

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): April 3, 2019

LINCOLN EDUCATIONAL SERVICES CORPORATION

(Exact Name of Registrant as Specified in Charter)

New Jersey

(State or Other Jurisdiction of Incorporation)

000-51371

(Commission File Number)

57-1150621

(IRS Employer Identification No.)

200 Executive Drive, Suite 340, West Orange, New Jersey 07052

(Address of Principal Executive Offices) (Zip Code)

Registrant's telephone number, including area code: (973) 736-9340

Not applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.02 **Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

On April 3, 2019, Lincoln Educational Services Corporation (the “Company”) entered into an employment agreement with Stephen M. Buchenot, the Company’s Senior Vice President of Campus Operations, pursuant to which Mr. Buchenot will continue to serve in such position (the “Buchenot Employment Agreement”). The full text of the Buchenot Employment Agreement is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference. Prior to the effectiveness of the Buchenot Employment Agreement on April 3, 2019, Mr. Buchenot was an at-will employee of the Company.

The Buchenot Employment Agreement, which will expire on December 31, 2020, unless sooner terminated in accordance with its terms, provides to Mr. Buchenot an annual base salary of \$289,893.00 commencing on April 3, 2019. Any adjustment of his base salary during the term of the Buchenot Employment Agreement will be at the discretion of the Company’s Board of Directors or the Compensation Committee, but would be an upward adjustment only. Under the Buchenot Employment Agreement, Mr. Buchenot is eligible to earn an annual bonus in 2019 and 2020, in each case based on performance targets or other criteria as determined by the Board of Directors or the Compensation Committee for such year and payable no later than March 15 with respect to the prior year.

Under the terms of the Buchenot Employment Agreement, the Company may terminate Mr. Buchenot’s employment at any time with or without Cause and Mr. Buchenot may resign from his employment at any time, with or without Good Reason (in each case as such terms are defined in the Buchenot Employment Agreement). In the event that Mr. Buchenot’s employment is terminated by the Company for Cause or Mr. Buchenot resigns without Good Reason, he would be entitled to receive only his accrued and unpaid compensation through the date of his termination or resignation, except that if termination or resignation occurred prior to the payment of any annual bonus due to him for a completed year, Mr. Buchenot would not be entitled to receive such annual bonus. In the event of Mr. Buchenot’s death or the termination of his employment by the Company due to his Disability (as such term is defined in the Buchenot Employment Agreement), Mr. Buchenot or his estate, as applicable, would be entitled to receive (i) his accrued, unpaid base salary and benefits due to him through the date of his death or termination, including any unpaid annual bonus for a completed prior year, (ii) a prorated portion of the target amount of his annual bonus for the year in which his death or the termination of his employment occurred and (iii) all outstanding reasonable travel and other business expenses incurred by him. In addition, all of Mr. Buchenot’s restricted stock and stock option awards would become fully vested and each stock option would become exercisable for one year from the date of his death or termination or until the stock option’s normal expiration date, if earlier; provided however, that if a stock option award specifically provides for a longer post-employment exercise period, such longer exercise period will apply. In the event that Mr. Buchenot’s employment is terminated by the Company without Cause or Mr. Buchenot resigns for Good Reason, in addition to his right to receive payment of all accrued and unpaid compensation and benefits due to him through the date of termination or resignation of employment, including any accrued unpaid bonuses for a completed year, subject to Mr. Buchenot’s execution of a release in favor of the Company and its subsidiaries and affiliates, Mr. Buchenot would be entitled to receive a lump sum payment on the 60th day following termination of employment equal to (a) one and one-half times the sum of (i) his annual base salary and (ii) the target amount of the annual bonus for Mr. Buchenot in the year in which the termination of employment occurs, (b) all outstanding reasonable travel and other business expenses incurred by him through the date of termination and (c) the estimated employer portion of premiums that would be necessary to continue Mr. Buchenot’s coverage under the Company’s healthcare plan until the first anniversary of the date of termination (subject to proration should Mr. Buchenot become insured under a subsequent healthcare plan). In addition, Mr. Buchenot would be entitled to receive a prorated portion of his annual bonus for the year of termination, which prorated annual bonus would be paid in a lump sum on the date that bonuses for the year in which Mr. Buchenot’s employment ended are paid generally to the Company’s senior executives (but no later than March 15th of the year following the year in which his employment ended).

