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, and intending to be legally bound, it is mutually covenanted and agreed as follows for the equal and ratable benefit of the Holders of the Securities:

## ARTICLE 1

### DEFINITIONS AND INCORPORATION BY REFERENCE

#### Section 1.01 DEFINITIONS.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

“*Additional Interest*” has the meaning specified in Section 6.03.

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

“*Agent*” means any Registrar or Paying Agent.

“*Agent Members*” has the meaning specified in Section 2.15.

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

“*Board*” or “*Board of Directors*” means the Board of Directors of the Company or a committee thereof duly authorized to act for it hereunder.

“*Board Resolution*” means a resolution of the Board of Directors.

“*Business Day*” means any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

“*Capital Lease Obligation*” means, at the time any determination thereof is to be made, the amount of the liability in respect of a lease that would at such time be required to be capitalized on a balance sheet in accordance with GAAP.

“*Clearstream*” means Clearstream Banking, société anonyme (or any successor securities clearing agency).

“*close of business*” means 5:00 p.m. (New York City time).

“*Code*” means the Internal Revenue Code of 1986, as amended.

“*Common Stock*” means the common stock of the Company, par value \$0.001 per share, at the date of this Indenture.

“*Company*” means Aspen Group, Inc., a Delaware corporation, and any and all successors thereto.

“*Corporate Trust Office*” means the address of the Trustee specified in Section 13.02 hereof or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

“*Custodian*” means the Trustee, as custodian with respect to the Securities of any series (so long as such Securities constitute Global Securities), or any successor entity.

“*Default*” means any event that is, or after notice or passage of time would be, an Event of Default.

“*Depository*” means, with respect to any series of Securities issuable or issued in whole or in part in global form, the Person specified in Section 2.06 hereof as the Depository with respect to the Global Securities of that series, and any and all successors thereto registered and in good standing as a clearing agency under the Exchange Act, appointed as depository hereunder and having become such pursuant to the applicable provision of this Indenture.

“*Event of Default*” has the meaning specified in Section 6.01.

“*Euroclear*” means Euroclear Bank S.A./N.V., as operator of the Euroclear system (or any successor securities clearing agency).

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

“*Form of Assignment and Transfer*” means the “Form of Assignment and Transfer” attached as Attachment 2 to the Form of Security attached hereto as Exhibit A.

“*Form of Notice of Conversion*” means the “Form of Notice of Conversion” attached as Attachment 1 to the Form of Security attached hereto as Exhibit A.

“*GAAP*” means United States generally accepted accounting principles, consistently applied.

“*Global Security*” means any Security in global form registered in the name of the Depository or the nominee of the Depository.

“*Global Securities*” means, individually and collectively, the Securities issued in global form issued in accordance with Sections 2.01, 2.09 and 2.15 hereof.

“*Hedging Obligations*” means, with respect to any Person, the obligations of such Person under (i) interest rate swap agreements, interest rate cap agreements and interest rate collar agreements and (ii) other agreements or arrangements designed to protect such Person against fluctuations in interest rates.

“*Holder*” means a Person in whose name a Security is registered.

“*Indebtedness*” means, with respect to any Person: (i) the principal of, and any premium, if any, and interest on, indebtedness of any such Person for money borrowed and indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all Capital Lease Obligations of such Person; (iii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations and all obligations under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business and deferred purchase price due and payable within 90 days); (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction, other than obligations with respect to letters of credit securing obligations entered into in the ordinary course of business; (v) all Hedging Obligations of such Person; (vi) all obligations of the type referred to above of other Persons and all dividends of other Persons for which (and to the extent that) such Person is responsible or liable as obligor, guarantor or otherwise; (vii) all obligations of the type referred to above of other Persons to the extent secured by any Lien on any property or asset of such Person; and (viii) any amendments, modifications, refundings, renewals or extensions of any indebtedness or obligation described above.

“*Indenture*” means this Indenture, as amended, restated, waived or supplemented from time to time and includes and incorporates by reference the forms and terms of particular series of Securities established as contemplated hereunder.

“*Indirect Participant*” means a Person who holds a beneficial interest in a Global Security through a Participant.

“*Interest Payment Date*” means, with respect to the payment of interest on the Securities of any series, each date set forth in a supplemental indenture for such series of Securities as an Interest Payment Date, beginning on the date specified in such supplemental indenture.

“*Maturity Date*” means, with respect to any series of Securities, the date set forth as the Maturity Date in a supplemental indenture with respect to such series.

“*Obligations*” means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under this Indenture or the applicable Securities.

“*Officer*” means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, Vice Chairman of the Board, the Treasurer, any Assistant Treasurer, the Controller, the Secretary, any Assistant Secretary, any Executive Vice President, any Vice President or any Assistant Vice President of such Person.

“*Officers’ Certificate*” means a certificate signed on behalf of the Company (and not in their individual capacity) by two Officers of the Company, one of whom must be the principal executive officer, the president, the principal financial officer, the treasurer or any executive vice president or vice president of the Company, that meets the requirements of Section 13.05 hereof.

“*open of business*” means 9:00 a.m. (New York City time).

“*Opinion of Counsel*” means an opinion from legal counsel that meets the requirements of Section 13.05 hereof. The counsel may be an employee of or counsel to the Company, any Subsidiary of the Company or the Trustee.

“*Participant*” means, with respect to the Depository, Euroclear or Clearstream, a Person who has an account with the Depository, Euroclear or Clearstream.

“*Paying Agent*” shall initially be the Trustee, and shall be the Person authorized by the Company pursuant to Section 2.06 to pay the principal amount of, interest on, any Securities on behalf of the Company.

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

“*Physical Securities*” means permanent certificated Securities of a particular series in registered form issued in denominations of \$1,000 principal amount and multiples thereof.

“*Place of Payment*” means, New York, New York, unless otherwise specified in a supplemental indenture with respect to a particular series of Securities.

“*Regular Record Date*” means, with respect to the payment of interest on the Securities of a particular series, each date as shall be specified with respect to such Securities in a supplemental indenture (whether or not a Business Day) as a Regular Record Date for such Securities.

“*Responsible Officer*” when used with respect to the Trustee, means any officer within the applicable trust services department of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers, in each case, who is the officer responsible for the administration of this Indenture, and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject.

“*SEC*” means the Securities and Exchange Commission.

“*Securities*” has the meaning assigned to it in the preamble to this Indenture.

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

“*Security Register*” means the register of the Securities and of transfers and exchanges thereof required to be kept by the Registrar pursuant to Section 2.06.

“*Significant Subsidiary*” means any Subsidiary that would be a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such Regulation is in effect on the date of this Indenture.

“*Stated Maturity*” means, with respect to any payment of interest or principal on any series of Securities, the date on which such payment of interest or principal is scheduled to be paid thereon by its terms as in effect from time to time, and does not include any contingent obligation to repay, redeem or repurchase any such interest or principal prior to the date scheduled for the payment thereof, *provided, however,* that, if any such date is not a Business Day, the payment will be made on the next succeeding Business Day.

“*Subsidiary*” means, with respect to any Person, (i) any corporation, association or other business entity of which more than 50% of the total voting power of shares of capital stock or other equity interests entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person (or a combination thereof) and (ii) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are such Person or one or more Subsidiaries of such Person (or any combination thereof.)

“*Successor Company*” has the meaning specified in Section 5.01(a).

“*TIA*” means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbbb as amended) as in effect on the date on which this Indenture is qualified under the TIA; *provided, however,* that if the TIA is amended after such date, “TIA” means, to the extent required by any such amendment, the TIA as so amended.

“*Trustee*” means the party named as such above until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

“*U.S.*” means the United States of America.

“*U.S. Government Obligations*” means securities that are (i) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case under clauses (i) or (ii), are not callable or redeemable at the option of the issuer thereof, and also includes a depository receipt issued by a bank or trust company as custodian with respect to any such U.S. Government Obligation or a specific payment of interest on or principal of any such U.S. Government Obligation held by such custodian for the account of the holder of a depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of interest on or principal of the U.S. Government Obligation evidenced by such depository receipt.



Section 1.02 OTHER DEFINITIONS.

Term	Defined in Section
“Act”	1.05
“Authentication Order”	2.05
“Conversion Agent”	2.06
“Conversion Date”	12.02(c)
“DTC”	2.15
“Legal Defeasance”	9.02
“Notice of Default” or “Notice of Defaults”	6.10
“outstanding”	2.11
“supplemental indenture”	2.01
“Registrar”	2.06

Section 1.03 INCORPORATION BY REFERENCE OF TRUST INDENTURE ACT.

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture.

The following TIA terms used in this Indenture have the following meanings:

“*indenture security holder*” means a Holder of a Security;

“*indenture to be qualified*” means this Indenture;

“*indenture trustee*” or “*institutional trustee*” means the Trustee;

“*obligor*” on the Securities means the Company and any successor obligor upon the Securities.

All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule under the TIA and not otherwise defined herein have the meanings so assigned to them.

Section 1.04 RULES OF CONSTRUCTION.

For the purposes of this Indenture, unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP, and, except as otherwise herein expressly provided, the terms “generally accepted accounting principles” and “GAAP” with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted at the date of this instrument;
- (3) “or” is not exclusive;
- (4) words in the singular include the plural, and in the plural include the singular;

- (5) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;
- (6) provisions apply to successive events and transactions; and
- (7) references to sections of or rules under the Securities Act and the Exchange Act shall be deemed to include substitute, replacement and successor sections thereof or rules adopted by the SEC from time to time.

Section 1.05 ACTS OF HOLDERS.

Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments signed by such Holders, in person or by an agent duly appointed in writing or may be embodied in and evidenced by the record of Holders voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders duly called and held in accordance with the provisions of Article 11, or a combination of such instruments or record and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “Act” of Holders signing such instrument or instruments and so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent or proxy shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.05 and Section 11.05. The record of any meeting of Holders shall be proved in the manner provided in Section 11.06.

Without limiting the generality of this Section, unless otherwise provided in or pursuant to this Indenture, a Holder, including a Depositary that is a Holder of a Global Security, may make, give or take by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in or pursuant to this Indenture to be made, given or taken by Holders, and a Depositary that is a Holder of a Global Security may provide its proxy or proxies to the beneficial owners of interests in any such Global Security through such Depositary’s standing instructions and customary practices.

The fact and date of the execution by any Person of any such instrument or writing may be proved in any manner which the Trustee deems sufficient.

The ownership of Securities shall be proved by the Register.

Section 1.06 REFERENCES TO INTEREST.

Unless otherwise explicitly stated, all references to interest on, or in respect of, any Security in this Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 2.03. Any express mention of the payment of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

ARTICLE 2

THE SECURITIES

Section 2.01 FORM AND DATING.

(a) *General.* The Securities of each series shall be in substantially such form as shall be established by or pursuant to a Board Resolution, by an Officers' Certificate or in one or more indentures supplemental hereto (as used herein, "*supplemental indenture*" shall include each of the foregoing), in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any applicable securities exchange, organizational document, governing instrument or law or as may, consistently herewith, be determined by the officers executing such Securities as evidenced by their execution of the Securities. If temporary Securities of any series are issued as permitted by Section 2.12, the form thereof also shall be established as provided in the preceding sentence. If the forms of Securities of any series are established by, or by action taken pursuant to, a Board Resolution, a copy of the Board Resolution, certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of the certificate, together with an appropriate record of any such action taken pursuant thereto, including a copy of the approved form of Securities, shall be delivered to the Trustee at or prior to the delivery of the Authentication Order contemplated by Section 2.05 or 2.12, as applicable, for the authentication and delivery of such Securities. The Trustee's certificate of authentication shall be in substantially the following form:

This is one of the Securities of the series described in the within-mentioned Indenture.

\_\_\_\_\_  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory

If the Trustee has designated an authenticating agent pursuant to Section 2.05 and the authenticating agent is authenticating any Security, then the Trustee's certificate of authentication shall be in substantially the following form:

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

\_\_\_\_\_  
As Trustee

\_\_\_\_\_  
As Authenticating Agent

\_\_\_\_\_  
Authorized Officer

(b) *Global Securities*. If Securities of or within a series are issuable in whole or in part in global form, any such Security may provide that it shall represent the aggregate or a specified amount of outstanding Securities from time to time endorsed thereon and may also provide that the aggregate amount of outstanding Securities represented thereby may from time to time be reduced or increased to reflect exchanges and conversions. Any endorsement of a Security in global form to reflect the amount, or any increase or decrease in the amount, or changes in the rights of Holders, of outstanding Securities represented thereby, will be made in such manner and by such Person or Persons as shall be specified therein or upon the written order of the Company signed by an Officer to be delivered to the Trustee pursuant to Section 2.05 or 2.12. Subject to the provisions of Section 2.05, Section 2.12, if applicable, and Section 2.09, the Trustee shall deliver and redeliver any Security in permanent global form in the manner and upon instructions given by the Person or Persons specified therein or in the applicable written order of the Company signed by an Officer. Any instructions by the Company with respect to endorsement or delivery or redelivery of a Security in global form shall be in writing.

The provisions of the last paragraph of Section 2.05 shall apply to any Security in global form if such Security was authenticated and delivered as contemplated herein, but never issued and sold by the Company.

Notwithstanding the provisions of this Section 2.01, unless otherwise specified as contemplated by Section 2.02, payment of principal of, premium, if any, and interest on any Security in permanent global form shall be made to the Holder thereof.

Section 2.02      AMOUNT UNLIMITED; ISSUABLE IN SERIES

(a) The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued from time to time in one or more series.

