



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 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to such Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is 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

Preliminary Prospectus dated June 7, 2005

**PROSPECTUS**

**4,000,000 Shares**



# Lincoln Educational Services Corporation

## Common Stock

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This is Lincoln Educational Services Corporation's initial public offering. Lincoln Educational Services Corporation is selling 3,000,000 shares and certain of Lincoln Educational Services Corporation's stockholders are selling 1,000,000 shares.

We expect the public offering price to be between \$19.00 and \$21.00 per share. Currently, no public market exists for the shares. After pricing of the offering, we expect that the shares will be quoted on The Nasdaq National Market under the symbol "LINC."

**Investing in our common stock involves risks that are described in the "Risk Factors" section beginning on page 8 of this prospectus.**

	<u>Per Share</u>	<u>Total</u>
Public offering price	\$	\$
Underwriting discount	\$	\$
Proceeds, before expenses, to us	\$	\$
Proceeds, before expenses, to the selling stockholders	\$	\$

The underwriters may also purchase up to an additional 600,000 shares from Lincoln Educational Services Corporation at the public offering price, less the underwriting discount, within 30 days from the date of this prospectus to cover overallotments.

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

The shares will be ready for delivery on or about \_\_\_\_\_, 2005.

**Merrill Lynch & Co.**

**Banc of America Securities LLC**

**Lehman Brothers**

**Harris Nesbitt**

**Jefferies & Company, Inc.**

**Robert W. Baird & Co.**

The date of this prospectus is \_\_\_\_\_, 2005.

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SOME PROGRAMS MAY NOT BE  
AVAILABLE AT ALL CAMPUSES.



# LINCOLN

EDUCATIONAL SERVICES



 **LINCOLN TECH**

 CAREER EDUCATION INSTITUTE

 **THE CITRONE INSTITUTE**

 **DADC**  
DALLAS AUTO-MOTIVE & DIESEL COLLEGE

 **NADC**  
NASHVILLE AUTO-DIESEL COLLEGE

 **SOUTHWESTERN COLLEGE**

 **NEW ENGLAND TECH**  
NEW ENGLAND TECHNICAL INSTITUTE

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**You should rely only on the information contained in this prospectus. We have not, and the underwriters have not, authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus is accurate only as of the date on the front cover of this prospectus or other date stated in this prospectus. Our business, financial condition, results of operations and prospects may have changed since that date.**

## SUMMARY

*This summary highlights information contained elsewhere in this prospectus. You should read the entire prospectus carefully before making an investment decision, especially the risks of investing in our common stock discussed under "Risk Factors." See Note 1 of the notes to our financial statements included elsewhere in this prospectus for a description of the reorganization and the formation of Lincoln Educational Services Corporation. Unless otherwise indicated, industry data are derived from publicly available sources, which we have not independently verified.*

### Lincoln Educational Services Corporation

#### Overview

We are a leading and diversified for-profit provider of career-oriented post-secondary education as measured by total enrollment and number of graduates. We offer recent high school graduates and working adults degree and diploma programs in four principal areas of study: automotive technology, allied health (which includes programs for medical administrative assistants, medical assistants, pharmacy technicians and massage therapists), skilled trades and business and information technology. At March 31, 2005, our automotive technology program, our allied health program, our skilled trades program and our business and information technology program accounted for 44.2%, 37.5%, 13.2% and 5.1%, respectively, of our total enrollment. We had 17,630 students enrolled as of March 31, 2005 and our average enrollment for the three months ended March 31, 2005 was 17,692 students, an increase of 14.8% from average enrollment of 15,417 for the three months ended March 31, 2004. For the three months ended March 31, 2005, our revenues were \$70.9 million, which represents an increase of 19.0% from the three months ended March 31, 2004. Excluding our acquisition of New England Technical Institute in January 2005, our revenues and average enrollments would have increased by 13.2% and 8.7%, respectively, compared to the three months ended March 31, 2004. For the year ended December 31, 2004, our revenues were \$261.3 million, which represents a 31.4% increase from the year ended December 31, 2003. Excluding our acquisition of Southwestern College in January 2004, our revenues and average enrollments for the year ended December 31, 2004 would have increased by 27.5% and 22.4%, respectively, compared to the year ended December 31, 2003.

As of March 31, 2005, we operated 32 campuses throughout the United States under seven well-established brands with long operating histories: Lincoln Technical Institute (58 years of operation), Nashville Auto-Diesel College (85 years), Denver Automotive & Diesel College (41 years), The Cittone Institute (36 years), Career Education Institute (21 years), Southwestern College (26 years) and New England Technical Institute, which we acquired on January 11, 2005 and has been in operation for 65 years.