The Buchenot Employment Agreement further provides that, upon a Change in Control of the Company (as defined in the Buchenot Employment Agreement), (a) the term of the Buchenot Employment Agreement will be automatically extended for an additional two-year term commencing on the date of the Change in Control and ending on the second anniversary of the date of the Change in Control and (b) all outstanding restricted stock and stock options held by Mr. Buchenot will vest in full and all stock options will become immediately exercisable on the date of the Change in Control. The Buchenot Employment Agreement also provides that if any amounts due to Mr. Buchenot pursuant to the Buchenot Employment Agreement or any other plan or arrangement constitute a “parachute payment” for purposes of Section 280G of the Internal Revenue Code and the amount of the parachute payment (after taking into account all taxes, including excise taxes) is less than the amount Mr. Buchenot would receive if he was paid three times his “base amount” (as defined under Section 280G of the Internal Code), less one dollar (after taking into account all taxes, including excise taxes), then the aggregate of the amounts constituting the parachute payment will be reduced (or returned by Mr. Buchenot if already paid to him) to an amount that will equal three times Mr. Buchenot’s base amount less one dollar.

The agreement also contains a two-year post-employment noncompetition covenant, a one-year post-employment nonsolicitation covenant and a standard confidentiality provision.

The foregoing description of the Buchenot Employment Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Buchenot Employment Agreement filed as Exhibit 10.1 to this Current Report on Form 8-K, which is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

[10.1](#) Employment Agreement dated April 3, 2019 between the Company and Stephen M. Buchenot.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

LINCOLN EDUCATIONAL SERVICES CORPORATION

Date: April 5, 2019

By: /s/ Brian K. Meyers

Name: Brian K. Meyers

Title: Executive Vice President, Chief Financial Officer and Treasurer

EMPLOYMENT AGREEMENT (this "Agreement"), dated as of April 3, 2019 between LINCOLN EDUCATIONAL SERVICES CORPORATION, a New Jersey corporation (the "Company"), and Stephen M. Buchenot (the "Executive").

WHEREAS, the Executive is currently employed by the Company;

WHEREAS, the parties desire to enter into an agreement setting forth the terms and conditions of the Executive's employment with the Company;

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. Effectiveness of Agreement.

This Agreement shall become effective as of the date hereof.

2. Employment and Duties.

2.1 Position and Duties. The Company hereby continues to employ the Executive, and the Executive agrees to serve, as Senior Vice President of Campus Operations, upon the terms and conditions contained in this Agreement. The Executive shall report to the CEO and President of the Company and perform the duties and services for the Company commensurate with the Executive's position. Except as may otherwise be approved in advance by the Company's Board of Directors (the "Board") or the Compensation Committee of the Board (the "Committee"), the Executive shall render his services exclusively to the Company during his employment under this Agreement and shall devote substantially all of his working time and efforts to the business and affairs of the Company.

2.2 Term of Employment. The Executive's employment under this Agreement shall terminate on December 31, 2020, unless terminated earlier pursuant to Section 5 or extended pursuant to Section 6.1 (the "Employment Period").

2.3 Location of Work. The Executive shall be based in the United States in West Orange, New Jersey. However, the Executive agrees to undertake whatever domestic and worldwide travel is required by the Company. The Executive shall not be required or permitted to relocate without the mutual, written consent of the Executive and the Company.

3. Compensation.

3.1 Base Salary. Subject to the provisions of Sections 5 and 6, the Executive shall be entitled to receive a base salary (the "Base Salary") at a rate of \$289,893.00 per annum, such rate to be effective as of April 3, 2019. Such rate may be adjusted upwards, but not downwards, from time to time by the Board or the Committee, in their sole discretion. The Base Salary shall be paid in equal installments on a biweekly basis or in accordance with the Company's current payroll practices, less all required deductions. The Base Salary shall be pro-rated for any period of service less than a full year.