(b) The following matters will be established with respect to each series of Securities issued hereunder (i) by a Board Resolution, (ii) by action taken pursuant to a Board Resolution and set forth, or determined in the manner provided, in an Officers' Certificate or (iii) in one or more indentures supplemental hereto:

- (1) the title of the Securities of the series (which title will distinguish the Securities of the series from all other series of Securities);
- (2) any limit upon the aggregate principal amount of the Securities of the series that may be authenticated and delivered under this Indenture (which limit will not pertain to Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 2.09, 2.10, 2.12, 3.06 or 10.05 or any Securities that, pursuant to Section 2.05, are deemed never to have been authenticated and delivered hereunder);
- (3) the date or dates on which the principal of and premium, if any, on the Securities of the series is payable or the method or methods of determination thereof;
- (4) the rate or rates at which the Securities of the series will bear interest, if any, or the method or methods of calculating such rate or rates of interest, the date or dates from which such interest will accrue or the method or methods by which such date or dates will be determined, the Interest Payment Dates on which any such interest will be payable, the right, if any, of the Company to defer or extend an Interest Payment Date, the record date, if any, for

the interest payable on any Security on any Interest Payment Date, and the basis upon which interest will be calculated if other than that of a 360-day year of twelve 30-day months;

(5) the place or places where the principal of, premium, if any, and interest, if any, on Securities of the series will be payable pursuant to Section 2.06, any Securities of the series may be surrendered for registration of transfer pursuant to Section 2.06, Securities of the series may be surrendered for exchange pursuant to Section 2.06 and notices and demands to or upon the Company in respect of the Securities of the series and this Indenture may be served and notices to Holders pursuant to Section 11.02 will be published;

(6) the period or periods within which, the price or prices at which, the currency or currencies (including currency unit or units) in which, and the other terms and conditions upon which, Securities of the series may be redeemed, in whole or in part, at the option of the Company and, if other than as provided in Section 3.02, the manner in which the particular Securities of such series (if less than all Securities of such series are to be redeemed) are to be selected for redemption;

(7) the right or the obligation, if any, of the Company to redeem or purchase Securities of the series pursuant to any sinking fund or analogous provisions or upon the happening of a specified event or at the option of a Holder thereof and the period or periods within which, the price or prices at which, the currency or currencies (including currency unit or units) in which, and the other terms and conditions upon which, Securities of the series will be redeemed or purchased, in whole or in part, pursuant to such right or obligation;

(8) if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which Securities of the series will be issuable;

(9) if other than U.S. dollars, the currency or currencies (including currency unit or units) in which the principal of, premium, if any, and interest, if any, on the Securities of the series will be payable, or in which the Securities of the series will be denominated, and the particular provisions applicable thereto;

(10) if the payments of principal of, premium, if any, or interest, if any, on the Securities of the series are to be made, at the election of the Company or a Holder, in a currency or currencies (including currency unit or units) other than that in which such Securities are denominated or designated to be payable, the currency or currencies (including currency unit or units) in which such payments are to be made, the terms and conditions of such payments and the manner in which the exchange rate with respect to such payments will be determined, and the particular provisions applicable thereto;

(11) if the amount of payments of principal of, premium, if any, and interest, if any, on the Securities of the series will be determined with reference to an index, formula or other method (which index, formula or method may be based, without limitation, on a currency or currencies (including currency unit or units) other than that in which the Securities of the series are denominated or designated to be payable), the index, formula or other method by which such amounts will be determined and any special voting or defeasance provisions in connection therewith;

(12) if other than the principal amount thereof, the portion of the principal amount of such Securities of the series that will be payable upon declaration of acceleration thereof pursuant to Section 6.02 or the method by which such portion will be determined;

- (13) the Person to whom any interest on any Security of the series will be payable;
- (14) provisions, if any, granting special rights to the Holders of Securities of the series upon the occurrence of such events as may be specified;
- (15) any deletions from, modifications of or additions to the Events of Default set forth in Section 6.01 or covenants of the Company set forth in Article 4 pertaining to the Securities of the series
- (16) under what circumstances, if any, and with what procedures and documentation the Company will pay additional amounts on the Securities of that series held by a Person who is not a U.S. Person (including any definition of such term) in respect of taxes, assessments or similar charges withheld or deducted and, if so, whether the Company has the option to redeem such Securities rather than pay such additional amounts (and the terms of any such option);
- (17) the forms of the Securities of the series;
- (18) the applicability, if any, of Sections 9.02 and 9.03 to the Securities of the series or such other means of defeasance or covenant defeasance as may be specified for the Securities of such series;
- (19) if other than the Trustee, the initial identities of the Registrar, Conversion Agent (if any) and any Paying Agent pursuant to Section 2.06;
- (20) if the Securities of the series will be issued in whole or in part in global form, (A) the Depositary for such Global Securities, (B) whether beneficial owners of interests in any Securities of the series in global form may exchange such interests for Physical Securities of such series, to be registered in the names of or to be held by such beneficial owners or their nominees and to be of like tenor of any authorized form and denomination, and (C) if other than as provided in Section 2.09, the circumstances under which any such exchange may occur;
- (21) the designation of the initial Depositary with respect to the Securities of the series pursuant to Section 2.06;
- (22) any restrictions on the registration, transfer or exchange of the Securities of the series;
- (23) if the Securities of the series may be issued or delivered (whether upon original issuance or upon exchange of a temporary Security of such series or otherwise), or any installment of principal or interest is payable, only upon receipt of certain certificates or other documents or satisfaction of other conditions in addition to those specified in this Indenture, the form and terms of such certificates, documents or conditions;
- (24) if the Securities of the series will be convertible into or for other securities or property of the Company, and any deletions from, modifications of or additions to the terms and conditions of any right to convert, exercise or exchange Securities of the series into or for other securities or property of the Company set forth in Article 12;
- (25) whether the Securities of the series are secured or unsecured, and if secured, the security and related terms in connection therewith (which will be provided for in a separate security agreement and/or other appropriate documentation); and

(26) any other terms of the series including any terms which may be required by or advisable under United States laws or regulations or advisable (as determined by the Company) in connection with the marketing of Securities of the series.

(c) All Securities of any one series will be substantially identical except as to denomination and except as may otherwise be provided (i) by a Board Resolution, (ii) by action taken pursuant to a Board Resolution and set forth, or determined in the manner provided, in the related Officers' Certificate or (iii) in an indenture supplemental hereto. All Securities of any one series need not be issued at the same time and, unless otherwise provided, a series may be reopened, without the consent of the Holders, for issuances of additional Securities of such series.

#### Section 2.03 PAYMENT OF INTEREST

Except as otherwise specified in any Security issued hereunder, or in any supplemental indenture with respect to Securities of a particular series, interest shall be due and payable on a Security as follows:

(a) A Holder of such Security as of the close of business on a Regular Record Date shall be entitled to receive and shall receive (except as otherwise indicated in this Section 2.03), accrued and unpaid interest on such Security from the date specified in such Security to the Interest Payment Date next succeeding such Regular Record Date, other than any Security whose Maturity Date is prior to such Interest Payment Date.

(b) In the event that a Security of any series becomes subject to redemption pursuant to Article 3 and the redemption date occurs after a Regular Record Date but on or prior to the next succeeding Interest Payment Date, the person whose Security becomes subject to redemption (and only such Person rather than the Holder as of such Regular Record Date) shall be entitled to receive and shall receive accrued and unpaid interest from the preceding Interest Payment Date (or such earlier date on which interest was last paid) to, but excluding, the redemption date of such Security, even if such Person is not the Holder of such Security on the Regular Record Date. In the event that a Security of any series becomes subject to redemption pursuant to Article 3 and the redemption date occurs on an Interest Payment Date, the Holder as of the Regular Record Date corresponding to such Interest Payment Date shall be entitled to receive and shall receive accrued and unpaid interest from the preceding Interest Payment Date (or such earlier date on which interest was last paid or as otherwise provided in the Security) to, but excluding, the redemption date of such Security, even if such Person is not the Holder of such Security.

(c) The Company shall pay the principal of and interest on any Global Security registered in the name of or held by the Depository or its nominee in immediately available funds to the Depository or its nominee, as the case may be, as the registered Holder of such Global Security. The Company shall pay the principal of any Physical Securities at the office or agency designated by the Company for that purpose.

(d) The Company shall pay interest on any Physical Securities (A) to Holders having an aggregate principal amount of \$ \_\_\_\_\_ or less, by check mailed to the Holders of such Securities at their address as it appears in the Security Register and (B) to Holders having an aggregate principal amount of more than \$ \_\_\_\_\_, either by check mailed to each such Holder or, upon application by a Holder to the Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until the Holder notifies the Registrar, in writing, to the contrary.

(e) In the event that Securities of any series are convertible and if, in such case, a Security is converted pursuant to Article 12, the Holder who converts such Security on any date other than an Interest Payment Date (except in the case of a Security whose Maturity Date is after the immediately preceding Record Date but prior to such Interest Payment Date) shall not be entitled to receive unpaid interest on such Security from the preceding Interest Payment Date until the conversion date, such amounts being deemed to have been paid by receipt of shares of Common Stock in full rather than canceled, extinguished or forfeited. As a result, if a Security is converted between a Regular Record Date and an Interest Payment Date (but not including on the Interest Payment Date), the Holder of record on the Regular Record Date will receive accrued and unpaid interest on such Security for such period on such Interest Payment Date but the Holder that converts the Security will be required to remit to the Company an amount equal to that interest at the time such Holder surrenders the Security for conversion, pursuant to Article 12; *provided, however*, that such Holder will not be required to remit such interest if (1) the Company has specified a redemption date that occurs during the period from the close of business on a Regular Record Date to the close of business on the Business Day immediately preceding the Interest Payment Date to which such record date relates or (2) any overdue interest exists on the Conversion Date with respect to the Securities converted, but only to the extent of overdue interest.

#### Section 2.04 DENOMINATIONS.

Unless otherwise specified in any Security issued hereunder or in any supplemental indenture, Securities of a series denominated in U.S. dollars shall be issuable in denominations of U.S. \$1,000 and any integral multiple thereof. Securities denominated in a foreign currency shall be issuable in such denominations as are established with respect to such Securities in or pursuant to this Indenture.

#### Section 2.05 EXECUTION AND AUTHENTICATION.

An Officer shall sign the Securities for the Company by manual or facsimile signature.

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

A Security shall not be valid until authenticated by the manual signature of the Trustee (or its authenticating agent as provided below). The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

The Trustee shall, upon a written order of the Company signed by an Officer (an "*Authentication Order*"), together with an Officers' Certificate and an Opinion of Counsel, authenticate Securities for original issue in the aggregate principal amount stated in the Authentication Order. The Officers' Certificate and Opinion of Counsel shall each state that all conditions precedent provided for or relating to the issuance of such Securities have been complied with.

If all of the Securities of a series are not to be originally issued at the same time, then the documents required to be delivered pursuant to this Section 2.05 must be delivered only once, prior to the authentication and delivery of the first Security of such series; *provided, however*, that any subsequent request by the Company to the Trustee to authenticate additional Securities of such series upon original issuance shall constitute a representation and warranty by the Company that, as of the date of such request, the statements made in the Officers' Certificate delivered



pursuant to this Section 2.05 shall be true and correct as if made on such date and that all the conditions precedent, if any, provided for in this Indenture or the terms of the Securities of such series relating to the authentication and delivery of additional Securities of such series have been complied with.

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

Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 2.13 together with a written statement stating that such Security has never been issued and sold by the Company, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall not be entitled to the benefits of this Indenture.

#### Section 2.06 REGISTRAR AND PAYING AGENT; APPOINTMENT OF DEPOSITARY.

The Company shall, in accordance with Section 4.02, maintain an office or agency where Securities may be presented for registration of transfer or for exchange ("*Registrar*"), (if Securities of any series are convertible) an office or agency where Securities may be presented for conversion ("*Conversion Agent*"), and an office or agency where Securities may be presented for payment ("*Paying Agent*"). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Company may appoint one or more co-registrars, one or more additional paying agents and one or more Conversion Agents. The term "*Registrar*" includes any co-registrar, the term "*Paying Agent*" includes any additional paying agent and the term "*Conversion Agent*" includes any additional Conversion Agent. The Company may change any Paying Agent or Registrar without notice to any Holder. The Company shall promptly notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent or, if the Securities of any series are convertible, a Conversion Agent, the Trustee shall act as such. The Company or any of its Subsidiaries may act as Paying Agent, Conversion Agent or Registrar.

The Company initially appoints The Depository Trust Company to act as Depository with respect to the Global Securities.

The Company initially appoints the Trustee to act as the Registrar and Paying Agent with respect to the Securities and to act as Custodian with respect to the Global Securities.

#### Section 2.07 PAYING AGENT TO HOLD MONEY IN TRUST.

The Company shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Securities or other payment in respect of the Securities or otherwise held by it as Paying Agent, and will notify the Trustee of any default by the Company in making any such payment when due. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company or a Subsidiary) shall have no further

liability for the money. If the Company or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Company, the Trustee shall serve as Paying Agent for the Securities.

Section 2.08      HOLDER LISTS.

(a) The Company shall furnish or cause to be furnished to the Trustee, semiannually, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Holders as of a date not more than 15 days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Trustee is acting as Registrar. In addition, the Trustee and the Company shall comply with TIA § 312.

(b) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders contained in the most recent list furnished to it as provided in this Section 2.08 or maintained by the Trustee in its capacity as Registrar, if so acting. The Trustee shall destroy any list furnished to it as provided in this Section 2.08 upon receipt of a new list so furnished.

Section 2.09      TRANSFER AND EXCHANGE.

(a) Upon surrender for registration of transfer of any Physical Security of any series at the office or agency maintained pursuant to Section 4.02, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Physical Securities of the same series, of any authorized denominations and of a same aggregate principal amount and like tenor and containing identical terms and provisions.

(b) At the option of the Holder, Securities of any series (except a Security in global form) may be exchanged for other Securities of the same series, of any authorized denominations, of a same aggregate principal amount and like tenor and containing identical terms and provisions, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities that the Holder making the exchange is entitled to receive.

(c) Notwithstanding any other provision of this Section 2.09, unless and until it is exchanged in whole or in part for Physical Securities, a Security in global form representing all or a portion of the Securities of a series may not be transferred except as a whole by the Depository for such series to a nominee of such Depository or by a nominee of such Depository to such Depository or another nominee of such Depository or by such Depository or any such nominee to a successor Depository for such series or a nominee of such successor Depository.

(d) If at any time: (i) the Depository for the Securities of a series notifies the Company that the Depository is unwilling or unable to continue as Depository for the Securities of such series and a successor Depository is not appointed within 60 days; (ii) the Depository ceases to be registered as a clearing agency under the Exchange Act and a successor Depository is not appointed within 60 days; or (iii) an Event of Default with respect to the Securities of such series has occurred and is continuing and any beneficial owner requests that its Securities be issued as Physical Securities; then, in such cases, the Company shall execute, and the Trustee, upon receipt of an Officers'

Certificate and an Authentication Order for the authentication and delivery of Physical Securities of such series of like tenor, shall authenticate and deliver (x) in the case of clause (iii), a Physical Security of such series to such beneficial owner in a principal amount equal to the principal amount of such Securities corresponding to such beneficial owner's beneficial interest and (y) in the case of clause (i) or (ii), Physical Securities of such series to the beneficial owners of the related Securities (or a portion thereof) in an aggregate principal amount equal to the principal amount of such Global Security, in exchange for such Global Security, and upon delivery of the Global Security to the Trustee such Global Security shall be cancelled.

(e) The Company may at any time in its sole discretion determine that all (but not less than all) Securities of a series issued in global form shall no longer be represented by such a Security or Securities in global form. In such event the Company shall execute, and the Trustee, upon receipt of an Authentication Order for the authentication and delivery of Physical Securities of such series of like tenor, shall authenticate and deliver in accordance with Section 2.02(g), Physical Securities of such series of like tenor, in authorized denominations and in an aggregate principal amount equal to the principal amount of the Security or Securities of such series of like tenor in global form in exchange for such Security or Securities in global form.

(f) If specified by the Company pursuant to Section 2.02 or this Section 2.09, with respect to a series of Securities, the Depository for such series may surrender a Security in global form of such series in exchange in whole or in part for Physical Securities of such series on such terms as are acceptable to the Company and such Depository. Thereupon, the Company shall execute, and the Trustee shall authenticate and deliver, without service charge,

(1) to each Person specified by such Depository a new Physical Security or Securities of the same series of like tenor, of any authorized denomination as requested by such Person in aggregate principal amount equal to and in exchange for such Person's beneficial interest in the Security in global form; and

(2) to such Depository a new Security in global form of like tenor in a denomination equal to the difference, if any, between the principal amount of the surrendered Security in global form and the aggregate principal amount of Physical Securities delivered to Holders thereof.

(g) Upon the exchange of a Security in global form for Physical Securities, such Security in global form shall be canceled by the Trustee. Physical Securities issued in exchange for a Security in global form pursuant to this Section shall be registered in such names and in such authorized denominations as the Depository for such Security in global form, pursuant to instructions from its direct or Indirect Participants or otherwise, shall instruct the Trustee in writing. The Trustee shall deliver such Securities to the Persons in whose names such Securities are so registered.

(h) Whenever any Securities are surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities that the Holder making the exchange is entitled to receive.

(i) All Securities issued upon any registration of transfer or upon any exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as were the Securities surrendered upon such registration of transfer or exchange.

(j) Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company, the Registrar or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in

form satisfactory to the Company, the Registrar and the Trustee duly executed by the Holder thereof or his attorney duly authorized in writing.