#### Market Opportunity

The U.S. Department of Education has reported that, over the last 25 years, enrollments at for-profit post-secondary institutions have experienced a compounded annual growth rate of approximately 10% versus enrollments at traditional colleges and universities, which had a compounded annual growth rate of approximately 1% over the same time period. In particular, we believe there is significant and growing demand by employers for individuals possessing skills in each of our areas of study. The U.S. Department of Labor estimates that there will be approximately 4.8 million job openings due to growth and net replacement from 2002 to 2012 in careers related to the areas of study we offer. However, we cannot provide any assurance that we will benefit from this projected growth.

## Business Strengths

We believe that the following strengths differentiate us from our competitors:

**Program Diversification.** We believe the breadth of our areas of study and the diversity of our offerings increase our addressable market and enhance our overall revenue stability and operational flexibility.

**Operational Flexibility.** Our operational infrastructure is highly flexible and enables us to adapt quickly to changing market trends.

**Strong Brands and Geographic Presence.** We believe that our schools have established a strong competitive position in their respective local markets and significant brand recognition with prospective students and employers.

**Strong Marketing and Student Recruitment.** We use a variety of marketing and recruiting methods to attract students and increase enrollments.

**Experienced Management Team.** Our senior management team has over 200 years of combined experience and an average of approximately 20 years of experience in the for-profit, post-secondary education industry.

## Growth Strategy

Our goal is to strengthen our role as a leading and diversified provider of career-oriented post-secondary education by continuing to pursue the following growth strategies:

**Expand Existing Areas of Study and Existing Facilities.** We believe we can leverage our existing operations to capitalize on the growing demand from students and employers in our local markets.

**Enter New Geographic Markets and New Areas of Study.** We believe we can increase our student enrollments by entering selected new geographic markets and new areas of study that we believe have significant growth potential and where we can leverage our reputation and operating expertise.

**Opportunistically Pursue Strategic Acquisitions.** In evaluating potential acquisitions, we seek to identify schools with the potential for program replication at our existing campuses, new areas of study, new markets with attractive growth opportunities and advanced degree programs.

**Introduce Online Education Alternatives.** We recently launched our online initiative to capitalize on the rapidly growing demand for, and flexibility provided by, online education alternatives.

## Regulation

Our schools are subject to extensive regulation by federal and state governmental agencies and by accrediting commissions. In particular, the Higher Education Act of 1965, as amended, and the regulations promulgated thereunder by the U.S. Department of Education, or the DOE, set forth numerous standards that our schools must satisfy to participate in various federal student financial assistance programs under Title IV of the Higher Education Act of 1965, which we refer to as Title IV Programs. In 2004, we derived approximately 81% of our revenues, calculated on a cash basis as required by DOE regulations, from Title IV Programs administered by the DOE. To participate in Title IV Programs, each of our schools must receive and maintain authorization by the applicable education agencies in the state in which each school is physically located, be accredited by an accrediting commission recognized by the DOE and be certified as an eligible institution by the DOE.

Each year, based on the financial information submitted by an eligible institution that participates in Title IV Programs, the DOE calculates a composite score to measure the institution's financial

responsibility. If an institution's composite score is below 1.0, the institution is considered by the DOE to lack financial responsibility. Based on our calculations, our audited financial statements for the 2003 and 2004 fiscal years reflect a composite score of 2.1 and 1.8, respectively. The DOE has not yet reviewed our financial statements for the 2004 fiscal year. However, as a result of the corrections of certain errors in our prior financial statements, the DOE recomputed our consolidated composite scores for the 2001 and 2002 fiscal years and concluded that the recomputed consolidated composite scores for those two years were below 1.0. The DOE has informed us that, as a result, for a period of three years effective December 30, 2004, all of our current and future institutions have been placed on "Heightened Cash Monitoring, Type 1 status," and are required to timely notify the DOE with respect to certain enumerated oversight and financial events. We have entered into a settlement agreement with the DOE with respect to compliance issues related to this matter.

### **Recent Developments**

On January 11, 2005, we acquired the rights, title and interests in the assets used in the conduct and operation of New England Technical Institute for a purchase price of \$19.7 million. New England Technical Institute operates four schools in New Britain, Hamden, Shelton and Cromwell, Connecticut and provides programs in automotive technology, allied health, business and information technology and skilled trades, including culinary arts and nursing. This acquisition expanded our presence in the northeastern United States and increased the number of campuses we operate from 28 to 32.