3.2 Annual Bonus. Subject to the provisions of Sections 5 and 6, the Executive shall be eligible to earn an annual bonus for 2019 and each full calendar year thereafter during the Employment Period (the "Annual Bonus"), the amount of which shall be based upon performance targets or such other criteria that are determined by the Board or the Committee pursuant to the provisions of the Company's Key Management Team Incentive Compensation Plan (the "Incentive Plan") in effect for the applicable calendar year. The Company shall pay the Annual Bonus to the Executive no later than March 15th following the end of the applicable fiscal year. The Annual Bonus shall be prorated for any year in which the Executive's employment is terminated due to death or Disability, as defined in Appendix A. If during the Employment Period the Executive's employment is terminated by the Company (or any successor thereto) for Cause, as defined in Exhibit A, or the Executive resigns from his employment other than for Good Reason, as defined in Exhibit A, prior to the payout of any Annual Bonus due for a completed calendar, the Executive shall not receive such Annual Bonus.

3.3 Reimbursement of Expenses. The Company shall reimburse the Executive for reasonable travel and other business expenses incurred by him in the fulfillment of his duties hereunder upon presentation by the Executive of an itemized account of such expenditures, in accordance with Company practices.

4. Employee Benefits.

4.1 General. The Executive shall, during the Employment Period, be included, to the extent eligible thereunder, in all employee benefit plans, programs and arrangements (including, without limitation, any plans, programs or arrangements providing for retirement benefits, profit sharing, disability benefits, health and life insurance or vacation and paid holidays) that shall be established by the Company for, or made available to, its senior executives. In addition, the Company shall furnish the Executive with coverage by the Company's customary director and officer indemnification arrangements, subject to applicable law.

5. Termination of Employment.

5.1 Effect of an Involuntary Termination. Subject to the provisions of Sections 6 and 9.5, if during the Employment Period there is an "Involuntary Termination" (as defined below) of the Executive's employment, the Company shall pay to the Executive:

(i) an amount equal to one and one-half times the sum of (x) the Executive's annual Base Salary, at a rate in effect at the date of such termination plus (y) the target amount of the Annual Bonus of the Executive for the year in which the Involuntary Termination occurs;

(ii) all outstanding reasonable travel and other business expenses that he incurred as of the date of his termination;

(iii) an additional cash amount equal to the Company's estimate of the employer portion of the premiums that would be necessary to continue the Executive's health care coverage until the first anniversary of the date of such Involuntary Termination; provided, however, that if prior to payment of such cash amount the Executive becomes covered under another group health plan (which coverage, once obtained, must be promptly disclosed by the Executive to the Company), such cash amount shall be prorated to cover only the period from the date of the Executive's Involuntary Termination until the date on which such alternate coverage starts; and

(iv) a prorated Annual Bonus for the year in which the Involuntary Termination occurs, calculated by multiplying (A) the Annual Bonus to which the Executive would have been entitled under Section 3.2 if his employment had continued through the end of such year by (B) a proration fraction the numerator of which is the number of days in such calendar year up to and including the date of the Executive's Involuntary Termination and the denominator of which is 365.

The Executive shall also be entitled to receive any other accrued compensation and benefits otherwise payable to him as of the date of his termination, including, without limitation, any Annual Bonus due for a completed calendar year. All payments made under Sections 5.1(i), (ii) and (iii) above shall be made by the Company (or its successor) in a lump-sum amount on the 60th day following the Executive's termination of employment, and payment made under Section 5.1(iv) above shall be made by the Company (or its successor) in a lump-sum amount on the date that bonuses for the year in which the Executive's Involuntary Termination occurs are paid generally to the Company's senior executives (but no later than March 15th of the year following the year in which the Executive's Involuntary Termination occurs).

The Company shall not be required to make the payments and provide the benefits provided for under this Section 5.1 unless (1) the Executive executes and delivers to the Company, within sixty days following the Executive's termination of employment, a Waiver and Release (relating to the Executive's release of claims against the Company Group (as defined below) in the form provided by the Company, and the Waiver and Release has become effective and irrevocable in its entirety, and (2) the Executive remains in material compliance with the restrictive covenants set forth in Section 9 of this Agreement. The Executive's failure or refusal to sign the Waiver and Release (or the revocation of such Waiver and Release in accordance with applicable laws) or the Executive's failure to materially comply with the restrictive covenants in Section 9 shall result in the forfeiture of the payments and benefits payable under this Section 5.1.

For purposes of this Agreement, "Involuntary Termination" means the termination of the Executive's employment (i) by the Company (or any successor thereto) without Cause, as defined in Appendix A, or (ii) by the Executive for Good Reason, as defined in Appendix A.