(k) No service charge shall be imposed by the Company, the Trustee or any Registrar for any exchange or registration of transfer of Securities, but the Company, the Trustee or any Registrar may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required by law or permitted pursuant to a supplemental indenture with respect to such Securities. None of the Company, the Trustee or any Registrar shall be required to exchange or register a transfer of any Securities surrendered for conversion or, if a portion of any Security is surrendered for conversion, such portion thereof surrendered for conversion.

(l) The Company shall not be required (i) to issue, register the transfer of or exchange Securities of any series during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Securities of that series selected for redemption under Section 3.02 and ending at the close of business on the day of such mailing, or (ii) to register the transfer of or exchange any security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

(m) The provisions of this Section 2.09 may be modified, supplemented or superseded with respect to any series of Securities by a Board Resolution or in one or more indentures supplemental hereto.

(n) At such time as all beneficial interests in a particular Global Security have been exchanged for Physical Securities or a particular Global Security has been redeemed, repurchased or canceled in whole and not in part, each such Global Security shall be returned to or retained and canceled by the Trustee in accordance with Section 2.13 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security or for Physical Securities, the principal amount of Securities represented by such Global Security shall be reduced accordingly and an endorsement shall be made on such Global Security by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security, such other Global Security shall be increased accordingly and an endorsement shall be made on such Global Security by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(o) Prior to due presentment for the registration of a transfer of any Security, the Trustee, any Agent and the Company may deem and treat the Person in whose name any Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest on such Securities and for all other purposes, and neither the Trustee, any Agent nor the Company shall be affected by notice to the contrary.

#### Section 2.10 REPLACEMENT SECURITIES.

If any mutilated Security is surrendered to the Trustee or the Company or the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Security, the Company shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Security, *provided that* if required by the Trustee or the Company, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Company to protect the Company, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Security is replaced. The Company may charge for its expenses in replacing a Security.

Every replacement Security is an obligation of the Company and will be entitled to all of the benefits of this Indenture equally and proportionately with all other Securities duly issued hereunder.

Section 2.11      OUTSTANDING SECURITIES.

For purposes of this Indenture and the Securities, except as otherwise specified in any Security of any series or supplemental indenture with respect to such Securities, any Security authenticated and delivered under this Indenture shall, as of any date of determination, be deemed to be “*outstanding*” except:

- (i) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation or reductions in the interest in any Global Security effected by the Trustee in accordance with the provisions hereof;
- (ii) Securities for the payment or redemption of which money or U.S. Government Obligations in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company acts as its own Paying Agent) for the Holders of such Securities; *provided, however*, that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefore satisfactory to the Trustee has been made;
- (iii) Securities that have been paid pursuant to Section 4.01; and
- (iv) Securities that have been replaced pursuant to Section 2.10, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a protected purchaser (as defined in Article 8 of the Uniform Commercial Code as in effect from time to time in the State of New York) in whose hands such Securities are valid obligations of the Company;

*provided, however*, that in determining whether the Holders of the requisite principal amount of the outstanding Securities have given or concurred with any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any other obligor upon the Securities or any Subsidiary of the Company or of such other obligor shall be disregarded and deemed not to be outstanding, except that, for purposes of determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities that the Trustee knows to be so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor.

Section 2.12      TEMPORARY SECURITIES.

Until certificates representing Securities are ready for delivery, the Company may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of Physical Securities but may have variations that the Company considers appropriate for temporary Securities and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate definitive Securities in exchange for temporary Securities.

Holders of temporary Securities will be entitled to all of the benefits of this Indenture.

Section 2.13 PURCHASE AND CANCELLATION.

The Company shall cause all Securities surrendered for payment, repurchase, registration of transfer or exchange or conversion, if surrendered to any Person other than the Trustee (including any of the Company's Agents, Subsidiaries or Affiliates), to be delivered to the Trustee for cancellation. All Securities delivered to the Trustee shall be canceled promptly by the Trustee. No Securities shall be authenticated in exchange for any Securities cancelled, as provided herein. The Company may, to the extent permitted by law, and directly or indirectly (regardless of whether such Securities are surrendered to the Company), repurchase Securities in the open market or otherwise, without giving prior notice to Holders, whether by the Company or the Company's Subsidiaries or through a private or public tender or exchange offer or through counterparties to private agreements, including by cash-settled swaps or other derivatives. The Company may cause any Securities so repurchased (other than Securities repurchased pursuant to cash-settled swaps or other derivatives) to be surrendered to the Trustee for cancellation in accordance with this Section 2.13 and any such Securities shall no longer be considered outstanding under this Indenture upon such repurchase. Any Securities surrendered for cancellation by the Company shall not be reissued or resold.

Section 2.14 DEFAULTED INTEREST.

If the Company defaults in a payment of interest on the Securities, it shall pay the defaulted interest in any lawful manner to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Securities. The Company shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Security and the date of the proposed payment. The Company shall fix or cause to be fixed each such special record date and payment date, *provided, however*, that no such special record date shall be less than 10 days prior to the related payment date for such defaulted interest. At least 15 days before the special record date, the Company (or, upon the written request of the Company, the Trustee in the name and at the expense of the Company) shall mail or cause to be mailed to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid. Except as otherwise expressly provided in Section 2.03 or a supplemental indenture with respect to such Securities, in the case of any Security (or any part thereof) that is converted, interest payable on an Interest Payment Date after the date of conversion of such Security (or such part thereof) shall not be payable. Subject to the foregoing provisions of this Section, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, that were carried by such other Security.

Section 2.15 BOOK-ENTRY PROVISIONS FOR GLOBAL SECURITIES.

- (a) Except as otherwise specified in any Security of any series or supplemental indenture with respect to such Securities, the Securities of each series issued hereunder shall initially be issued in the form of one or more Global Securities without interest coupons (i) registered in the name of Cede & Co., as nominee of the Depository and (ii) delivered to the Trustees as custodian for the Depository.
- (b) Members of, or participants in, the Depository ("*Agent Members*") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Security, and Cede & Co., or such other Person designated by the Depository as its nominee, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of the

Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of any Holder.

(c) The Holder of Global Securities may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action that a Holder is entitled to take under this Indenture or the Securities.

(d) A legend in substantially the following form shall appear on the face of all Global Securities:

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

### ARTICLE 3

#### REDEMPTION AND PREPAYMENT

##### Section 3.01 APPLICABILITY OF ARTICLE.

The provisions of this Article are applicable to the Securities of any series that are redeemable before their maturity except as otherwise contemplated by Section 2.02 for Securities of such series or in any supplemental indenture with respect to such Securities.

##### Section 3.02 SELECTION OF SECURITIES TO BE REDEEMED.

If less than all of the Securities of any series are to be redeemed at any time, the Trustee will select the Securities of such series to be redeemed among the Holders of the Securities of such series in compliance with the requirements of the principal national securities exchange, if any, on which the Securities of such series are listed or, if the

Securities of such series are not so listed, and except as may be otherwise specified in a supplemental indenture with respect to the Securities of such series, by lot or by such other method as the Trustee deems fair and appropriate; *provided, however*, that no Securities of \$1,000 or less shall be redeemed in part. In the event of partial redemption by lot, the particular Securities of such series to be redeemed shall be selected, unless otherwise provided herein or in the Securities of such series or in a supplemental indenture with respect to such Securities or otherwise agreed by the Company and the Trustee, by the Trustee from the outstanding Securities of the series not previously called for redemption.

The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Security selected for partial redemption, the principal amount thereof to be redeemed. Securities and portions of Securities selected shall be in amounts of \$1,000 or whole multiples of \$1,000; except that if all of the Securities of a series of a Holder are to be redeemed, the entire outstanding amount of Securities of such series held by such Holder, even if not a multiple of \$1,000, shall be redeemed. A new Security of the same series in principal amount equal to the unredeemed portion thereof shall be issued in the name of the Holder thereof upon cancellation of the original Security. Securities called for redemption shall become due on the redemption date. On and after the redemption date, interest will cease to accrue on the Securities or portions of them called for redemption. Except as provided in this Section 3.02, provisions of this Indenture that apply to Securities called for redemption shall also apply to portions of Securities called for redemption.

### Section 3.03 NOTICE OF REDEMPTION.

At least 30 days but not more than 60 days before a redemption date, the Company shall mail or cause to be mailed, by first class mail, a notice of redemption to each Holder whose Securities are to be redeemed at its registered address.

The notice shall identify the Securities to be redeemed, including the series thereof, and shall state:

- (i) the redemption date;
- (ii) the redemption price;
- (iii) the name and address of the Paying Agent;
- (iv) that Securities called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (v) that, unless the Company defaults in making such redemption payment, interest on Securities called for redemption will cease to accrue on and after the redemption date;
- (vi) as to any Security being redeemed in part, the portion of the principal amount of such Security to be redeemed and that, after the redemption date upon surrender of such Security, a new Security or Securities of the same series in principal amount equal to the unredeemed portion shall be issued upon cancellation of the original;
- (vii) the paragraph of the Securities and/or Section of this Indenture, any supplemental indenture with respect to such Securities or any Securities pursuant to which the Securities called for redemption are being redeemed; and



(viii) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Securities.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at the Company's expense; *provided, however*, that the Company shall have delivered to the Trustee, at least 45 days prior to the redemption date (unless a shorter period is satisfactory to the Trustee), an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04 EFFECT OF NOTICE OF REDEMPTION.

Once notice of redemption is mailed in accordance with Section 3.03 hereof, Securities called for redemption become irrevocably due and payable on the redemption date at the redemption price.

Section 3.05 DEPOSIT OF REDEMPTION PRICE.

No later than 12:00 p.m. (noon), Eastern Time, on any redemption date, the Company shall deposit with the Trustee or with the Paying Agent (or if the Company is acting as Paying Agent, the Company shall segregate and hold in trust for the Persons entitled to such sums) money in immediately available funds sufficient to pay the redemption price of and accrued interest, if any, on all Securities to be redeemed on that date. The Trustee or the Paying Agent shall promptly return to the Company any money deposited with the Trustee or the Paying Agent by the Company in excess of the amounts necessary to pay the redemption price of, and accrued interest on, all Securities to be redeemed.

Section 3.06 SECURITIES REDEEMED OR PURCHASED IN PART.

Upon surrender of a Security that is redeemed in part, the Company shall issue and, upon the Company's written request, the Trustee shall authenticate for the Holder at the expense of the Company a new Security of the same series equal in principal amount to the unredeemed portion of the Security surrendered.

Section 3.07 MANDATORY REDEMPTION; SINKING FUND.

The Company shall not be required to make mandatory redemption or sinking fund payments with respect to the Securities, unless otherwise specified in the terms of a particular series of Securities or in a supplemental indenture with respect to such Securities.

ARTICLE 4

COVENANTS

Section 4.01 PAYMENT OF SECURITIES.

The Company shall pay or cause to be paid the principal of, premium, if any, and interest on the Securities on the dates and in the manner provided in the Securities. Principal, premium, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary thereof, holds as of 12:00 p.m. (noon), Eastern Time, on the due date money deposited by the Company in immediately available funds and

designated for and sufficient to pay all principal, premium, if any, and interest then due. If the Company is the Paying Agent, principal, premium, if any, and interest shall be considered paid on the date due if it has segregated and held in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal, premium, if any, and interest so becoming due until such sums are paid to such Persons.

Section 4.02 MAINTENANCE OF OFFICE OR AGENCY.

In satisfaction of Section 2.06, the Company shall maintain a Registrar or co-Registrar, which shall be an office or agency (and which may be an office of the Trustee or an affiliate of the Trustee) where Securities may be surrendered for registration of transfer, or for exchange, and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company shall maintain a Paying Agent (which may be an office of the Trustee or an affiliate of the Trustee or the Registrar or a co-Registrar) where Securities may be surrendered for payment. If, but only if, Securities of any series are convertible, the Company shall maintain a Conversion Agent (which may be an office of the Trustee or the Registrar or a co-Registrar or the Paying Agent) where such Securities may be surrendered for conversion. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of any such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Trustee's principal agency, which currently is located at \_\_\_\_\_.

The Company may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

Section 4.03 REPORTING REQUIREMENT.

The Company shall file with the Trustee within 15 days after the Company is required to file the same with the SEC (after giving effect to any grace period afforded to the Company pursuant to Rule 12b-25 under the Exchange Act), copies of the annual reports and of the information, documents and other reports, and such summaries thereof, as may be required pursuant to the TIA at the times and in the manner provided pursuant to the TIA (or copies of such portions of any of the foregoing as the SEC may from time to time by rules and regulations prescribe) that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates). Any such document or report that the Company files with the SEC via the EDGAR system shall be deemed to be filed with the Trustee for purposes of this Section 4.03 as of the time such documents are filed via the EDGAR system.

Section 4.04 COMPLIANCE CERTIFICATE.

The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate, stating whether or not to the best knowledge of the signers thereof the

Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

Section 4.05      EXISTENCE.

Subject to Article 5 hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence and rights (charter and statutory rights) as a corporation; *provided, however*, that the Company shall not be required to preserve any such right as a corporation, if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders of the Securities.

ARTICLE 5

SUCCESSOR COMPANY

Section 5.01      CONSOLIDATION, MERGER AND SALE OF ASSETS.

The Company shall not consolidate with or merge with or into, or sell, transfer, lease or otherwise convey all or substantially all of its consolidated assets to, another Person, unless:

- (a) the resulting, surviving or transferee Person (if not the Company) (the “*Successor Company*”) is a corporation organized and existing under the laws of the United States, any State thereof or the District of Columbia and such Successor Company (if not the Company) expressly assumes by supplemental indenture all of the Company’s obligations under the Securities and this Indenture;
- (b) immediately after giving effect to such transaction (and treating such resulting, surviving or transferee Person as the Company for all such purposes hereunder), no Default or Event of Default shall occur and be continuing under this Indenture; and
- (c) the Company delivers to the Trustee the Officers’ Certificate and Opinion of Counsel pursuant to Section 5.03.

For purposes of this Section 5.01, the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of one or more Subsidiaries of the Company to another Person that is not a Subsidiary of the Company, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Company to another Person.

Section 5.02      SUCCESSOR PERSON SUBSTITUTED.

In the case of any consolidation, merger, sale, transfer, lease or other conveyance pursuant to Section 5.01 in which the Company is not the Successor Company, and upon the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee, of the due and punctual payment of the principal of and interest on all of the then outstanding Securities, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed or satisfied by the Company, such Successor Company shall

succeed to, and be substituted for, and may exercise every right and power of, the Company, with the same effect as if it had been named herein as the party of the first part, and the Company shall be discharged from its obligations under the terms of the Securities and this Indenture, except in the case of a lease of all or substantially all of the Company's properties and assets. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Securities issuable hereunder that theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Securities that previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Securities that such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Securities so issued shall in all respects rank equally and have the same benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, transfer or conveyance (but not in the case of a lease) upon compliance with this Article 5 the Person named as the "Company" in the first paragraph of this Indenture or any successor that shall thereafter have become such in the manner prescribed in this Article 5 shall be discharged from its liabilities as obligor and maker of the Securities and from its obligations under this Indenture.

In case of any such consolidation, merger, sale, transfer, or other conveyance or lease, such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

Section 5.03 OPINION OF COUNSEL TO BE GIVEN TO TRUSTEE.

Prior to execution of any supplemental indenture pursuant to this Article 5, the Trustee shall receive an Officers' Certificate and an Opinion of Counsel in accordance with Section 13.05 as conclusive evidence that any such consolidation, merger, sale, transfer, or other conveyance or lease, and any such assumption by the Successor Company of the obligations of the Company hereunder, complies with the provisions of this Article 5.