### **Principal Stockholders**

Stonington Partners, Inc. II, or Stonington, our principal stockholder, is a private investment fund with over \$1.0 billion in assets under management. Alexis P. Michas, a Managing Partner of Stonington, and James J. Burke, Jr., a Partner, are members of our board of directors. As of May 31, 2005, Stonington owns, through Back to School Acquisition, L.L.C., its controlled subsidiary, 79.1% of the fully diluted equity of Lincoln Educational Services Corporation, and, after giving effect to this offering, Stonington will continue to own, through Back to School Acquisition, L.L.C., 69.9% of the fully diluted equity of Lincoln Educational Services Corporation after giving effect to the exercise of all options that have vested or vest prior to July 31, 2005.

Hart Capital LLC, or Hart Capital, which is the managing member of our second largest stockholder Five Mile River Capital Partners LLC, is a private investment fund that invests primarily in the education sector. Hart Capital has assisted us in our acquisitions and online programs. Steven W. Hart, the owner and President of Hart Capital, is a member of our board of directors. As of May 31, 2005, Hart Capital owns, through Five Mile River Capital Partners LLC, 13.6% of the fully diluted equity of Lincoln Educational Services Corporation; and after giving effect to this offering, Hart Capital will continue to own, through Five Mile River Capital Partners LLC, 8.4% of the fully diluted equity of Lincoln Educational Services Corporation after giving effect to the exercise of all options that have vested or vest prior to July 31, 2005.

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Our principal executive offices are located at 200 Executive Drive, Suite 340, West Orange, New Jersey 07052, and our telephone number at that address is (973) 736-9340.

## The Offering

### Common stock offered:

By us	3,000,000	shares
By the selling stockholders	1,000,000	shares
Total	4,000,000	shares
Shares outstanding after the offering	24,710,985	shares

### Use of proceeds

We estimate that our proceeds from this offering will be approximately \$53.4 million, after deducting underwriting discounts and commissions and estimated offering expenses payable by us. We intend to use these net proceeds primarily to repay \$31 million outstanding as of April 30, 2005, under our new credit agreement and for working capital and general corporate purposes, which may include the expansion of existing facilities, strategic acquisitions and the development and introduction of new programs. Any amounts we repay under our new credit agreement may be reborrowed in the future. See "Use of Proceeds."

We will not receive any proceeds from the sale of shares by the selling stockholders.

### Risk factors

See "Risk Factors" and other information included in this prospectus for a discussion of factors you should carefully consider before deciding to invest in shares of our common stock.

Proposed Nasdaq National Market symbol LINC

The number of shares of common stock outstanding after this offering is based on the number of shares outstanding as of May 31, 2005 and assumes no exercise of outstanding options after that date. Unless we indicate otherwise, all information in this prospectus (1) assumes no exercise of the overallotment option granted to the underwriters and (2) excludes:

- 1,985,495 shares issuable upon the exercise of options outstanding as of May 31, 2005 (including 110,602 shares to be issued in connection with the exercise of options by certain selling stockholders, immediately prior to the consummation of this offering.); and
- shares available for future option grants.

## Summary Historical and Pro Forma Financial and Other Data

The following tables set forth our summary historical and pro forma financial and other data as of the dates and for the periods indicated. The summary historical consolidated statement of operations data for each of the years in the three-year period ended December 31, 2004 have been derived from our audited consolidated financial statements included elsewhere in this prospectus. The summary historical condensed consolidated statement of operations data for the three months ended March 31, 2004 and 2005 and the summary historical condensed consolidated balance sheet data as of March 31, 2005 have been derived from our unaudited condensed consolidated financial statements, which are included elsewhere in this prospectus. In our opinion, the unaudited condensed consolidated financial statements have been prepared on the same basis as the audited financial statements and include all adjustments, consisting of only normal recurring adjustments, necessary for fair presentation of the information set forth therein. The results for any interim period are not necessarily indicative of the results that may be expected for a full year. The summary pro forma statement of operations and other data for the year ended December 31, 2004 and for the three months ended March 31, 2005 reflects our acquisitions of Southwestern College (which occurred on January 23, 2004) and New England Technical Institute (which occurred on January 11, 2005) as if each of these acquisitions had occurred on January 1, 2004. The summary as adjusted balance sheet data as of March 31, 2005 reflects our sale of common stock in this offering at an estimated initial public offering price of \$20.00 per share (the mid-point of the range set forth on the cover of this prospectus) and the application of the net proceeds as described under "Use of Proceeds." The historical results included below and elsewhere in this prospectus are not necessarily indicative of our future performance. The summary pro forma and as adjusted financial data do not purport to be indicative of the results of operations that would have been achieved had these acquisitions and this offering been consummated as of the dates assumed, nor are the results necessarily indicative of our future results of operations.