5.2 Effect of a Termination for Cause or Resignation without Good Reason. Subject to the provisions of Sections 3.2 and 6, if during the Employment Period, the Executive's employment is terminated by the Company (or any successor thereto) for Cause or the Executive resigns from his employment other than for Good Reason, the Company shall pay to the Executive, any (i) accrued but unpaid Base Salary earned through the date of his termination, (ii) unreimbursed expenses, plus (iii) accrued but unpaid employee benefits set forth in Section 4.1 above as determined in accordance with the provisions of the applicable employee benefit plans or programs of the Company.

5.3 Effect of a Termination due to Death or Disability. Subject to the provisions of Sections 3.2 and 6, if during the Employment Period, the Executive's employment is terminated by the Company (or any successor thereto) due to death or Disability, as defined in Appendix A, the Company shall pay to the Executive, or if applicable his estate:

(i) accrued but unpaid Base Salary earned through the date of his termination and any Annual Bonus due but not yet paid for a completed calendar year;

(ii) a prorated Annual Bonus for the year in which the termination of employment occurs, calculated by multiplying (A) the Executive's target Annual Bonus for that year by (B) a proration fraction the numerator of which is the number of days in such calendar year up to and including the date of the Executive's termination of employment and the denominator of which is 365;

(iii) all outstanding reasonable travel and other business expenses that the Executive incurred as of the date of his termination; and

(iv) accrued but unpaid employee benefits set forth in Section 4.1 above as determined in accordance with the provisions of the applicable employee benefit plans or programs of the Company.

In addition, upon the Executive's termination of employment due to death or Disability, all outstanding stock options and restricted stock awarded to the Executive shall become fully vested, and stock options shall become immediately exercisable and will remain exercisable for one year from the date of termination (or, if earlier, until the stock option's normal expiration date); provided, however, that if the applicable stock option award specifically provides for a longer post-employment period to exercise such option, such longer period shall apply.

6. Effect of a Change in Control.

6.1 New Term of Employment. Notwithstanding anything to the contrary in this Agreement, upon the occurrence of a Change in Control, as defined in Appendix A, during the Employment Period, the Company (or its successor) shall renew this Agreement for a period of two years commencing on the date of the Change in Control and ending on the second anniversary of the date of the Change in Control.

6.2 Acceleration of Equity Awards. Notwithstanding anything to the contrary in any of the Equity Award Documents, as defined in Appendix A, upon a Change in Control, all outstanding stock options and restricted stock granted by the Company or any of its affiliates to the Executive shall become fully vested, and stock options shall become immediately exercisable, on the date of the Change in Control.

7. Reduction of Payments.

If any amounts due to the Executive under this Agreement and any other agreement, plan or arrangement of or with the Company or any of its affiliates constitute a “parachute payment,” as such term is defined in Section 280G(b)(2) of the Internal Revenue Code of 1986, as amended (the “Code”), and the amount of the parachute payment, reduced by all federal, state and local taxes applicable thereto, including the excise tax imposed pursuant to Section 4999 of the Code, is less than the amount the Executive would receive if he was paid three times his “base amount”, as defined in Section 280G(b)(3) of the Code, less \$1.00, reduced by all federal, state and local taxes applicable thereto, then the aggregate of the amounts constituting the parachute payment will be reduced (or returned by the Executive if it has already been paid to him) to an amount that will equal three times the Executive’s base amount less \$1.00. Any determination to be made with respect to this Section 7 shall be made by an accounting firm jointly selected by the Company and the Executive and paid for by the Company, and which may be the Company’s independent auditors.

8. No Additional Rights.

The Executive shall have no right to receive any compensation or benefits upon his termination or resignation of employment, except (i) as expressly set forth in Sections 5 and 6 above, where applicable, or (ii) as determined in accordance with the provisions of the employee benefit plans or programs of the Company.

9. Restrictive Covenants.

9.1 Noncompetition. During the term of the Executive’s employment with the Company (or any successor thereto) and continuing for two years thereafter, the Executive shall not, without the prior written consent of the Company, directly or indirectly, own, manage, operate, join, control, or participate in the ownership, management, operation or control of, or be employed by or connected in any manner with, any Competing Business, whether for compensation or otherwise; provided, however, that the Executive shall be permitted to hold, directly or indirectly, less than 1% of any class of securities of any entity that is listed on a national securities exchange or on the NASDAQ National Market System. Notwithstanding the foregoing, this Section 9.1 shall cease to apply upon the termination of the Executive’s employment with the Company (or any successor thereto) resulting from an Involuntary Termination. For purposes of this Agreement, “Competing Business” means any business within the United States that involves for-profit, post-secondary education.