ARTICLE 6

EVENTS OF DEFAULT

Section 6.01 EVENTS OF DEFAULT.

Except as may otherwise be provided in the Securities of any series or a supplemental indenture with respect to such Securities, an "Event of Default," with respect to Securities of any series shall have occurred if:

- (a) the Company defaults in the payment of principal of any Security of that series when due and payable on the Maturity Date with respect thereto;
- (b) the Company fails to pay an installment of interest on any Security of that series when due, if such failure continues for 30 days after the date when due;
- (c) upon exercise of a Holder's conversion right with respect to any Security of that series in accordance with Article 12, the Company fails to deliver, or cause the Trustee to deliver, to such Holder the full amount of

conversion consideration deliverable in respect of the Securities surrendered for conversion when due, in accordance with this Indenture and the terms of such Securities;

(d) the Company fails to comply with its obligations under Section 5.01(a) and (b) and Section 5.02;

(e) the Company fails to comply with any other covenant or agreement contained in the terms of the Securities of that series or this Indenture, if such failure is not cured within 90 days after notice to the Company by the Trustee or to the Trustee and the Company by Holders of at least \_\_\_% in aggregate principal amount of the then outstanding Securities of all series affected by that failure, treating those series as a single class, in accordance with this Indenture, other than a covenant or agreement with respect to which a failure to observe or perform is otherwise expressly provided for in this Indenture or is expressly included in this Indenture solely for the benefit of a series of the Securities other than such series of Securities;

(f) default (i) in any scheduled payment of principal of any Indebtedness of the Company or any of its Subsidiaries (other than the outstanding Securities of that series and other than non-recourse Indebtedness), aggregating more than \$ \_\_\_\_\_ in principal amount, when due and payable after giving effect to any applicable grace period or (ii) in the performance of any other term or provision of any Indebtedness of the Company or any of its Subsidiaries (other than the outstanding Securities of that series and other than non-recourse Indebtedness) in excess of \$ \_\_\_\_\_ principal amount that results in such Indebtedness becoming or being declared due and payable before the date on which it would otherwise become due and payable, and such acceleration is not rescinded or annulled, or such Indebtedness is not discharged, within a period of 20 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least \_\_\_% in principal amount of the outstanding Securities of all series, treating those series as a single class, a written notice specifying such default(s) and stating that such notice is a "Notice of Default" under this Indenture;

(g) one or more final, non-appealable judgments against the Company or any of its Subsidiaries, the aggregate uninsured portion of which is at least \$ \_\_\_\_\_, if such judgments are not paid or discharged within 120 days;

(h) the Company shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or admits, in writing, its inability to pay its debts as they become due; or

(i) an involuntary case or other proceeding shall be commenced against the Company seeking liquidation, reorganization or other relief with respect to the Company or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 90 consecutive days.

Section 6.02 ACCELERATION; RESCISSION AND ANNULMENT.

In case one or more Events of Default shall have occurred and be continuing with respect to one or more series of Securities then, and in each and every such case (other than an Event of Default specified in Section 6.01(h) or Section 6.01(i)), unless the principal of all of the Securities of all series with respect to which an Event or Events of Default shall have occurred, shall have already become due and payable, either the Trustee or the Holders of at least \_\_\_% in aggregate principal amount of the then outstanding Securities of all series affected by that failure, treating those series as a single class, by notice in writing to the Company (and to the Trustee if given by Holders), may, and the Trustee at the request of Holders of at least \_\_\_% in aggregate principal amount of the then outstanding Securities of all series affected by that failure, treating those series as a single class, shall, declare 100% of the principal of, and any accrued and unpaid interest on, all of such outstanding Securities to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be due and payable immediately, notwithstanding any provision in this Indenture or in the terms of the Securities to the contrary. In the case of an Event of Default specified in Section 6.01(h) or Section 6.01(i), the principal of, and accrued and unpaid interest, if any, on, all outstanding Securities shall automatically become due and payable immediately.

The immediately preceding paragraph, however, is subject to the conditions that if, at any time after the principal of and interest on the outstanding Securities of any series shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, (1) the Company shall pay or shall deposit with the Trustee a sum sufficient to pay installments of accrued and unpaid interest upon all outstanding Securities of such series and the principal of any and all outstanding Securities of such series that shall have become due otherwise than by acceleration (with interest on overdue installments of accrued and unpaid interest to the extent that payment of such interest is enforceable under applicable law, and on such principal, at the rate borne by the outstanding Securities plus one percent at such time) and amounts due to the Trustee pursuant to Section 7.06, and (2) rescission would not conflict with any order or decree of a court of competent jurisdiction and (3) any and all existing Events of Default under this Indenture with respect to the Securities of such series, other than the nonpayment of the principal of and accrued and unpaid interest, if any, on such Securities that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 6.09, then and in every such case the Holders of a majority in aggregate principal amount of the then outstanding Securities of all series affected by that failure, treating those series as a single class may, by written notice to the Company and to the Trustee, rescind and annul any consequence of any such Default or Event of Default, including, without limitation, acceleration of the obligations, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon.

Section 6.03 ADDITIONAL INTEREST.

Notwithstanding any provisions of this Indenture to the contrary, if the Company so elects, the sole remedy for an Event of Default relating to (i) its failure to file with the Trustee pursuant to Section 314(a)(1) of the Trust Indenture Act any documents or reports that it is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act or (ii) its failure to comply with its reporting obligations set forth in Section 4.03, shall for the 180 days after the occurrence of such an Event of Default consist exclusively of the right to receive additional interest on the Securities at a rate equal to \_\_\_% per annum of the principal amount of the outstanding Securities (“*Additional Interest*”) for each day during the 90-day period beginning on, and including, the occurrence of such an Event of Default during

which such Event of Default is continuing, which Additional Interest rate shall be increased by an additional \_\_\_\_% per annum, on the 91st day after the occurrence of such Event of Default (if such Event of Default is not cured or waived prior to such 91st day); *provided* that the rate at which such Additional Interest accrues may in no event exceed \_\_\_\_% per annum. If the Company elects to pay Additional Interest on account of such an Event of Default, such Additional Interest shall be payable in the same manner and on the same dates as the stated interest payable on the Securities. On the 181st day after such Event of Default occurs (if such Event of Default is not cured or waived on or prior to such 181st day), the Securities shall be subject to acceleration as provided in Section 6.02. This Section 6.03 shall not affect the rights of Holders of Securities in the event of the occurrence of any other Event of Default. In the event the Company does not elect to pay Additional Interest following an Event of Default in accordance with this Section 6.03, the Securities shall be subject to acceleration as provided in Section 6.02.

In order to elect to pay Additional Interest as the sole remedy during the first 180 days after the occurrence of an Event of Default described in the immediately preceding paragraph, the Company must give notice to Holders of the Securities, the Trustee and the Paying Agent of such election prior to the 91st day after the occurrence of such Event of Default. Upon the Company's failure to timely give all Holders, the Trustee and the Paying Agent such notice, the Securities shall be immediately subject to acceleration as provided in Section 6.02.

#### Section 6.04 PAYMENTS OF SECURITIES ON DEFAULT; SUIT THEREFOR.

If an Event of Default described in clause (a) or (b) of Section 6.01 shall have occurred with respect to the Securities of any series, the Company shall, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on the Securities of such series for principal and interest, if any, with interest on any overdue principal and interest, if any, at the rate borne by such Securities plus one percent at such time, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 7.06. If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Securities of such series and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon such Securities, wherever situated.

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Securities under title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial proceedings relative to the Company or such other obligor upon the Securities, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.04, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest, if any, in respect of the Securities, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and

counsel) and of the Holders of the Securities of any series allowed in such judicial proceedings relative to the Company or any other obligor on the Securities, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due the Trustee under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Holders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including reasonable agents and counsel fees, and including any other amounts due to the Trustee under Section 7.06, incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the Holders may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities of any series or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Securities, may be enforced by the Trustee without the possession of any of the Securities, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders.

In any proceedings brought by the Trustee with respect to the Securities of any series (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Securities affected thereby, and it shall not be necessary to make any Holders parties to any such proceedings.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of any waiver or rescission and annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Holders, and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Holders, and the Trustee shall continue as though no such proceeding had been instituted.

#### Section 6.05 APPLICATION OF MONIES COLLECTED BY TRUSTEE.

If the Trustee collects any money or other property pursuant to this Article, it shall pay out the money or other property in the following order:



*First:* to the Trustee, its agents and attorneys for amounts due under Section 7.06 hereof, including payment of all compensation, expense and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

*Second:* to Holders of Securities for amounts due and unpaid on the Securities for principal, premium, if any, interest and any other amounts, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal, premium, if any, interest and other amounts, respectively; and

*Third:* to the Company or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders of Securities pursuant to this Section 6.05.

#### Section 6.06 PROCEEDINGS BY HOLDERS.

Except to enforce the right to receive payment of principal or interest when due, or the right to receive payment or delivery of the consideration due upon conversion, the Holder of a Security shall have the right to institute a suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, if (and only if):

- (a) such Holder previously shall have given to the Trustee written notice of an Event of Default with respect to such Securities and of the continuance thereof, as herein provided;
- (b) Holders of at least \_\_\_% in aggregate principal amount of the then outstanding Securities of all series with respect to which such Event of Default has occurred and is continuing, treating those series as a single class, shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder;
- (c) such Holder or Holders shall have offered, and, if requested, provided, to the Trustee such indemnity reasonably satisfactory to it against any loss, liability or expense to be incurred therein or thereby; and
- (d) the Trustee shall have neglected or refused to institute any such action, suit or proceeding for 60 days after its receipt of such notice, request and offer of indemnity and does not receive, during those 60 days, from Holders of a majority in aggregate principal amount of the then outstanding Securities of all series with respect to which such Event of Default has occurred and is continuing, treating those series as a single class, a direction pursuant to Section 6.09 that is inconsistent with the request, it being understood and intended, and being expressly covenanted by the taker and Holder of every Security with every other taker and Holder and the Trustee that no one or more Holders of Securities of any series shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders of such Securities (except as otherwise provided herein). For the protection and enforcement of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Security, the right of any Holder to receive payment or delivery, as the case may be, of (x) the principal of, (y) accrued and unpaid interest, if any, on, and (z) the consideration due upon conversion, if any, of, such Security, on or after the respective due dates expressed or provided for in such Security or in this Indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates against the Company shall not be impaired or affected without the consent of such Holder.

Section 6.07 PROCEEDINGS BY TRUSTEE.

In case of an Event of Default the Trustee may, in its discretion, proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 6.08 REMEDIES CUMULATIVE AND CONTINUING.

All powers and remedies given by this Article 6 to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder of any Securities to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or Event of Default or any acquiescence therein; and, subject to the provisions of Section 6.06, every power and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders.

Section 6.09 DIRECTION OF PROCEEDINGS AND WAIVER OF DEFAULTS BY MAJORITY HOLDERS.

The Holders of a majority in aggregate principal amount of the then outstanding Securities of all series with respect to which a Default or Event of Default has occurred, treating those series as a single class, shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Securities of such series; *provided, however*, that the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability. The Holders of a majority of the aggregate principal amount of the then outstanding Securities of all series with respect to which a Default or Event of Default has occurred, treating those series as a single class, may on behalf of the Holders of all of the Securities of such series, treating those series as a single class, by written notice to the Trustee and the Company, waive any Default or Event of Default with respect to such Securities hereunder except that no such waiver shall be effective as to a Default or Event of Default (i) in the payment of the principal of, or accrued and unpaid interest, if any, on the Securities, (ii) arising from a failure by the Company to pay or deliver, as the case may be, or to cause the Trustee to deliver, to converting Holders the consideration, if any, due upon conversion of the Securities in accordance with this Indenture or (iii) in respect of a covenant or provision hereof that under Article 10 cannot be modified or amended without the consent of the Holder of each outstanding

Security affected unless each affected Holder consents. Upon any such waiver the Company, the Trustee and the Holders of the Securities of such series shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 6.09, said Default or Event of Default shall for all purposes of the Securities of such series and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 6.10 NOTICE OF DEFAULTS.

The Trustee shall, within 90 days after the occurrence of a Default of which a Responsible Officer has actual knowledge, if such Default is continuing, mail to all Holders of Securities of each series with respect to which the Default has occurred, as the names and addresses of such Holders appear upon the Security Register, notice of all such Defaults known to a Responsible Officer (a “*Notice of Default*” or “*Notice of Defaults*”), unless such Defaults shall have been cured or waived before the giving of such notice; *provided* that, except in the case of a Default in the payment of the principal of, or accrued and unpaid interest on, any of the Securities or a Default in the payment or delivery, as the case may be, of the consideration, if any, due upon conversion, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 6.11 STATEMENTS AS TO DEFAULTS.

The Company shall deliver to the Trustee, as soon as possible, and in any event within 30 days after the occurrence of any Event of Default or Default, an Officers’ Certificate setting forth the details of such Event of Default or Default, its status and the action that the Company is taking or proposes to take in respect thereof.

Section 6.12 FURTHER INSTRUMENTS AND ACTS.

Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

Section 6.13 UNDERTAKING TO PAY COSTS.

All parties to this Indenture agree, and each Holder of any Security by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture or the Securities, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys’ fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section 6.13 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than \_\_\_% in principal amount of the then outstanding Securities of any series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or accrued and unpaid interest, if any, on any Security

on or after the due date expressed or provided for in such Security or to any suit for the enforcement of the right to convert any Security in accordance with the provisions of Article 12.

## ARTICLE 7

### TRUSTEE

#### Section 7.01 DUTIES OF TRUSTEE.

- (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture or an indenture supplemental hereto applicable to such Event of Default, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of its own affairs.
- (b) Except during the continuance of an Event of Default:
- (i) the duties of the Trustee shall be determined solely by the express provisions of this Indenture or an indenture supplemental hereto, and the Trustee need perform only those duties that are specifically set forth in this Indenture or an indenture supplemental hereto and no others, and no implied covenants or obligations shall be read into this Indenture or an indenture supplemental hereto against the Trustee; and
- (ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.
- (c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:
- (i) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;
- (ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proven that the Trustee was negligent in ascertaining the pertinent facts; and
- (iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.09 hereof.
- (d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), and (c) of this Section 7.01.
- (e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02 RIGHTS OF TRUSTEE.

- (a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.
- (b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel, and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.
- (c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.
- (d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.
- (e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.
- (f) No provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any liability. The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

Section 7.03 INDIVIDUAL RIGHTS OF TRUSTEE.

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest (within the meaning of TIA § 310(b)) it must eliminate such conflicting interest within 90 days after Default, apply to the SEC for permission to continue as trustee, or resign. Any Agent may do the same with like rights and duties.

Section 7.04 TRUSTEE'S DISCLAIMER.

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Securities; it shall not be accountable for the Company's use of the proceeds from the Securities or any money paid to the Company or upon the Company's direction under any provision of this Indenture; it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee; and it shall not be responsible for any statement or recital herein or any statement in the Securities or any other document in connection with the sale of the Securities or pursuant to this Indenture other than its certificate of authentication.

Section 7.05      REPORTS BY TRUSTEE TO HOLDERS OF THE SECURITIES.

On or before \_\_\_\_\_ of each year, beginning with the \_\_\_\_\_ following the date on which Securities are first issued under this Indenture, and for so long as Securities remain outstanding, the Trustee shall mail to the Holders of the Securities a brief report dated as of such reporting date that complies with TIA § 313(a) (but if no event described in TIA § 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also shall comply with TIA § 313(b)(2). The Trustee will also transmit by mail all reports as required by TIA § 313(c). A copy of each report at the time of its mailing to the Holders of Securities shall be mailed to the Company and filed with the SEC and each stock exchange on which the Securities are listed in accordance with TIA § 313(d). The Company shall promptly notify the Trustee when the Securities are listed on any stock exchange.