You should read the following summary historical, pro forma and as adjusted financial and other data in conjunction with "Selected Financial Information," "Unaudited Pro Forma Financial Information," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements along with the notes thereto, included elsewhere in this prospectus.

	Year Ended December 31,				Three Months Ended March 31,		
	2002	2003	2004	2004 Pro Forma	2004	2005	2005 Pro Forma
	(dollars in thousands)						
<b>Statement of Operations Data:</b>							
Revenues	\$ 139,201	\$ 198,881	\$ 261,275	\$ 276,223	\$ 59,574	\$ 70,869	\$ 71,147
Costs and expenses:							
Educational services and facilities	66,580	85,201	104,843	113,204	24,163	29,084	29,292
Selling, general and administrative(1)	71,753	97,714	130,941	136,570	31,778	39,284	39,355
(Gain) loss on sale of assets	(1,082)	(22)	368	368	—	—	—
Total costs and expenses	137,251	182,893	236,152	250,142	55,941	68,368	68,647
Operating income	1,950	15,988	25,123	26,081	3,633	2,501	2,500
Gain on sale of securities	—	211	—	—	—	—	—
Interest income	212	133	104	133	13	8	8
Interest expense(2)	(2,937)	(2,758)	(3,007)	(4,145)	(842)	(1,194)	(1,194)
Income (loss) before income taxes	(775)	13,574	22,220	22,069	2,804	1,315	1,314
Provision (benefit) for income taxes	(101)	5,355	9,242	9,179	1,186	543	543
Net (loss) income	\$ (674)	\$ 8,219	\$ 12,978	\$ 12,890	\$ 1,618	\$ 772	\$ 771

	Year Ended December 31,				Three Months Ended March 31,		
	2002	2003	2004	2004 Pro Forma	2004	2005	2005 Pro Forma
	(dollars in thousands, except per share data)						
<b>Income (loss) per share:</b>							
Basic	\$ (0.03)	\$ 0.38	\$ 0.60	\$ 0.59	\$ 0.07	\$ 0.04	\$ 0.04
Diluted	(0.03)	0.37	0.56	0.56	0.07	0.03	0.03
<b>Other Data:</b>							
EBITDA(3)	\$ 9,151	\$ 26,078	\$ 35,872	\$ 37,686	\$ 3,729	\$ 2,557	\$ 2,556
EBITDA margin(4)	6.6%	13.1%	13.7%	13.6%	6.3%	3.6%	3.6%
Net cash provided by (used in) operating activities	9,723	27,166	26,674	—	957	(3,059)	—
Net cash used in investing activities	(2,155)	(8,680)	(38,311)	—	(20,617)	(22,886)	—
Net cash provided by (used in) financing activities	(3,889)	19,400	4,117	—	(3,008)	(5,451)	—
Capital expenditures	3,598	13,154	23,813	—	6,276	3,195	—
Number of campuses (at end of period)	23	23	28	32	28	32	32
Average student enrollments	9,155	12,487	16,266	17,362	15,417	17,692	17,692

As of March 31, 2005

Actual	As Adjusted
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(dollars in thousands)

**Balance Sheet Data:**

Cash and cash equivalents	\$ 10,049	\$ 32,449
Working capital (deficit)(5)	(14,782)	7,618
Total assets	156,098	178,498
Total debt(6)	42,006	11,006
Shareholders' equity	\$ 59,501	\$ 112,901

- (1) Selling, general and administrative expenses include (a) a \$2.1 million charge for the year ended December 31, 2004 to give effect to the one-time write-off of deferred offering costs, (b) compensation costs of approximately \$0.5 million, \$0.8 million and \$1.8 million for the years ended December 31, 2002, 2003 and 2004, respectively, and \$0.7 million and \$0.4 million for the three months ended March 31, 2004 and 2005, respectively, related to the adoption of SFAS No. 123, "Accounting for Stock Based Compensation" and (c) a \$0.7 million one-time non-cash charge for the year ended December 31, 2004 related to the timing of rent expense for our schools during the period of construction of leasehold improvements and to align the depreciation lives of our leasehold improvements to the terms of our noncancellable leases, including renewal options.
- (2) Interest expense for the three months ended March 31, 2005 includes a \$0.4 million non-cash charge resulting from the write-off of deferred finance costs under our old credit agreement.
- (3) EBITDA is a measurement not recognized in financial statements presented in accordance with GAAP. We define EBITDA as net (loss) income before interest expense (net of interest income), provision (benefit) for income taxes and depreciation and amortization. For the year ended December 31, 2003, EBITDA includes a gain on sale of securities of \$0.2 million. EBITDA is presented because we believe it is a useful indicator of our performance and our ability to make strategic acquisitions and meet capital expenditure and debt service requirements. It is not, however, intended to represent cash flows from operations as defined by GAAP and should not be used as an alternative to net income (loss) as an indicator of operating performance or to cash

flow as a measure of liquidity. EBITDA is not necessarily comparable to similarly titled measures used by other companies. Following is a reconciliation of net (loss) income to EBITDA:

	Year Ended December 31,				Three Months Ended March 31,		
	2002	2003	2004	2004 Pro Forma	2004	2005	2005 Pro Forma
	(dollars in thousands)						
Net (loss) income	\$ (674)	\$ 8,219	\$ 12,978	\$ 12,890	\$ 1,618	\$ 772	\$ 771
Interest expense, net	2,725	2,625	2,903	4,012	829	1,186	1,186
Provision (benefit) for income taxes	(101)	5,355	9,242	9,179	1,186	543	543
Depreciation and amortization	7,201	9,879	10,749	11,605	96	56	56
<b>EBITDA</b>	<b>\$ 9,151</b>	<b>\$ 26,078</b>	<b>\$ 35,872</b>	<b>\$ 37,686</b>	<b>\$ 3,729</b>	<b>\$ 2,557</b>	<b>\$ 2,556</b>

- (4) EBITDA divided by revenues.
- (5) Working capital (deficit) is defined as current assets less current liabilities.
- (6) Total debt consists of long-term debt including current portion, capital leases, auto loans and a finance obligation for \$9.7 million incurred in connection with a sale-leaseback transaction as further described in Note 9 to the consolidated financial statements included elsewhere in this prospectus.

## RISK FACTORS

*You should carefully consider each of the risks below, together with all of the other information contained in this prospectus, before deciding to invest in shares of our common stock.*

*If any of the following risks is not managed, our business, prospects, financial condition and results of operations could be materially adversely affected, the market price of your shares could decline, and you could lose all or part of your investment.*

### **Risks Related to Our Industry**

**Failure of our schools to comply with the extensive regulatory requirements for school operations could result in financial penalties, restrictions on our operations and loss of external financial aid funding, which could affect our revenues and impose significant operating restrictions on us.**

Our schools are subject to extensive regulation by federal and state governmental agencies and by accrediting commissions. In particular, the Higher Education Act of 1965, as amended, and the regulations promulgated thereunder by the U.S. Department of Education, or the DOE, set forth numerous standards that our schools must satisfy to participate in various federal student financial assistance programs under Title IV Programs. In 2004, we derived approximately 81% of our revenues, calculated on a cash basis, from Title IV Programs. To participate in Title IV Programs, each of our schools must receive and maintain authorization by the applicable education agencies in the state in which each school is physically located, be accredited by an accrediting commission recognized by the DOE and be certified as an eligible institution by the DOE. These regulatory requirements 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 also affect our ability to acquire or open additional schools, add new educational programs, expand existing educational programs, and change our corporate structure and ownership.

If any of our schools fails to comply with applicable regulatory requirements, the school and its related main campus and/or additional locations could be subject to the loss of state licensure or accreditation, the loss of eligibility to participate in and receive funds under the Title IV Programs, the loss of the ability to grant degrees, diplomas and certificates, provisional certification, or the imposition of liabilities or monetary penalties, each of which could adversely affect our revenues and impose significant operating restrictions upon us. In addition, the loss by any of our schools of its accreditation, its state authorization or license, or its eligibility to participate in Title IV Programs constitutes an event of default under our new credit agreement, which we and our subsidiaries entered into with a syndicate of banks on February 15, 2005, which could result in the acceleration of all amounts then outstanding under our new credit agreement. The various regulatory agencies periodically revise their requirements and modify their interpretations of existing requirements and restrictions. We cannot predict with certainty how any of these regulatory requirements will be applied or whether each of our schools will be able to comply with these requirements or any additional requirements instituted in the future.

**If we or our eligible institutions do not meet the financial responsibility standards prescribed by the DOE, as has occurred in the past, we may be required to post letters of credit or our eligibility to participate in Title IV Programs could be terminated or limited, which could significantly reduce our student population and revenues.**

To participate in Title IV Programs, an eligible institution must satisfy specific measures of financial responsibility prescribed by the DOE or post a letter of credit in favor of the DOE and possibly accept other conditions on its participation in Title IV Programs. Any obligation to post one or more letters of credit would increase our costs of regulatory compliance. Our inability to obtain a

required letter of credit or limitations on, or termination of, our participation in Title IV Programs could limit our students' access to various government-sponsored student financial aid programs, which could significantly reduce our student population and revenues.