9.2 Nonsolicitation. During the term of the Executive’s employment with the Company (or any successor thereto) and continuing for one year thereafter, the Executive shall not, without the prior written consent of the Company, directly or indirectly, as a sole proprietor, member of a partnership, stockholder, investor, officer or director of a corporation, or as an employee, associate, consultant or agent of any person, partnership, corporation or other business organization or entity other than the Company or any of its subsidiaries or affiliates (the “Company Group”) (i) solicit or endeavor to entice away from any member of the Company Group, any person or entity who is, or was on the date of this Agreement, employed by, or serving as a key consultant of, any member of the Company Group or (ii) solicit or endeavor to entice away from any member of the Company Group, any person or entity who is, or was on the date of this Agreement, a customer or client (or reasonably anticipated to become a customer or client) of any member of the Company Group.

9.3 Confidentiality. The Executive shall not at any time, except in performance of his obligations to the Company Group under the provisions of this Agreement and as an employee of the Company, directly or indirectly, disclose or use any secret or protected information that he may learn or has learned by reason of his association with any member of the Company Group. The term “protected information” includes trade secrets and confidential and proprietary business information of the Company Group, including, but not limited to, customers (including potential customers), sources of supply, processes, methods, plans, apparatus, specifications, materials, pricing information, intellectual property (including applications and rights in discoveries, inventions or patents), internal memoranda, marketing plans, contracts, finances, personnel, research and internal policies, but shall exclude any information which (i) is or becomes available to the public or is generally known in the industry or industries in which the Company Group operates other than as a result of disclosure by the Executive in violation of this Section 9.3 or (ii) the Executive is required to disclose under any applicable laws, regulations or directives of any government agency, tribunal or authority having jurisdiction in the matter or under subpoena or other process of law.

9.4 Exclusive Property. The Executive confirms that all protected information is and shall remain the exclusive property of the Company Group. All business records, papers and documents kept or made by the Executive relating to the business of the Company shall be and remain the property of the Company Group.

9.5 Compliance with Restrictive Covenants. Without intending to limit any other remedies available to the Company Group and except as required by law, in the event that the Executive breaches or threatens to breach any of the covenants set forth in this Section 9, (i) the Company Group shall be entitled to seek a temporary restraining order and/or a preliminary or permanent injunction restraining the Executive from engaging in activities prohibited by this Section 9 or such other relief as may be required to enforce any of such covenants and (ii) all obligations of the Company to make payments and provide benefits under this Agreement shall immediately cease.

10. Arbitration.

10.1 General. Subject to Section 9.5 above, any dispute or controversy arising under or in connection with this Agreement that cannot be mutually resolved by the Executive and the Company shall be settled exclusively by arbitration in West Orange, New Jersey before three arbitrators of exemplary qualifications and stature. The Executive and the Company shall each select one arbitrator. The arbitrators selected by the Executive and the Company shall jointly select the third arbitrator. Judgment may be entered on the arbitrators’ award in any court having jurisdiction. The Executive and the Company hereby agree that the arbitrators shall be empowered to enter an equitable decree mandating specific enforcement of the provisions of this Agreement.

10.2 Associated Costs. The cost of the arbitration shall be borne by the parties in the manner determined by the arbitrators. If, however, the dispute concerns contractual rights that arise in the event of or subsequent to a Change in Control, the costs of arbitration (and any reasonable attorney's fees incurred by the Executive) shall be borne by the Company, unless the arbitrators determine that the Executive commenced such arbitration on unfounded or unreasonable grounds.

11. Section 409A of the Code.

11.1 General. This Agreement is intended to be exempt from or meet the requirements of Section 409A of the Code, and shall be interpreted and construed consistent with that intent.

11.2 Deferred Compensation. Notwithstanding any other provision of this Agreement, to the extent that the right to any payment (including the provision of benefits) hereunder provides for the "deferral of compensation" within the meaning of Section 409A(d)(1) of the Code, the payment shall be paid (or provided) in accordance with the following:

(i) If the Executive is a "Specified Employee" within the meaning of Section 409A(a)(2)(B)(i) of the Code on the date of the Executive's termination of employment, then no such payment shall be made or commence during the period beginning on the date of the Executive's termination of employment and ending on the date that is six months and one day following the Executive's termination of employment or, if earlier, on the date of the Executive's death.