Section 7.06      COMPENSATION AND INDEMNITY.

The Company shall pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services hereunder as the Company and Trustee have separately agreed. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Company shall indemnify the Trustee against any and all losses, liabilities or expenses incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Company (including this Section 7.06) and defending itself against any claim (whether asserted by the Company or any Holder or any other person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense may be attributable to its negligence or willful misconduct. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim, and the Trustee shall cooperate in the defense. The Trustee may have separate counsel, and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld.

The obligations of the Company under this Section 7.06 shall survive the satisfaction and discharge of this Indenture, and the removal or resignation of the Trustee.

To secure the Company's payment obligations in this Section 7.06, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except that held in trust to pay principal of, premium, if any, and interest on particular Securities. Such lien shall survive the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(h) or (i) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

Section 7.07 REPLACEMENT OF TRUSTEE.

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.07.

The Trustee may resign with respect to one or more or all series of Securities at any time and be discharged from the trust hereby created by so notifying the Company in writing. The Holders of a majority in principal amount of the then outstanding Securities of any series may remove the Trustee with respect to such series by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

- (a) the Trustee ceases to be eligible in accordance with Section 7.09 hereof;
- (b) the Trustee is adjudged bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (c) a custodian or public officer takes charge of the Trustee or its property; or
- (d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Securities of a series may appoint a successor Trustee to replace the successor Trustee appointed by the Company with respect to that series of Securities.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company, or the Holders of at least \_\_\_% in principal amount of the then outstanding Securities of all series issued under this Indenture may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder of a Security who has been a Holder of a Security for at least six months, ceases to be eligible in accordance with Section 7.09, such Holder of a Security may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders of the Securities. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee subject to the lien provided for in Section 7.06 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.07, the Company's obligations under Section 7.06 hereof shall continue for the benefit of the retiring Trustee.

If a successor Trustee is appointed with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of any applicable series shall execute and deliver an indenture supplemental hereto that shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities

of any series as to which the predecessor Trustee is not retiring shall continue to be vested in the predecessor Trustee, and shall add to or change any of the provisions of this Indenture as are necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees as co-trustees of the same trust and that each such Trustee shall be Trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee.

Section 7.08      SUCCESSOR TRUSTEE BY MERGER, ETC.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee.

Section 7.09      ELIGIBILITY; DISQUALIFICATION.

There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trust powers, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least \$ \_\_\_\_\_ as set forth in its most recent published annual report of condition.

This Indenture shall always have a Trustee who satisfies the requirements of TIA § 310(a)(1), (2) and (5). The Trustee is subject to TIA § 310(b); *provided, however*, that there shall be excluded from the operation of TIA § 310(b)(1) any indenture or indentures under which other securities, or certificates of interest or participation in other securities, of the Company are outstanding, if the requirements for such exclusion set forth in TIA § 310(b)(1) are met.

Section 7.10      PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.

The Trustee is subject to TIA § 311(a), excluding any creditor relationship described in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated therein.

## ARTICLE 8

### SATISFACTION AND DISCHARGE

Section 8.01      SATISFACTION AND DISCHARGE OF THE INDENTURE.

(a) The obligations of the Company under this Indenture shall terminate with respect to the Securities of one or more series (except those obligations referred to in Section 8.01(b)), (1) if (i) all Securities of such series theretofore authenticated and delivered (except Securities that have been replaced pursuant to Section 2.10 or paid and Securities whose payment in cash has theretofore been deposited with the Trustee or a Paying Agent or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust as provided in Section 8.04) have been delivered to the Trustee for cancellation; and (ii) the Company has paid all sums payable by it hereunder or under the applicable indenture supplemental hereto in respect of such series of Securities; or (2) if (i) either (A) in the case of a series of Securities redeemable prior to its Maturity Date, the Company, pursuant to Article 3, has given notice to the Trustee and mailed a notice of redemption to each Holder of Securities of such series of the redemption of all of such Securities under arrangements satisfactory to the Trustee for the giving of



such notice or (B) all Securities of such series have otherwise become due and payable hereunder or will become due and payable within one year; (ii) the Company has irrevocably deposited or caused to be deposited with the Trustee or the Paying Agent (or if the Company is acting as Paying Agent, the Company has segregated and held), as trust funds in trust solely for the benefit of the Holders of Securities of such series for that purpose, either (A) an amount of cash in United States dollars, (B) non-callable U.S. Government Obligations which, through scheduled payment of principal and interest in respect thereof in accordance with their terms, will provide, not later than one Business Day before the due date of any payment of principal of, premium, if any, or interest on the Securities of such series, cash in an amount, or (C) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for the principal of, premium, if any, and interest on the outstanding Securities of such series to the date of such deposit (in the case of Securities that have become due and payable) or to the stated maturity or redemption date, as the case may be; and (iii) the Company shall have paid all other sums payable by it hereunder in respect of Securities of such series (including any conversion consideration, if applicable).

(b) Notwithstanding Section 8.01(a), the Company's obligations in Sections 2.08, 2.09, 2.10, 2.11, 4.01 and 4.02 shall survive with respect to the Securities of the applicable series until the sums held in trust pursuant to Section 8.01(a) are made available to the Holders of the Securities of such series on the Stated Maturity Date. Sections 7.06, 8.04 and 9.06 shall survive such discharge of the Company's other obligations pursuant to the preceding sentence in respect of Securities of the applicable series.

(c) This Indenture shall upon request of the Company contained in an Officers' Certificate cease to be of further effect with respect to the Securities of any series, and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when (a) (i) all Securities of such series theretofore authenticated and delivered have been delivered to the Trustee for cancellation; or (ii) the Company has deposited with the Trustee or delivered to Holders, as applicable, after the Securities of such series have become due and payable, whether at the Maturity Date, upon conversion or otherwise, cash and/or (in the case of conversion) other property sufficient to pay all of the outstanding Securities of such series or satisfy the Company's Conversion Obligation, as the case may be, and pay all other sums due and payable under this Indenture by the Company with respect to such Securities; and (b) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture with respect to such Securities have been complied with. For the avoidance of doubt, notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 7.06 shall survive. The Trustee upon request shall acknowledge in writing the discharge of the Company's obligations under the Securities of the applicable series and the Company's obligations under this Indenture with respect to the Securities of such series, except for those surviving obligations specified above.

#### Section 8.02 DEPOSITED MONEYS TO BE HELD IN TRUST BY TRUSTEE.

Subject to Section 8.04, all monies and other property, if any, deposited with the Trustee pursuant to Section 8.01 or in accordance with Article 12 with respect to Securities of a series shall be held in trust for the sole benefit of the Holders of such Securities, and such monies and other property shall be applied by the Trustee to the payment, either directly or through any Paying Agent (including the Company if acting as its own Paying Agent), to the Holders of the particular Securities for the payment, settlement or redemption of which such monies or other property have

been deposited with the Trustee, of all sums or amounts due and to become due thereon for principal and interest, if any.

Section 8.03 PAYING AGENT TO REPAY MONIES HELD.

Upon the satisfaction and discharge of this Indenture with respect to the Securities of a particular series, all monies and other property, if any, then held by any Paying Agent (if other than the Trustee) with respect to such Securities, shall, upon written request of the Company, be repaid to it or paid to the Trustee, and thereupon such Paying Agent shall be released from all further liability with respect to such monies and other property.

Section 8.04 RETURN OF UNCLAIMED MONIES.

Subject to the requirements of applicable law, any monies and other property deposited with or paid to the Trustee for payment on the Securities of a particular series and not applied but remaining unclaimed by the Holders of the Securities for one year after the date upon which the payment on such Securities shall have become due and payable, shall be repaid to the Company by the Trustee on demand, and all liability of the Trustee shall thereupon cease with respect to such monies and other property; and the Holder of any of the Securities shall thereafter look only to the Company for any payment or delivery that such Holder of the Securities may be entitled to collect unless an applicable abandoned property law designates another Person.

Section 8.05 REINSTATEMENT.

If the Trustee or the Paying Agent is unable to apply any money or other property in accordance with Section 8.02 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.01 until such time as the Trustee or the Paying Agent is permitted to apply all such money and other property in accordance with Section 8.02; provided, however, that if the Company makes any payment of interest on, principal of or payment or delivery in respect of any Security following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or other property, if any, held by the Trustee or Paying Agent.

ARTICLE 9

LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 9.01 OPTION TO EFFECT LEGAL DEFEASANCE OR COVENANT DEFEASANCE

The Company may, by written direction to the Trustee, at any time, elect to have either Section 9.02 or 9.03 hereof, with such modifications thereto as may be specified in the supplemental indenture establishing a particular series of Securities, be applied to all outstanding Securities of one or more series upon compliance with the conditions set forth below in this Article 9.

Section 9.02      LEGAL DEFEASANCE AND DISCHARGE.

Upon the Company's exercise under Section 9.01 hereof of the option applicable to this Section 9.02 relating to one or more series of Securities, the Company shall, upon the satisfaction of the conditions set forth in Section 9.04 hereof, be deemed to have been discharged from its obligations with respect to all outstanding Securities of such series on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the outstanding Securities of the applicable series, except as set forth in Section 9.05 hereof and the other Sections of this Indenture referred to in (a) and (b) below, and to have satisfied all of its other obligations under the Securities of the applicable series and under the provisions of this Indenture applicable to such series (and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following provisions, which shall survive until otherwise terminated or discharged hereunder: (a) the rights of Holders of outstanding Securities of the applicable series to receive solely from the trust fund described in Section 9.04 hereof, and as more fully set forth in such Section, payments in respect of the principal of, premium, if any, and interest, on such Securities when such payments are due, (b) the Company's obligations with respect to such Securities under Section 4.02 hereof, (c) the rights, powers, trusts, duties and immunities of the Trustee hereunder, and the Company's obligations in connection therewith and (d) this Article 9. The Securities of the applicable series shall cease to be outstanding for all purposes except as set forth in the preceding sentence. Subject to compliance with this Article 9, the Company may exercise its option under this Section 9.02 notwithstanding the prior exercise of its option under Section 9.03 hereof.

Section 9.03      COVENANT DEFEASANCE.

Upon the Company's exercise under Section 9.01 hereof of the option applicable to this Section 9.03 relating to one or more series of Securities, the Company shall, upon the satisfaction of the conditions set forth in Section 9.04 hereof, be released from its obligations under the covenants contained in Sections 4.03, 4.04, 5.01, and 13.08 hereof with respect to the outstanding Securities of the applicable series, and under any other covenants specified in the supplemental indenture with respect to such Securities or other terms of the applicable series as covenants to which this Section 9.03 apply, on and after the date the conditions set forth below are satisfied (hereinafter, "*Covenant Defeasance*"), and the Securities of the applicable series shall thereafter not be deemed outstanding for the purposes of any direction, waiver, consent or declaration or act of Holders (or the consequences of any thereof) in connection with such covenants, but shall continue to be deemed outstanding for all other purposes hereunder. For this purpose, Covenant Defeasance means that, with respect to the outstanding Securities of the applicable series, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Securities shall be unaffected thereby.

Section 9.04      CONDITIONS TO LEGAL OR COVENANT DEFEASANCE.

The following shall be the conditions to the application of either Section 9.02 or 9.03 hereof to the outstanding Securities of one or more series:

In order to exercise either Legal Defeasance or Covenant Defeasance:

- (a) the Company must irrevocably deposit with the Trustee (or another trustee satisfying the requirements of Section 7.09, who shall agree to comply with the provisions of this Article 9 applicable to it) in trust, for the benefit of the Holders of the Securities of the applicable series, (i) an amount of cash in U.S. dollars, (ii) non-callable U.S. Government Obligations, which, through scheduled payment of principal and interest in respect thereof in accordance with their terms, will provide, not later than one Business Day before the due date of any payment of principal of, premium, if any, or interest on the Securities of such series (including any conversion consideration, if applicable), cash in an amount, or (iii) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, interest and premium, if any, on the outstanding Securities of the applicable series on the Stated Maturity or on the applicable redemption date, as the case may be, and any mandatory sinking fund payments applicable to the Securities of such series on the day on which such payments are due, and the Company must specify whether the Securities of the applicable series are being defeased to maturity or to a particular redemption date;
- (b) in the case of an election under Section 9.02 hereof, the Company shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (ii) since the date of this Indenture, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the outstanding Securities of the applicable series will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;
- (c) in the case of an election under Section 9.03 hereof, the Company shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that the Holders of the outstanding Securities of the applicable series will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;
- (d) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit); and
- (e) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

Section 9.05 DEPOSITED MONEY AND U.S. GOVERNMENT OBLIGATIONS TO BE HELD IN TRUST; OTHER MISCELLANEOUS PROVISIONS.

Subject to Section 8.04 hereof, all money and non-callable U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 9.05, the “Trustee”) pursuant to Section 9.04 hereof in respect of the outstanding Securities of the applicable series shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent) as the Trustee may determine, to the Holders of such Securities of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable U.S. Government Obligations deposited pursuant to Section 9.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge that by law is for the account of the Holders of the outstanding Securities of the applicable series.

Anything in this Article 9 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon the request of the Company any money or non-callable U.S. Government Obligations held by it as provided in Section 9.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 9.04(a) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance of the applicable series.

Section 9.06 REINSTATEMENT.

If the Trustee or Paying Agent is unable to apply any U. S. dollars or non-callable U.S. Government Obligations deposited pursuant to Section 9.02 or 9.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, or if any amounts previously applied are required to be returned to the Company or to any trustee in connection with any proceeding referred to in Section 6.01(h) or (i) then the obligations of the Company under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 9.02 or 9.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 9.02 or 9.03 hereof, as the case may be; *provided, however*, that, if the Company makes any payment of principal of, premium, if any, or interest on any Security following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money held by the Trustee or Paying Agent.

## ARTICLE 10

### SUPPLEMENTAL INDENTURES

#### Section 10.01 SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF HOLDERS.

Notwithstanding Section 10.02 of this Indenture, the Company and the Trustee may amend or supplement this Indenture or the Securities (including any supplemental indenture) without notice to or the consent of any Holder of a Security:

- (a) to provide for the assumption by a Successor Company of the Company's obligations under the terms of the Securities and this Indenture pursuant to Article 5;
- (b) to add guarantees with respect to the Securities of any series;
- (c) to secure the Securities of any series;
- (d) to add to the covenants for the benefit of the Holders of Securities of any or all series or surrender any right or power conferred upon the Company;
- (e) make any change, including to cure any omission, ambiguity, manifest error or defect or to correct any defect or inconsistency in this Indenture that does not adversely affect the rights of any Holder in any material respect;
- (f) comply with any requirement of the SEC in connection with the qualification of this Indenture under the Trust Indenture Act or with the rules of any applicable securities depository;
- (g) to provide for the issuance of and establish the form and terms and conditions of the Securities of any series, to establish the form of any certifications required to be furnished pursuant to the terms of this Indenture or any series of Securities, or to add to the rights of the Holders of any series of Securities;
- (h) add additional Events of Default with respect to the Securities of any or all series;
- (i) evidence the acceptance or appointment of a successor Trustee or to add an additional trustee or agent in accordance with this Indenture, or
- (j) conform the provisions of this Indenture and the Securities of a particular series to the "Description of Notes" section as set forth in a preliminary prospectus supplement related to the offering and sale of such Securities, as supplemented by the related pricing term sheet.