Each year, based on the financial information submitted by an eligible institution that participates in Title IV Programs, the DOE calculates three financial ratios for the institution: an equity ratio, a primary reserve ratio and a net income ratio. Each of these ratios is scored separately and then combined into a composite score to measure the institution's financial responsibility. As a result of the corrections of certain errors, including accounting for advertising costs, a sale leaseback transaction, rent and certain other individually insignificant adjustments, in our prior financial statements, the DOE recomputed our consolidated composite scores for the years ended December 31, 2001 and 2002 and concluded that the recomputed consolidated composite scores for those two years were below 1.0. In addition, we identified certain additional errors in our financial statements for the year ended December 31, 2003 relating to our accounting for stock-based compensation and accrued bonuses that did not result in a recomputation of our 2003 composite score. The DOE has informed us that as a result, for a period of three years effective December 30, 2004, all of our current and future institutions have been placed on "Heightened Cash Monitoring, Type 1 status," a less favorable Title IV fund payment system that requires us to credit student accounts before drawing down Title IV funds and to timely notify the DOE with respect to certain enumerated oversight and financial events. If we fail to comply with these requirements, we may lose our eligibility for continued participation in Title IV Programs or may be required to post irrevocable letters of credit. We expect that the DOE will also consider our audited financial statements and composite scores for our most recent fiscal year as well as for other fiscal years after 2001 and 2002 when each of our institutions is next required to apply for recertification to participate in Title IV Programs. Additionally, since the DOE concluded that the previously computed composite scores for 2001 and 2002 were overstated, we agreed to pay \$165,000 to the DOE pursuant to a settlement agreement with respect to compliance issues related to this matter. We paid this amount on March 3, 2005.

**If we fail to demonstrate "administrative capability" to the DOE, our business could suffer.**

DOE regulations specify extensive criteria an institution must satisfy to establish that it has the requisite "administrative capability" to participate in Title IV Programs. These criteria require, among other things, that the institution:

- comply with all applicable Title IV regulations;
- have capable and sufficient personnel to administer Title IV Programs;
- have acceptable methods of defining and measuring the satisfactory academic progress of its students;
- provide financial aid counseling to its students; and
- submit in a timely manner all reports and financial statements required by the regulations.

If an institution fails to satisfy any of these criteria or any other DOE regulation, the DOE may:

- require the repayment of Title IV funds;
- impose a less favorable payment system for the institution's receipt of Title IV funds;
- 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 the DOE's "administrative capability" requirements, one or more of our institutions, including its additional locations, could be limited in its access to, or lose, Title IV Program funding. A decrease in Title IV funding could adversely affect our revenues, as we received approximately 81% of our revenues (calculated on a cash basis of accounting) from Title IV Programs in 2004.

**We are subject to fines and other sanctions if we pay impermissible commissions, bonuses or other incentive payments to individuals involved in certain recruiting, admissions or financial aid activities, which could increase our cost of regulatory compliance and adversely affect our results of operations.**

A school participating in Title IV Programs may not provide any commission, bonus or other incentive payment based on success in enrolling students or securing financial aid to any person involved in any student recruiting or admission activities or in making decisions regarding the awarding of Title IV Program funds. The law and regulations governing this requirement do not establish clear criteria for compliance in all circumstances. If we are found to have violated this law, we could be fined or otherwise sanctioned by the DOE or we could face litigation filed under the *qui tam* provisions of the Federal False Claims Act. See "Business—Legal Proceedings."

**If our schools do not maintain their state authorizations and their accreditation, they may not participate in Title IV Programs, which could adversely affect our student population and revenues.**

An institution that grants degrees, diplomas or certificates must be authorized by the appropriate education agency of the state in which it is located and, in some cases, other states. Requirements for authorization vary substantially among states. The school must be authorized by each state in which it is physically located in order for its students to be eligible for funding under Title IV Programs. Loss of state authorization by any of our schools from the education agency of the state in which the school is located would end that school's eligibility to participate in Title IV Programs and could cause us to close the school.

A school must be accredited by an accrediting commission recognized by the DOE in order to participate in Title IV Programs. 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, including achieving and maintaining stringent retention, completion and placement outcomes. Certain states require institutions to maintain accreditation as a condition of continued authorization to grant degrees. The Higher Education Act requires accrediting commissions recognized by the DOE to review and monitor many aspects of an institution's operations and to take appropriate disciplinary action when the institution fails to comply with the accrediting agency's standards. Loss of accreditation by any of our main campuses would result in the termination of eligibility of that school and all of its branch campuses to participate in Title IV Programs and could cause us to close the school and its branches.