(ii) Payments with respect to reimbursements of expenses shall be made in accordance with Company policy and in no event later than the last day of the calendar year following the calendar year in which the relevant expense is incurred. No reimbursement during any calendar year shall affect the amounts eligible for reimbursement in any other calendar year, except, in each case, to the extent that the right to reimbursement does not provide for a "deferral of compensation" within the meaning of Section 409A of the Code.

(iii) The Company shall not accelerate any payment or the provision of any benefits under this Agreement or make or provide any such payment or benefits if such payment or provision of such benefits would, as a result, be subject to tax under Section 409A of the Code. If, in the good faith judgment of the Company, any provision of this Agreement could cause the Executive to be subject to adverse or unintended tax consequences under Section 409A of the Code, such provision shall be modified by the Company in its sole discretion to maintain, to the maximum extent practicable, the original intent of the applicable provision without violating the requirements of Section 409A of the Code. It is understood that each installment is a separate payment, and that the timing of payment is within the control of the Company.

(iv) The provisions of this Section 11 shall apply notwithstanding any provisions of this Agreement related to the timing of payments following the Executive's termination of employment.

12. Miscellaneous.

12.1 Communications. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made as of the date delivered, or on the fifth business day after mailed if delivered personally or mailed by registered or certified mail (postage prepaid, return receipt requested), to the relevant party at the following address (or at such other address for a party as shall be specified by like notice, except that notices of change of address shall be effective upon receipt):

if to the Company:

200 Executive Drive, Suite 340
West Orange, New Jersey 07052
Attention: Chief Executive Officer and President

if to the Executive:

200 Executive Drive, Suite 340
West Orange, New Jersey 07052

12.2 Waiver of Breach; Severability. (a) The waiver by the Executive or the Company of a breach of any provision of this Agreement by the other party hereto shall not operate or be construed as a waiver of any subsequent breach by either party.

(b) The parties hereto recognize that the laws and public policies of various jurisdictions may differ as to the validity and enforceability of covenants similar to those set forth herein. It is the intention of the parties that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and policies of each jurisdiction in which enforcement may be sought, and that the unenforceability (or the modification to conform to such laws or policies) of any provisions hereof shall not render unenforceable, or impair, the remainder of the provisions hereof. Accordingly, if at the time of enforcement of any provision hereof, a court of competent jurisdiction holds that the restrictions stated herein are unreasonable under circumstances then existing, the parties hereto agree that the maximum period, scope, or geographic area reasonable under such circumstances shall be substituted for the stated period, scope or geographical area and that such court shall be allowed to revise the restrictions contained herein to cover the maximum period, scope and geographical area permitted by law.

12.3 Assignment; Successors. No right, benefit or interest hereunder shall be assigned, encumbered, charged, pledged, hypothecated or be subject to any setoff or recoupment by the Executive. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Company.

12.4 Entire Agreement. This Agreement and the Equity Award Documents represent the entire agreement of the parties and shall supersede any and all previous contracts, arrangements or understandings between the Company and the Executive relating to the subject matter hereof. This Agreement may be amended at any time by mutual written agreement of the parties hereto.

“Cause” shall mean, with respect to the Executive, the following:

- (a) prior to a Change in Control, (i) the Executive’s willful failure to perform the duties of his employment in any material respect, (ii) malfeasance or gross negligence in the performance of the Executive’s duties of employment, (iii) the Executive’s conviction of a felony under the laws of the United States or any state thereof (whether or not in connection with his employment), (iv) the Executive’s intentional or reckless disclosure of protected information respecting any member of the Company Group’s business to any individual or entity which is not in the performance of the duties of his employment, (v) the Executive’s commission of an act or acts of sexual harassment that would normally constitute grounds for termination, or (vi) any other act or omission by the Executive (other than an act or omission resulting from the exercise by the Executive of good faith business judgment), which is materially injurious to the financial condition or business reputation of any member of the Company Group; provided, however, that in the case of (i) and (ii) above, the Executive shall not be deemed to have been terminated for cause unless he has received written notice of the alleged basis therefor from the Company, and fails to remedy the matter within 30 days after he has received such notice, except that no such “cure opportunity” shall be required in the case of two separate episodes occurring within any 12-month period that give the Company the right to terminate for cause for such reason; or