Upon the request of the Company accompanied by written direction to the Trustee, and upon receipt by the Trustee of the documents described in Section 7.02(b) hereof, the Trustee shall join with the Company in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into any such amended or supplemental indenture that affects its own rights, duties, liabilities or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but will not be obligated to, enter into such amended or supplemental indenture.

Section 10.02 SUPPLEMENTAL INDENTURES WITH CONSENT OF HOLDERS.

Except as provided in Section 10.01, the Company and the Trustee may amend or supplement this Indenture or the terms of the Securities only with the written consent of the Trustee and the Holders of at least a majority in aggregate principal amount of the outstanding Securities of all series affected by such amendment or supplement (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities), treating those series as a single class. Notwithstanding the foregoing, no amendment or supplemental indenture may without the written consent of the Holder of each Security affected:

- (a) change the Maturity Date, or the payment date of any installment interest on, any Security;
- (b) reduce the principal amount of, or interest on, any Security;
- (c) change the place, manner or currency of payment of principal of, or interest on, any Security;
- (d) impair the right to institute a suit for the enforcement of any payment on, or with respect to, or of the conversion of, any Security;
- (e) change the ranking of the Securities in a manner adverse to the Holders of Securities;
- (f) adversely affect the right of Holders of Securities that are convertible pursuant to Article 12 to convert their Securities in accordance with Article 12, or reduce the amount of consideration due upon conversion;
- (g) reduce the percentage in aggregate principal amount of outstanding Securities whose Holders must consent to a modification or amendment of this Indenture or the Securities;
- (h) reduce the percentage in aggregate principal amount of outstanding Securities whose Holders must consent to a waiver of compliance with any provision in this Indenture or the Securities or a waiver of any Default or Event of Default; or
- (i) modify Section 6.09 or this Article 10, except to increase the percentage required for modification or waiver or to provide for the consent of each affected Holder.

Holders do not need under this Section 10.02 to approve the particular form of any proposed amendment to this Indenture or any proposed supplemental indenture; it shall be sufficient if the required Holders approve the substance thereof.

Section 10.03 NOTICE OF AMENDMENT OR SUPPLEMENT.

After an amendment or supplement under this Article 10 becomes effective, the Company shall mail to the Holders a notice briefly describing such amendment or supplement. However, the failure to give such notice to all the Holders, or any defect in the notice, shall not impair or affect the validity of the amendment or supplement.

Section 10.04 REVOCATION AND EFFECT OF CONSENTS.

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Security is a continuing consent by the Holder of a Security and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Securities, even if notation of the consent is not made on any Securities. However, any such Holder of a Security or subsequent Holder of a Security may revoke the consent as to its Securities if the Trustee receives written notice of revocation before the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder, except as otherwise provided herein.

Section 10.05 NOTATION ON OR EXCHANGE OF SECURITIES.

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Securities thereafter authenticated. The Company in exchange for all Securities may issue and the Trustee shall authenticate new Securities that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or to issue new Securities shall not affect the validity and effect of such amendment, supplement or waiver.

Section 10.06 TRUSTEE TO SIGN AMENDMENTS, ETC.

The Company may not sign an amendment or supplemental indenture until its Board of Directors approves it. The Trustee shall sign any amendment or supplemental indenture authorized pursuant to this Article 10 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. In signing such amendment or supplemental indenture, the Trustee shall be entitled to receive and shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel as conclusive evidence that such amendment or supplemental indenture is authorized or permitted by this Indenture, that it is not inconsistent herewith, and that it will be valid and binding upon the Company in accordance with its terms.

ARTICLE 11

MEETINGS OF HOLDERS

Section 11.01 PURPOSES FOR WHICH MEETING MAY BE CALLED.

A meeting of Holders of Securities of any series may be called at any time and from time to time pursuant to this Article 11 to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other Act to be made, given or taken by Holders of Securities of such series.

Section 11.02 CALL, NOTICE AND PLACE OF MEETINGS.

(a) The Trustee may at any time call a meeting of Holders of Securities of any series for any purpose specified in Section 11.01, to be held at such time and at such place as the Trustee may determine. Notice of every meeting of Holders of Securities of any series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 13.02, not less than 20 nor more than 180 days prior to the date fixed for the meeting.



(b) In case at any time the Company, by written direction to the Trustee, or the Holders of at least \_\_\_% in principal amount of the outstanding Securities of any series shall have requested the Trustee to call a meeting of the Holders of Securities of such series for any purpose specified in Section 11.01 by written request setting forth in reasonable detail the Act or other action proposed to be taken at the meeting, and the Trustee shall not have mailed notice of such meeting within 20 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or the Holders of Securities of such series in the amount above specified, as the case may be, may determine the time and the place for such meeting and may call such meeting for such purposes by giving notice thereof as provided in clause (a) of this Section 11.02.

Section 11.03 PERSONS ENTITLED TO VOTE AT MEETINGS.

To be entitled to vote at any meeting of Holders of Securities of any series, a Person must be (a) a Holder of one or more outstanding Securities of such series, or (b) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more outstanding Securities of such series by such Holder or Holders. No vote may be cast or counted at any meeting in respect of any Security challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting will have no right to vote, except as a Holder of a Security of such series or proxy. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Securities of any series shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 11.04 QUORUM; ACTION.

The Persons entitled to vote a majority in principal amount of the outstanding Securities of a series shall constitute a quorum for a meeting of Holders of Securities of such series; *provided, however*, that if any Act is to be taken at such meeting with respect to a consent or waiver which this Indenture (or any indenture supplemental hereto establishing a series of Securities hereunder) expressly provides may be given by the Holders of more or less than a majority in principal amount of the outstanding Securities of a series, the Persons entitled to vote such percentage in principal amount of the outstanding Securities of such series shall constitute a quorum. In the absence of a quorum within 30 minutes after the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities of such series, be dissolved. In any other case the meeting may be adjourned for a period determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any reconvened meeting, such reconvened meeting may be further adjourned as determined by the chairman of the meeting prior to the adjournment of such adjourned meeting. Notice of the reconvening of any such adjourned meeting shall be given as provided in Section 11.02(a), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage, as provided above, of the principal amount of the outstanding Securities of such series that shall constitute a quorum.

Except as otherwise provided in Section 6.02 or 10.02 (or in any indenture supplemental hereto establishing a series of Securities hereunder), any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted only by the affirmative vote of the Holders of a majority in principal amount of the outstanding Securities of that series; *provided, however*, that, except as otherwise provided in Section 6.02 or 10.02 (or in any indenture supplemental hereto establishing a series of Securities hereunder), any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that

this Indenture or any supplemental indenture expressly provides may be made, given or taken by the Holders of a specified percentage in principal amount of the outstanding Securities of a series may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the outstanding Securities of such series.

Any resolution passed or decision taken at any meeting of Holders of Securities of any series duly held in accordance with this Section 11.04 or other Act duly taken shall be binding on all the Holders of Securities of such series, whether or not such Holders were present or represented at the meeting, if any.

#### Section 11.05 DETERMINATION OF VOTING RIGHTS; CONDUCT AND ADJOURNMENT OF MEETINGS.

Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities of a series in regard to proof of the holding of Securities of such series and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 1.05 and the appointment of any proxy shall be proved in the manner specified in Section 1.05. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 1.05 or other proof.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders of Securities as provided in Section 11.02(b), in which case the Company or the Holders of Securities of the series calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote at least a majority in principal amount of the outstanding Securities of such series represented at the meeting.

Any meeting of Holders of Securities of any series duly called pursuant to Section 11.02 at which a quorum is present may be adjourned from time to time by Persons entitled to vote at least a majority in principal amount of the outstanding Securities of such series represented at the meeting; and the meeting may be held as so adjourned without further notice.

#### Section 11.06 COUNTING VOTES AND RECORDING ACTION OF MEETINGS.

The vote upon any resolution submitted to any meeting of Holders of Securities of any series shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities of such series or of their representatives by proxy and the principal amounts and serial numbers of the outstanding Securities of such series held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record, at least in duplicate, of the proceedings of each meeting of Holders of Securities of any series shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice

of the meeting and showing that said notice was given as provided in Section 11.02 and, if applicable, Section 11.04. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company, and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 11.07 ARTICLE SUBJECT TO OTHER PROVISIONS.

Each provision of this Article 11 (whether or not expressly so stated) is subject to any other provision of this Indenture (or any supplemental indenture establishing a series of Securities hereunder) that provides that Securities of different series constitute a single class.

ARTICLE 12

CONVERSION OF SECURITIES

Section 12.01 APPLICABILITY OF ARTICLE.

The provisions of this Article shall be applicable to the Securities of any series that are convertible into shares of Common Stock of the Company, and the issuance of such shares of Common Stock upon the conversion of such Securities, except as otherwise specified as contemplated by Section 2.02 for the Securities of such series. This Article shall not be applicable to Securities of any series that are not convertible into shares of Common Stock of the Company.

Section 12.02 EXERCISE OF CONVERSION PRIVILEGE.

(a) In order to exercise a conversion privilege, the Holder of a Security of a series with such a privilege must surrender such Security to the Company at the office or agency maintained for that purpose pursuant to Section 4.02, accompanied by a duly executed Conversion Notice to the Company substantially in the form set forth on Attachment 1 to Exhibit A stating that the Holder elects to convert such Security or a specified portion thereof. Such Conversion Notice shall also state, if different from the name and address of such Holder, the name or names (with address) in which the certificate or certificates for shares of Common Stock that shall be issuable on such conversion shall be issued. Securities surrendered for conversion shall (if so required by the Company or the Trustee) be duly endorsed by, or accompanied by instruments of transfer satisfactory to the Company and the Trustee duly executed by, the registered Holder or its attorney duly authorized in writing.

(b) To the extent provided in Section 2.03(e), Securities surrendered for conversion during the period from the close of business on any Regular Record Date to the opening of business on the next succeeding Interest Payment Date (except in the case of any Security whose Maturity Date is prior to such Interest Payment Date) shall be accompanied by payment by such Holder in immediately available funds to the Company of an amount equal to the interest to be received on such Interest Payment Date on the principal amount of the Securities being surrendered for conversion. However, to the extent provided in Section 2.03(b), Securities that have been called for redemption on a redemption date, or that are repurchasable on a redemption date that occurs between the close of business on a Regular Record Date and the close of business on the Business Day immediately preceding such Interest Payment Date, shall not require such concurrent payment to the Company upon surrender for conversion, and, if such

Securities are converted during the time period set forth in the preceding sentence, the Holders of such converted Securities shall be entitled to receive (and retain) any accrued interest on the Principal amount of such surrendered Securities, if any.

(c) To convert a Security a Holder must deliver to the Conversion Agent (i) a Conversion Notice, (ii) any payment required pursuant to Section 12.02(b) or pursuant to and/or established in one or more indentures supplemental hereto setting forth the terms of such series of Security, (iii) any payment in respect of transfer or similar taxes, if required by Section 12.07, and (iv) the Security duly endorsed in accordance with such reasonable regulations as the Company may prescribe. The date on which the Holder satisfies all of those requirements is the “*Conversion Date*” for such Security. As soon as practicable after the Conversion Date, the Company shall issue and shall deliver or cause to be issued and delivered, at the office or agency at which such Security is surrendered, to such Holder or on its written order, a certificate or certificates for the number of full shares of Common Stock issuable upon the conversion of such Security (or specified portion thereof), in accordance with the provisions of such supplemental indenture, and cash as provided therein in respect of any fractional share of such Common Stock otherwise issuable upon such conversion. Except as set forth above and subject to Section 2.14, no payment or adjustment shall be made upon any conversion on account of any interest accrued on the Securities (or any part thereof) surrendered for conversion or on account of any dividends on the Common Stock of the Company issued upon such conversion. The person in whose name the shares of Common Stock issued upon conversion is registered shall be deemed to be a holder of record of such Common Stock on the Conversion Date; *provided, however*, that no surrender of a Security on any Conversion Date when the stock transfer books of the Company shall be closed shall be effective to constitute the person or persons entitled to receive the shares of Common Stock upon conversion as the record holder or holders of such shares of Common Stock on such date, but such surrender shall be effective to constitute the person or persons thereof for all purposes at the close of business on the next succeeding day on which such stock transfer books are open; *provided, further*, that such conversion shall be at the conversion date in effect on the Conversion Date as if the stock transfer books of the Company had not been closed. Upon conversion of a Security, such person shall no longer be a Holder of such Security.

In the case of any Security that is converted in part only, upon such conversion the Company shall execute and the Trustee shall authenticate and deliver to or on the order of the Holder thereof, at the expense of the Company, a new Security or Securities of the same series, of authorized denominations, in aggregate principal amount equal to the unconverted portion of such Security.

#### Section 12.03 NO FRACTIONAL SHARES.

No fractional share of Common Stock of the Company shall be issued upon conversions of Securities of any series. If more than one Security shall be surrendered for conversion at one time by the same Holder, the number of full shares that shall be issuable upon conversion shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof to the extent permitted hereby) so surrendered. If, except for the provisions of this Section 12.03, any Holder of a Security or Securities would be entitled to a fractional share of Common Stock of the Company upon the conversion of such Security or Securities, or specified portions thereof, the Company shall pay to such Holder an amount in cash equal to the current market value of such fractional share computed, (i) if such Common Stock is listed or admitted to unlisted trading privileges on a national securities exchange, on the basis of the last reported sale price regular way on such exchange on the last trading day prior to the date of conversion upon which such a sale shall have been effected, or (ii) if such Common Stock is not at the

time so listed or admitted to unlisted trading privileges on a national securities exchange, on the basis of the average of the bid and asked prices of such Common Stock in the over-the-counter market, on the last trading day prior to the date of conversion, as reported by the National Quotation Bureau, Incorporated or similar organization if the National Quotation Bureau, Incorporated is no longer reporting such information, or if not so available, the fair market price as determined by the Board of Directors. For purposes of this Section 12.03, “trading day” means each Monday, Tuesday, Wednesday, Thursday and Friday other than any day on which the Common Stock is not traded on the New York Stock Exchange, or if the Common Stock is not traded on the New York Stock Exchange, on the principal exchange or market on which the Common Stock is traded or quoted.

Section 12.04 ADJUSTMENT OF CONVERSION PRICE.

The conversion price of Securities of any series that is convertible into Common Stock of the Company shall be adjusted for any stock dividends, stock splits, reverse stock splits, reclassifications, combinations or similar transactions in accordance with the terms of the supplemental indenture or Board Resolutions setting forth the terms of the Securities of such series.

Whenever the conversion price is adjusted, the Company shall compute the adjusted conversion price in accordance with terms of the applicable supplemental indenture and shall prepare an Officers’ Certificate setting forth the adjusted conversion price and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall forthwith be filed at each office or agency maintained for the purpose of conversion of Securities pursuant to Section 4.02 and, if different, with the Trustee.

Section 12.05 NOTICE OF CERTAIN CORPORATE ACTIONS.