**Our institutions would lose eligibility to participate in Title IV Programs if the percentage of their revenues derived from those programs were too high, which could reduce our student population and revenues.**

Each of our institutions would immediately lose its eligibility to participate in Title IV Programs if it derived more than 90% of its revenues (calculated on a cash basis) from those programs in any fiscal year as calculated in accordance with DOE regulations. Any institution that violates this rule is ineligible to apply to regain its eligibility until the following fiscal year. Based on our calculations, none of our institutions received more than 90% of its revenues in fiscal year 2004, and our institution with the highest percentage received approximately 87% of its revenues, from Title IV Programs. If any of our institutions loses eligibility to participate in Title IV Programs, that loss would cause an event of default under our new credit agreement, which could result in the acceleration of any indebtedness.

then outstanding under our new credit agreement, and would also adversely affect our students' access to various government-sponsored student financial aid programs, which could reduce our student population and revenues. These calculations are required to be made on a cash basis of accounting.

**Our institutions would lose eligibility to participate in Title IV Programs if their former students defaulted on repayment of their federal student loans in excess of specified levels, which could reduce our student population and revenues.**

An institution of higher education, such as each of our institutions, loses its eligibility to participate in some or all Title IV Programs if its former students default on the repayment of their federal student loans in excess of specified levels. If any of our institutions exceeds the official student loan default rates published by the DOE, it will lose eligibility to participate in Title IV Programs. That loss would adversely affect our students' access to various government-sponsored student financial aid programs, which could reduce our student population and revenues.

**We are subject to sanctions if we fail to correctly calculate and timely return Title IV Program funds for students who withdraw before completing their educational program, which could increase our cost of regulatory compliance and decrease our profit margin.**

An institution participating in Title IV Programs must correctly calculate the amount of unearned Title IV Program funds that have been credited to students who withdraw from their educational programs before completing them and must return those unearned funds in a timely manner, generally within 30 days of the date the institution determines that the student has withdrawn. If the unearned funds are not properly calculated and timely returned, we may have to post a letter of credit in favor of the DOE or may be otherwise sanctioned by the DOE, which could increase our cost of regulatory compliance and adversely affect our results of operations. One of our schools, Southwestern College, made late returns of Title IV Program funds in excess of the DOE's prescribed threshold. As a result, in accordance with DOE regulations, we submitted a letter of credit in favor of the DOE in the amount of \$28,400. Another of our schools, Nashville Auto-Diesel College, made late returns of Title IV Program funds in excess of the DOE's prescribed threshold during periods that predated our acquisition of that school. As a result, in accordance with DOE regulations, we submitted a letter of credit in favor of the DOE in the amount of \$327,000. Based on the absence of late returns of Title IV Program funds in excess of the DOE's prescribed thresholds in Nashville Auto-Diesel College's compliance audits for the 2002 fiscal year after our acquisition and for the 2003 fiscal year, we were allowed to have this letter of credit expire in accordance with its terms in March 2004. We could be required to provide letters of credit in favor of the DOE in the future if any of our institutions makes late returns of Title IV Program funds in excess of the DOE's prescribed thresholds, which could increase our cost of regulatory compliance.

**If regulators do not approve our acquisition of a school that participates in Title IV Programs, the acquired school would no longer be permitted to participate in Title IV Programs, which could impair our ability to operate the acquired school as planned or to realize the anticipated benefits from the acquisition of that school.**

If we acquire a school that participates in Title IV Programs, we must obtain approval from the DOE and applicable state education agencies and accrediting commissions in order for the school to be able to continue operating and participating in Title IV Programs. An acquisition can result in the temporary suspension of the acquired school's participation in Title IV Programs unless we submit to the DOE a timely and materially complete application for recertification and the DOE issues a temporary provisional program participation agreement. If we were unable to timely re-establish the state authorization, accreditation or DOE certification of the acquired school, our ability to operate the acquired school as planned or to realize the anticipated benefits from the acquisition of that school

could be impaired. Southwestern College received an executed provisional program participation agreement from the DOE. In connection with our acquisition of New England Technical Institute, that institution received an executed temporary provision program participation agreement. We are in the process of obtaining final approval of that acquisition from the DOE. We expect the DOE approval issued to New England Technical Institute at the conclusion of the pending change in ownership approval process to be provisional.