- (b) on or after a Change in Control, (i) the Executive’s willful failure to perform the duties of his employment in any material respect, (ii) malfeasance or gross negligence in the performance of the Executive’s duties of employment, (iii) the Executive’s conviction of a felony under the laws of the United States or any state thereof (whether or not in connection with his employment), or (iv) the Executive’s intentional or reckless disclosure of protected information respecting any member of the Company Group’s business to any individual or entity which is not in the performance of the duties of his employment; provided, however, that in the case of (i) and (ii) above, the Executive shall not be deemed to have been terminated for cause unless he has received written notice of the alleged basis therefor from the Company, and fails to remedy the matter within 30 days after he has received such notice, except that no such “cure opportunity” shall be required in the case of two separate episodes occurring within any 12-month period that give the Company the right to terminate for cause for such reason.

“Change in Control” shall mean:

- (a) when a “person” (as defined in Section 3(a)(9) of the Exchange Act), including a “group” (as defined in Section 13(d) and 14(d) of the Exchange Act), either directly or indirectly becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act) of 25% or more of either (i) the then outstanding Common Stock, or (ii) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors; provided, however, that the following acquisitions shall not constitute a Change in Control: (1) any acquisition directly from the Company; (2) any acquisition by the Company; or (3) any acquisition by an employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company;
- (b) when, during any period of 24 consecutive months during the Employment Period, the individuals who, at the beginning of such period, constitute the Board (the “Company Incumbent Directors”) cease for any reason other than death to constitute at least a majority thereof; provided, however, that a director who was not a director at the beginning of such 24-month period shall be deemed to be a Company Incumbent Director if such director was elected by, or on the recommendation of or with the approval of at least two-thirds of the directors of the Company, who then qualified as Company Incumbent Directors;
- (c) when the stockholders of the Company approve a reorganization, merger or consolidation of the Company without the consent or approval of a majority of the Company Incumbent Directors;
- (d) consummation of a merger, amalgamation or consolidation of the Company with any other corporation, the issuance of voting securities of the Company in connection with a merger, amalgamation or consolidation of the Company or sale or other disposition of all or substantially all of the assets of the Company or the acquisition of assets of another corporation (each, a “Business Combination”), unless, in each case of a Business Combination, immediately following such Business Combination, all or substantially all of the individuals and entities who were the beneficial owners of the Common Stock outstanding immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then outstanding shares of common stock and 50% of the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity which as a result of such transaction owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination, of the Common Stock; or
- (e) a complete liquidation or dissolution of the Company or the sale or other disposition of all or substantially all of the assets of the Company;

“Disability” shall mean the inability of the Executive to perform substantially his duties and responsibilities to the Company or any of its subsidiaries by reason of a physical or mental disability or infirmity (a) for a continuous period of six months or (b) at such earlier time as the Executive submits medical evidence of such disability to the reasonable satisfaction of the Committee that the Executive has a physical or mental disability or infirmity that shall likely prevent him from substantially performing his duties and responsibilities for six months or longer. The date of such Disability shall be on the last day of such six-month period or the day on which the Committee determines that the Executive has a physical or mental disability or infirmity as provided in clause (b) herein.

“Good Reason” shall mean, with respect to the Executive, the occurrence of any of the following (without his written consent): (a) a reduction in the Executive’s Base Salary or target Annual Bonus; (b) an adverse change in the Executive’s title, authority, duties, responsibilities or reporting lines as specified in Section 2.1 of this Agreement; (c) the relocation of the Executive’s principal place of employment to a location more than 10 miles from West Orange, New Jersey; (d) a failure by the Company to pay material compensation when due in connection with the Executive’s employment; or (e) a material breach of this Agreement by the Company; provided, however, that, if any such Good Reason is reasonably susceptible to cure, then the Executive shall not terminate his employment hereunder unless the Executive first provides the Company with written notice of his intention to terminate and of the grounds for such termination, and the Company has not, within 10 business days following receipt of such written notice, cured such Good Reason.

“Equity Award Documents” shall mean (a) any option agreements, restricted stock agreements or other equity award agreements under the Company’s 2005 Long-Term Incentive Plan and (b) any stock pledge agreement or promissory note relating to the Executive’s stock options, shares of Company common stock underlying such options or restricted stock.