In case:

- (1) the Company shall declare a dividend (or any other distribution) on its Common Stock payable otherwise than in cash out of its retained earnings, that would require an adjustment to the conversion price of the Securities; or
- (2) the Company authorizes the granting to the holders of all or substantially all of its Common Stock of rights, options or warrants to subscribe for or purchase any shares of capital stock of any class or of any other rights; or
- (3) of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding shares of Common Stock), or of any consolidation, merger or share exchange to which the Company is a party and for which approval of any shareholders of the Company is required, or of the sale of all or substantially all of the assets of the Company;

then the Company shall cause to be filed with the Trustee, and shall cause to be mailed to all Holders at their last addresses as they appear in the Securities Register, at least 20 days (or 10 days in any case specified in Clause (1) or (2) above) prior to the applicable record date hereinafter specified, a notice stating (i) the date on which a record is to be taken for the purpose of such dividend, distribution, rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights, options or warrants are to be determined, or (ii) the date on which such reclassification, consolidation, merger, share exchange, sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of

Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, share exchange, sale, dissolution, liquidation or winding up. If at any time the Trustee shall not be the Conversion Agent, a copy of such notice shall also forthwith be filed by the Company with the Conversion Agent. Failure to give any such notice or any defect therein shall not affect the legality or validity of the proceedings described in clauses (1) through (3) of this Section 12.05.

Section 12.06 RESERVATION OF SHARES OF COMMON STOCK.

The Company shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, for the purpose of effecting the conversion of Securities, the full number of shares of Common Stock of the Company then issuable upon the conversion of all outstanding Securities of any series that has conversion rights.

Section 12.07 PAYMENT OF CERTAIN TAXES UPON CONVERSION.

Upon conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of Common Stock upon the conversion. However, the Holder shall pay any withholding tax or any tax that is due because the shares are issued in a name other than the Holder's name.

Section 12.08 NONASSESSABILITY.

The Company covenants that all shares of its Common Stock that may be issued upon conversion of Securities will upon issue in accordance with the terms hereof be duly and validly issued and fully paid and nonassessable.

Section 12.09 EFFECT OF CONSOLIDATION OR MERGER ON CONVERSION PRIVILEGE.

In case of any consolidation of the Company with, or merger of the Company into or with any other Person, or in case of any sale of all or substantially all of the assets of the Company, the company or the Person formed by such consolidation or the Person into which the Company shall have been merged or the Person which shall have acquired such assets, as the case may be, shall execute and deliver to the Trustee a supplemental indenture providing that the Holder of each Security then outstanding of any series that is convertible into Common Stock of the Company shall have the right, which right shall be the exclusive conversion right thereafter available to said Holder (until the expiration of the conversion right of such Security), to convert such Security into the kind and amount of shares of stock or other securities or property (including cash) receivable upon such consolidation, merger or sale by a holder of the number of shares of Common Stock of the Company into which such Security might have been converted immediately prior to such consolidation, merger or sale, subject to compliance with the other provisions of this Indenture, such Security and such supplemental indenture. Such supplemental indenture shall provide for adjustments that shall be as nearly equivalent as may be practicable to the adjustments provided for in such Security. The above provisions of this Section 12.09 shall similarly apply to successive consolidations, mergers or sales. It is expressly agreed and understood that anything in this Indenture to the contrary notwithstanding, if, pursuant to such merger, consolidation or sale, holders of outstanding shares of Common Stock of the Company do not receive shares of common stock of the surviving corporation but receive other securities, cash or other property or any combination thereof, Holders of Securities shall not have the right to thereafter convert their Securities into common stock of the surviving corporation or the corporation that shall have acquired such assets, but rather, shall have the right upon such conversion to receive the other securities, cash or other property receivable by a holder of the number of shares

of Common Stock of the Company into which the Securities held by such holder might have been converted immediately prior to such consolidation, merger or sale, all as more fully provided in the first sentence of this Section 12.09. Anything in this Section 12.09 to the contrary notwithstanding, the provisions of this Section 12.09 shall not apply to a merger or consolidation of another corporation with or into the Company pursuant to which both of the following conditions are applicable: (i) the Company is the surviving corporation and (ii) the outstanding shares of Common Stock of the Company are not changed or converted into any other securities or property (including cash) or changed in number or character or reclassified pursuant to the terms of such merger or consolidation.

As evidence of the kind and amount of shares of stock or other securities or property (including cash) into which Securities may properly be convertible after any such consolidation, merger or sale, or as to the appropriate adjustments of the conversion prices applicable with respect thereto, the Trustee shall be furnished with and may accept the certificate or opinion of an independent certified public accountant with respect thereto; and, in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely thereon, and shall not be responsible or accountable to any Holder of Securities for any provision in conformity therewith or approved by such independent certified accountant that may be contained in said supplemental indenture.

#### Section 12.10 DUTIES OF TRUSTEE REGARDING CONVERSION.

Neither the Trustee nor any Conversion Agent shall at any time be under any duty or responsibility to any Holder of Securities of any series that is convertible into Common Stock of the Company to determine whether any facts exist which may require any adjustment of the conversion price, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, whether herein or in any supplemental indenture, any resolutions of the Board of Directors or written instrument executed by one or more officers of the Company provided to be employed in making the same. Neither the Trustee nor any Conversion Agent shall be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock of the Company, or of any securities or property, which may at any time be issued or delivered upon the conversion of any Securities and neither the Trustee nor any Conversion Agent makes any representation with respect thereto. Subject to the provisions of Section 7.01, neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of its Common Stock or stock certificates or other securities or property upon the surrender of any Security for the purpose of conversion or to comply with any of the covenants of the Company contained in this Article 12 or in a supplemental indenture with respect to such Securities.

#### Section 12.11 REPAYMENT OF CERTAIN FUNDS UPON CONVERSION.

Any funds that at any time have been deposited by the Company or on its behalf with the Trustee or any other Paying Agent for the purpose of paying the principal of, and premium, if any, and interest, if any, on any of the Securities (including, but not limited to, funds deposited pursuant to Article 8 hereof) and which shall not be required for such purposes because of the conversion of such Securities as provided in this Article 12 shall after such conversion be repaid to the Company by the Trustee upon the Company's written request.

#### Section 12.12 STOCKHOLDER RIGHTS PLAN.

If the Company has a stockholder rights plan in effect upon a conversion of any Security and the Company delivers any shares of Common Stock upon such conversion, the converting Holder shall receive, in addition to such shares

of Common Stock, the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any stockholder rights plan adopted by the Company and in effect upon conversion of such Securities, as the same may be amended from time to time. Notwithstanding the foregoing, if prior to such conversion the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights agreement, the conversion rate with respect to such series shall be adjusted as provided in the supplemental indenture with respect to such series of Securities.

ARTICLE 13

MISCELLANEOUS

Section 13.01 TRUST INDENTURE ACT CONTROLS.

This Indenture is subject to the provisions of the TIA that are required to be part of this Indenture and shall, to the extent applicable, be governed by such provisions. If any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the TIA, the required provision shall control.

Section 13.02 NOTICES.

Any notice or communication by the Company or the Trustee to the other is duly given if in writing and delivered in person or mailed by first class mail (registered or certified, return receipt requested), telecopier or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company:

Aspen Group, Inc.,  
46 East 21<sup>st</sup> Street, Third Floor,  
New York, NY 10010  
Attention: Michael Mathews, CEO  
Email: michael.mathews@aspen.edu

If to the Trustee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Company or the Trustee, by notice to the others may designate additional or different addresses for subsequent notices or communications. Notices and demands to or upon the Company by any Holders shall be made in accordance with Section 4.02.



Except as otherwise provided in this Indenture, any applicable Security or any supplemental indenture with respect to such Securities, all notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt is acknowledged or confirmed, if telecopied; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder shall be mailed by first class mail or by overnight courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Any notice or communication shall also be so mailed to any Person described in TIA § 313(c), to the extent required by the TIA. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Company mails a notice or communication to Holders, it shall mail a copy to the Trustee and each Agent at the same time.

#### Section 13.03 COMMUNICATION BY HOLDERS OF SECURITIES WITH OTHER HOLDERS OF SECURITIES.

Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar and anyone else will have the protection of TIA § 312(c).

#### Section 13.04 CERTIFICATE AND OPINION AS TO CONDITIONS PRECEDENT.

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

- (a) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee which shall include the statements set forth in Section 13.05 hereof; and
- (b) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee which shall include the statements set forth in Section 13.05 hereof.

#### Section 13.05 STATEMENTS REQUIRED IN CERTIFICATE OR OPINION.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA § 314(a)(4)) shall comply with the provisions of TIA § 314(e) and shall include:

- (i) a statement that the Person making such certificate or opinion has read such covenant or condition;
- (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(iii) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(iv) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

Section 13.06 RULES BY TRUSTEE AND AGENTS.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 13.07 NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES AND STOCKHOLDERS.

No past, present or future director, officer, employee, incorporator or stockholder of the Company, as such, shall have any liability for any obligations of the Company under the Securities, this Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Securities by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities.

Section 13.08 STAY, EXTENSION AND USURY LAWS.

The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 13.09 GOVERNING LAW.

This Indenture and the Securities shall be governed by the laws of the State of Delaware.

Section 13.10 NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 13.11 SUCCESSORS.

All agreements of the Company in this Indenture and the Securities shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors.

Section 13.12 SEVERABILITY.

In case any provision in this Indenture or in the Securities is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Section 13.13 COUNTERPART ORIGINALS.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. This Indenture will be effective when each party shall have signed and delivered (including delivery by facsimile transmission), one or more counterparts to the other, but it shall not be necessary for both parties to sign the same counterpart.

Section 13.14 TABLE OF CONTENTS, HEADINGS, ETC.

The Table of Contents and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and will in no way modify or restrict any of the terms or provisions hereof.

Section 13.15 CALCULATIONS.

Except as otherwise provided in this Indenture, the Company shall be responsible for making all calculations called for under the Securities. The Company shall make all these calculations in good faith, and, absent manifest error, the Company's calculations shall be final and binding on Holders of Securities. The Company shall provide a schedule of its calculations to each of the Trustee and the Conversion Agent (if other than the Trustee), and each of the Trustee and Conversion Agent (if other than the Trustee) is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee will forward the Company's calculations to any Holder of Securities upon the request of such Holder at the sole cost and expense of the Company.

*[Signature Page Follows]*

SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Indenture as of the date first written above.

ASPEN GROUP, INC.

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

Name:

Title:

\_\_\_\_\_

As Trustee

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

Name:

Title:

EXHIBIT A

[Face of Note]

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]

ASPEN GROUP, INC.

\_\_\_\_\_ % [Series \_\_\_\_] Senior Note due [\_\_\_\_\_]

No: [\_\_\_\_\_]

[\$\_\_\_\_\_]

CUSIP No.:

ASPEN GROUP, INC.

promises to pay to \_\_\_\_\_ or registered assigns, the principal sum of \_\_\_\_\_

Dollars on \_\_\_\_\_.

Interest Payment Dates \_\_\_\_\_.

Record Dates: \_\_\_\_\_

ASPEN GROUP, INC.

By \_\_\_\_\_  
Name:  
Title:

This is one of the  
Notes referred to in the  
within-mentioned Indenture:

\_\_\_\_\_,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

[Back of Note]

ASPEN GROUP, INC.

\_\_\_\_\_% [Series \_\_\_\_] Senior Note due [\_\_\_\_\_]

Capitalized terms used herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. *INTEREST.* This Note shall bear interest at a rate of \_\_\_\_% per annum from \_\_\_\_\_ or from the most recent date to which interest had been paid or provided to, but excluding, the next scheduled Interest Payment Date, until the principal hereof shall be repaid. Interest on this Note will be computed on the basis of a 360-day year composed of twelve 30-day months. Interest is payable semiannually in arrears on each \_\_\_\_\_ and \_\_\_\_\_, commencing on \_\_\_\_\_, to the Person in whose name this Note (or one or more predecessor securities) is registered at the close of business on the Regular Record Date for such interest. Additional Interest will be payable at the option of the Company on the terms set forth in Section 6.03 of the Indenture, and any reference to interest on, or in respect of, any Note therein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to such Section 6.03 and any express mention of the payment of Additional Interest in any provision therein shall not be construed as excluding Additional Interest in those provisions thereof where such express mention is not made.
2. *METHOD OF PAYMENT.* The Company shall pay principal of and interest on this Note, so long as such Note is a Global Note, in immediately available funds to the Depositary or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay principal of any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. Except as provided below, interest will be paid (i) on any Notes having an aggregate principal amount of \$ \_\_\_\_\_ or less, by check mailed to the Holders of such Notes, and (ii) on any Notes having an aggregate principal amount of more than \$ \_\_\_\_\_, either by check mailed to each such Holder or, upon application by a Holder to the Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until the Holder notifies the Registrar, in writing, to the contrary. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.
3. *PAYING AGENT AND REGISTRAR.* Initially, \_\_\_\_\_, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Company may change any Paying Agent or Registrar without notice to any Holder. The Company may act in any such capacity.
4. *INDENTURE.* This Note is one of a duly authorized issue of Securities of the Company designated as its \_\_\_\_% [Series \_\_\_\_] Senior Note due \_\_\_\_\_ (herein called the "Notes"), issued under a Senior Indenture dated as of \_\_\_\_\_, 201\_ (the "Indenture"), by and between the Company and \_\_\_\_\_, herein called the "Trustee", and reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Notes and of the terms upon which the Notes are, and are to be, authenticated and delivered.

Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture.

5. OPTIONAL REDEMPTION.

[(a) The Notes are not subject to redemption at the option of the Company prior to \_\_\_\_\_. The Notes may be redeemed, in whole or in part, at the option of the Company on or after \_\_\_\_\_, at the redemption prices specified below (expressed as percentages of the principal amount thereof), in each case, together with accrued and unpaid interest, hereon to the date of redemption, upon not less than 30 nor more than 60 days' notice, if redeemed during the twelve-month period beginning on [\_\_\_\_\_] of the years indicated below:

<u>Year</u>	<u>Redemption Price</u>
-------------	-------------------------

(b) Notwithstanding the foregoing, prior to \_\_\_\_\_, the Company may, on any one or more occasions, use the net proceeds of one or more offerings of its capital stock to redeem up to \_\_\_\_\_% of the aggregate principal amount of all notes that had been issued under the Indenture up to the time of redemption at a redemption price of \_\_\_\_\_% the principal amount of the notes redeemed, plus accrued and unpaid interest, to the date of redemption; provided that, after any such redemption, the aggregate principal amount of the Notes outstanding (excluding Notes held by the Company and its Subsidiaries) must equal at least \_\_\_\_\_% of the Notes that had been issued under the Indenture up to the time of redemption; and provided further, that any such redemption shall occur within 90 days of the date of closing of such offering of capital stock of the Company.]

6. *MANDATORY REDEMPTION.* [The Company shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.] or [Describe mandatory redemption or sinking fund provisions.]

7. *NOTICE OF REDEMPTION.* Notice of Redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at its registered address. Notes in denominations larger than \$1,000 may be redeemed in part but only in whole multiples of \$1,000, unless all of the Notes held by a Holder are to be redeemed. On and after the redemption date interest shall cease to accrue on Notes or the portion thereof called for redemption.

8. [CONVERSION.

(a) As provided in and subject to the provisions of the Indenture, the Holder hereof has the right, at its option (i) during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the close of business on the Business Day immediately preceding \_\_\_\_\_, 20\_\_, and (ii) on or after \_\_\_\_\_, 20\_\_, at any time prior to the close of business on the second scheduled trading day immediately preceding the Maturity Date, to convert this Note or a portion thereof that is \$1,000 or an integral multiple thereof, into cash up to the aggregate principal amount of the Notes to be converted and cash, shares of Common Stock or a combination thereof, at the Company's election, in respect of the remainder, if any, of the

Company's Conversion Obligation, at the applicable conversion rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

(b) In order to exercise the conversion privilege with respect to a beneficial interest in a Global Note, the holder of such beneficial interest must comply with the procedures of the Depositary for converting a beneficial interest in a global note and, if required, pay funds equal to any interest payable on the next Interest Payment Date and any documentary, stamp or similar issue or transfer taxes, if any, to the extent required by Section 12.07 of the Indenture. In order to exercise the conversion privilege with respect to any Physical Note, the Holder of any such Notes to be converted must (1) complete, manually sign and deliver the Conversion Notice at the office of the Conversion Agent and state in writing therein the principal amount of Notes to be converted and the name(s) (with addresses) in which such Holder wishes the certificate(s) for any shares of Common Stock to be delivered upon settlement of the Conversion Obligation to be registered, (2) surrender the Notes at the office of the Conversion Agent, (3) furnish appropriate endorsements and transfer documents if required, (4) pay any documentary, stamp or similar issue or transfer taxes if required, and (5) make any payment under Article 12 of the Indenture, if required. A Holder may convert all or any portion (if the portion to be converted is an integral multiple of \$1,000) of the Note.]

9. *DENOMINATIONS, TRANSFER, EXCHANGE.* The Notes are in registered form without coupons in all appropriate denominations. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes, fees or expenses required by law or permitted by the Indenture. The Company need not transfer or exchange any Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, it need not transfer or exchange any Note for a period of 15 days before a selection of Notes to be redeemed.

10. *PERSONS DEEMED OWNERS.* Prior to due presentment of this Note for registration of transfer, the Company, the Trustee and any agent of the Company or Trustee may treat the Person in whose name the Note is registered as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

11. *AMENDMENT, SUPPLEMENT AND WAIVER.* The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Notes to be effected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of the Notes at the time outstanding and other series of Securities affected (treating the Notes and such other series as a single class). The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Notes at the time outstanding and other series of Securities affected (treating the Notes and such other series as a single class), on behalf of the Holders of all Notes and such other series, if any, to waive compliance by the Company with certain provisions of the Indenture and certain past Defaults under the Indenture and their consequences with respect to the Notes and such other series. In addition, as provided in the Indenture, the Company may make certain amendments to the Indenture without the consent of any Holder. Any such consent or waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.



12. *EVENTS OF DEFAULT.* Each of the following constitutes an Event of Default: (i) default in the payment of principal of the Note when due and payable on the Maturity Date; (ii) failure by the Company to pay an installment of interest on the Note when due, if such failure continues for 30 days after the date when due; (iii) upon exercise of a Holder's conversion right in accordance with Article 12 of the Indenture, failure by the Company to deliver, or cause the Trustee to deliver, to such Holder the full amount of conversion consideration deliverable in respect of the Notes surrendered for conversion when due, in accordance with the Indenture and the terms of such Securities; (iv) failure by the Company to comply with its obligations under Section 5.01(a) and (b) and Section 5.02 of the Indenture; (v) failure by the Company to comply with any other covenant or agreement contained in the Note or the Indenture, if such failure is not cured within 90 days after notice to the Company by the Trustee or to the Trustee and the Company by Holders of at least \_\_\_% in aggregate principal amount of the Notes then outstanding and any other affected Securities outstanding under the Indenture (treating the Notes and such other series as a single class), in accordance with the Indenture; (vi) certain defaults with respect to the Indebtedness of the Company or any of its Subsidiaries, as provided in the Indenture; (vii) one or more final, non-appealable judgments against the Company or any of its Subsidiaries, the aggregate uninsured portion of which is at least \$\_\_\_\_\_, if such judgments are not paid or discharged within 120 days; and (viii) certain events of bankruptcy or insolvency with respect to the Company. In case an Event of Default shall have occurred and be continuing, the principal of and interest on all Notes may be declared due and payable, by either the Trustee or Holders of not less than \_\_\_% in aggregate principal amount of Notes then outstanding and other series of Securities affected (treating the Notes and such other series as a single class), and upon said declaration shall become due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency with respect to the Company, all outstanding Notes will become due and payable without further action or notice. Holders of the Notes may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the then-outstanding Notes and other series of Securities affected (treating the Notes and such other series as a single class) may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Notes notice of any continuing Default or Event of Default (except a Default or Event of Default relating to the payment of principal or interest) if it determines that withholding notice is in their interest. The Holders of a majority in aggregate principal amount of the Notes and other series of Securities affected (treating the Notes and such other series as a single class) and other series of Securities affected (treating the Notes and such other series as a single class) then outstanding by notice to the Trustee may on behalf of the Holders of all of the Notes and such other Securities waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of principal, interest or premium, if any, on the Notes. The Company is required to deliver to the Trustee annually a statement regarding compliance with the Indenture.

13. *TRUSTEE DEALINGS WITH THE COMPANY.* The Trustee, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Company or its Affiliates, and may otherwise deal with the Company or its Affiliates, as if it were not the Trustee.

14. *NO RECOURSE AGAINST OTHERS.* No director, officer, employee, incorporator or stockholder of the Company will have any liability for any obligations of the Company under the Notes or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting

a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

15. *AUTHENTICATION*. This Note shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.
16. *ABBREVIATIONS*. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).
17. *CUSIP NUMBERS*. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Notes and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.
18. *SERVICE CHARGES*. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith to the extent provided in the Indenture.

The Company will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

Aspen Group, Inc.,  
46 East 21<sup>st</sup> Street, Third Floor,  
New York, NY 10010  
Attention: Michael Mathews, CEO  
Email: michael.mathews@aspen.edu

[FORM OF NOTICE OF CONVERSION]

To: Aspen Group, Inc.

The undersigned owner of this Note hereby irrevocably exercises the option to convert this Note, or a portion hereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, into cash and shares of Common Stock, if any, in accordance with the terms of the Indenture referred to in this Note, and directs that cash payable and any shares of Common Stock issuable and deliverable upon conversion, together with any check in payment for fractional shares of Common Stock, and any Notes representing any unconverted principal amount hereof, be paid or issued and delivered, as the case may be, to the registered Holder hereof unless a different name has been indicated below. Subject to certain exceptions set forth in the Indenture, if this notice is being delivered on a date after the close of business on a Regular Record Date and prior to the open of business on the related Interest Payment Date, this notice is accompanied by payment of an amount equal to the interest payable on such Interest Payment Date of the principal of this Note to be converted. If any shares of Common Stock or portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect hereto as set forth in Section 12.07 of the Indenture. Any amount required to be paid by the undersigned on account of interest accompanies this Note.

Principal amount to be converted (in an integral multiple of \$1,000, if less than all):

\_\_\_\_\_

\_\_\_\_\_  
Signature(s)

Signature(s) must be guaranteed by an Institution which is a member of one of the Following recognized signature Guarantee

(i) The Securities Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) The Stock Exchange Medallion Program (SEMP) or (iv) another guarantee program acceptable to the Trustee.

\_\_\_\_\_

\_\_\_\_\_  
Signature(s)

Fill in for registration of any shares of Common Stock and Notes if to be issued otherwise than to the registered Holder.

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(Name)

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(Address)

Please print Name and Address  
(including zip code number)

Social Security or other Taxpayer  
Identifying Number

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[FORM OF ASSIGNMENT AND TRANSFER]

For value received \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto \_\_\_\_\_ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

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Signature(s)

(Sign exactly as the name appears on the face of this Note)

Signature(s) must be guaranteed by an institution which is a member of one of the following recognized signature Guarantee Programs:

(i) The Securities Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) The Stock Exchange Medallion Program (SEMP) or (iv) another guarantee program acceptable to the Trustee.

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Signature Guarantee

[SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE]

The following exchanges of a part of this Global Note for an interest in another Global Note or for a Physical Security, or exchanges of a part of another Global Note or Physical Security for an interest in this Global Note, have been made:

<b>Date of Exchange</b>	<b>Amount of decrease in Principal Amount of this Global Note</b>	<b>Amount of increase in Principal Amount of this Global Note</b>	<b>Principal Amount of this Global Note following such decrease (or increase)</b>	<b>Signature of authorized officer of Trustee or Note Custodian</b>
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**Nason, Yeager, Gerson White & Lioce, P.A.**  
**3001 PGA Blvd., Suite 305**  
**Palm Beach Gardens, FL 33410**

April 11, 2018

Aspen Group, Inc.  
1660 S Albion Street, Suite 525  
Denver, Colorado 80222  
Attention: Michael Mathews  
Chief Executive Officer

Aspen Group, Inc. Shelf Registration Statement on Form S-3

Dear Mr. Mathews:

You have requested our opinion with respect to certain matters in connection with the filing by Aspen Group, Inc., a Delaware corporation (the “Company”) of a Registration Statement on Form S-3 (the “Registration Statement”) to be filed on the date hereof by the Company with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”). The Registration Statement relates to the issuance and sale from time to time by the Company of (i) shares of common stock of the Company, par value \$0.001 per share (the “Common Stock”), (ii) shares of the Company’s preferred stock, par value \$0.001 per share (“Preferred Stock”), (iii) debt securities of the Company (“Debt Securities”), which may be issued in one or more series; (iv) warrants to purchase Common Stock (the “Warrants”) and (v) units consisting of any combination of the foregoing securities (the Common Stock, the Preferred Stock, the Debt Securities and the units together the “Securities”), having an aggregate maximum offering price of \$60,000,000. The Securities may be issued and sold from time to time in multiple transactions pursuant to Rule 415 of the General Rules and Regulations promulgated under the Securities Act and as set forth in the Registration Statement, any amendments thereto, the prospectus contained therein and any amendments or supplements thereto (the “Prospectus Supplement”).

In connection with this opinion, we have examined such documents and such matters of fact and law as we have deemed necessary as a basis for this opinion, including, but not limited to, the Registration Statement, the form of Senior Indenture to be entered into between the Company and a trustee (the “Trustee”) to be selected by the Company, the Company’s Certificate of Incorporation, as amended, and the Company’s Bylaws, as amended. We have assumed the genuineness and authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies thereof, and the due execution and delivery of all documents, where due execution and delivery are a prerequisite to the effectiveness thereof.

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The opinions expressed herein are limited to the General Corporation Law of the State of Delaware (the “DGCL”), as currently in effect, and we express no opinion as to the effect of any other law of the State of Delaware or the laws of any other jurisdiction.

Subject to the foregoing and in reliance thereon, and assuming that: (i) the Registration Statement and any amendments thereto (including post-effective amendments) will have become effective and comply with all applicable laws; (ii) the Registration Statement will be effective and will comply with all applicable laws at the time the Securities are offered or issued as contemplated by the Registration Statement; (iii) a Prospectus Supplement will have been prepared and filed with the Commission describing the Securities offered thereby and will comply with all applicable laws; (iv) all Securities will be issued and sold in compliance with applicable federal and state securities laws and in the manner stated in the Registration Statement and the appropriate Prospectus Supplement; (v) a definitive securities purchase, underwriting, or similar agreement with respect to any Securities issued will have been duly authorized and validly executed and delivered by the Company and the other parties thereto; and (vi) any Securities issuable upon conversion, exchange, or exercise of any Security being issued will be duly authorized, created, and, if appropriate, reserved for issuance upon such conversion, exchange, or exercise; it is our opinion that:

(1) With respect to shares of Common Stock, when (a) the Board of Directors of the Company (the “Board”) has taken all necessary corporate action to approve the issuance of Common Stock and the terms of the offering and related matters and (b) certificates representing the shares of Common Stock have been duly executed, countersigned, registered, and delivered either (i) in accordance with the applicable definitive purchase, underwriting, or similar agreement approved by the Board of the Company upon payment of the consideration therefor (not less than the par value of the Common Stock) provided for therein, or (ii) upon conversion or exercise of any other security, in accordance with the terms of such security or the instrument governing such security providing for such conversion or exercise as approved by the Board, for the consideration approved by the Board (not less than the par value of the Common Stock), then the shares of Common Stock will be validly issued, fully paid, and non-assessable.

(2) With respect to shares of any series of Preferred Stock, when (a) the Board has taken all necessary corporate action to approve the issuance and terms of the shares of the series, the terms of the offering thereof and related matters, including the adoption of a resolution establishing and designating the series and fixing and determining the powers, designations, preferences, limitations and relative, participating or other rights thereof and the filing of the Certificate of Designation with the Secretary of State of the State of Delaware as required by the DGCL; and (b) certificates representing the shares of the series of Preferred Stock have been duly executed, countersigned, registered and delivered either (i) in accordance with the applicable definitive purchase, underwriting or similar agreement approved by the Board, upon payment of the consideration therefor (not less than the par value of the Preferred Stock) provided for therein, or (ii) upon conversion, exchange or exercise of any other security in accordance with the terms of the security or the instrument governing the security providing for the conversion, exchange or exercise as approved by the Board, for the consideration approved

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by the Board (not less than the par value of the Preferred Stock), the shares of the series of Preferred Stock will be validly issued, fully paid and non-assessable.

(3) With respect to Debt Securities to be issued under the Senior Indenture, when (a) a Statement of Eligibility of Trustee on Form T-1 has been filed with the Commission pursuant to Section 305(b)(2) of the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”), (b) the Trustee has duly executed and delivered the Senior Indenture, (c) the Senior Indenture has been duly authorized and validly executed and delivered by the Company and the Trustee, (d) the Senior Indenture has been duly qualified under the Trust Indenture Act (e) the Board has taken all necessary corporate action to approve the issuance and terms of such Debt Securities, the terms of the offering thereof, and related matters and (f) such Debt Securities have been duly executed, authenticated, issued, and delivered in accordance with the provisions of the Senior Indenture and the applicable definitive purchase, underwriting, or similar agreement upon payment of the consideration therefor provided for therein, such Debt Securities will be validly issued and will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms (subject to applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or other similar laws in effect and subject to general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law).

(4) With respect to the Warrants, when (a) the Board has taken all necessary corporate action to approve the creation of and the issuance and terms of the Warrants, the terms of the offering thereof, and related matters, (b) the warrant agreement or agreements relating to the Warrants have been duly authorized and validly executed and delivered by the Company and the warrant agent appointed by the Company, and the depository appointed by the Company, and (c) the Warrants or certificates representing the Warrants have been duly executed, countersigned, registered, and delivered in accordance with the appropriate warrant agreement or agreements and the applicable definitive purchase, underwriting, or similar agreement approved by the Board of the Company upon payment of the consideration therefor provided for therein, the Warrants will be validly issued.

This opinion is being furnished to you for submission to the Commission as Exhibit 5.1 to the Registration Statement in accordance with the requirements of Item 16 of Form S-3 and Item 601(b)(5)(i) of Regulation S-K promulgated under the Securities Act. We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement with the Commission on the date hereof and to the use of the name of our firm in the section entitled “Legal Matters” in the Registration Statement. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the Securities Act or the rules and regulations promulgated thereunder by the Commission.

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This opinion is limited to the matters stated in this letter, and no opinion may be implied or inferred beyond the matters expressly stated in this letter. This opinion is given as of the date hereof, and we assume no obligation to advise you after the date hereof of facts or circumstances that come to our attention or changes in the law, including judicial or administrative interpretations thereof, that occur which could affect the opinions contained herein.

Very truly yours,

/s/ Nason, Yeager, Gerson White & Lioce, P.A.

Nason, Yeager, Gerson White & Lioce, P.A.

Consent of Independent Registered Public Accounting Firm

We hereby consent to the incorporation by reference in the Registration Statement on Form S-3, of Aspen Group, Inc. of our report dated July 25, 2017, on the consolidated financial statements of Aspen Group, Inc. for the years ended April 30, 2017 and 2016, included in Form 10-K filed on July 25, 2017, and to the reference to our firm under the heading "Experts" in the prospectus.

/s/ Salberg & Company, P.A.

SALBERG & COMPANY, P.A.

Boca Raton, Florida

April 10, 2018