**If regulators do not approve or delay their approval of transactions involving a change of control of our company or any of our schools, our ability to participate in Title IV Programs may be impaired.**

If we or any of our schools experience a change of control under the standards of applicable state education agencies, our accrediting commissions or the DOE, we or the affected schools must seek the approval of the relevant regulatory agencies in order for us or the acquired school to participate in Title IV Programs. Transactions or events that constitute a change of control include significant acquisitions or dispositions of our common stock or significant changes in the composition of our board of directors. Some of these transactions or events may be beyond our control. Our failure to obtain, or a delay in receiving, approval of any change of control from any state in which our schools are located or other states as the case may be, our accrediting commissions or the DOE could impair or result in the termination of our accreditation, state licensure or ability to participate in Title IV Programs. Our failure to obtain, or a delay in obtaining, approval of any change of control from any state in which we do not have a school but in which we recruit students could require us to suspend our recruitment of students in that state until we receive the required approval. The potential adverse effects of a change of control with respect to participation in Title IV Programs could influence future decisions by us and our stockholders regarding the sale, purchase, transfer, issuance or redemption of our stock. In addition, the adverse regulatory effect of a change of control also could discourage bids for your shares of our common stock and could have an adverse effect on the market price of your shares.

The DOE and both of our accrediting agencies have confirmed that this offering will not be a change of control under their respective standards. Each school has received confirmation from the educational agency that authorizes the school to operate in the state in which it is physically located that the offering will not be a change of control with the exception of our five schools in Pennsylvania, our school in Texas, and our school in Kentucky. Our Pennsylvania schools will be subject to review by the Pennsylvania Department of Education to reaffirm their approvals as a result of this offering. Although we expect the Pennsylvania Department of Education to reaffirm the approvals of our Pennsylvania schools after this offering, there can be no assurance that the agency will reaffirm those approvals. The Texas Workforce Commission has not yet determined whether the offering will be a change of control. We expect the Texas Workforce Commission to make a determination prior to the consummation of the offering. If the Texas Workforce Commission determines that the offering is a change of control, our Texas school would be required to submit a change in ownership application to the Texas Workforce Commission and to obtain the Texas Workforce Commission's approval prior to the consummation of this offering. We have been informed that the Kentucky State Board for Proprietary Education will determine whether the offering constitutes a change of control after the offering takes place. If the agency determines that the offering is a change of control, our Kentucky school would be required to submit a change in ownership application to the Kentucky State Board for Proprietary Education.

**Congress may change the law or reduce funding for Title IV Programs, which could reduce our student population, revenues or profit margin.**

Congress periodically revises the Higher Education Act and other laws governing Title IV Programs and annually determines the funding level for each Title IV Program. During 2005, Congress is expected to devote significant attention to reauthorizing the Higher Education Act, which will likely

result in numerous changes. Approximately 81% of our revenues in 2004 (calculated on a cash basis of accounting) were derived from Title IV programs. Any action by Congress that significantly reduces funding for Title IV Programs or the ability of our schools or students to receive funding through these programs could reduce our student population and revenues. Congressional action may also require us to modify our practices in ways that could result in increased administrative costs and decreased profit margin.

In addition current requirements for student and school participation in Title IV Programs may change or one or more of the present Title IV Programs could be replaced by other programs with materially different student or school eligibility requirements. If we cannot comply with the provisions of the Higher Education Act, as they may be revised, or if the cost of such compliance is excessive, our revenues or profit margin could be adversely affected.

**Regulatory agencies or third parties may conduct compliance reviews, bring claims or initiate litigation against us. If the results of these reviews or claims are unfavorable to us, our results of operations and financial condition could be adversely affected.**

Because we operate in a highly regulated industry, we are subject to compliance reviews and claims of noncompliance and lawsuits by government agencies and third parties. If the results of these reviews or proceedings are unfavorable to us, or if we are unable to defend successfully against third-party lawsuits or claims, we may be required to pay money damages or be subject to fines, limitations on the operations of our business, loss of federal funding, injunctions or other penalties. Even if we adequately address issues raised by an agency review or successfully defend a third-party 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 defend those lawsuits or claims. The DOE conducted a program review at Southwestern College and issued an initial program review report in which it identified potential instances of noncompliance with DOE requirements. Southwestern College has submitted an initial response to the report, is in the process of submitting additional information to the DOE and is waiting for a response or determination from the DOE. The DOE also conducted a program review at Nashville Auto-Diesel College and issued a final program determination stating that Nashville Auto-Diesel College had taken the required corrective actions to resolve four of five findings of noncompliance with DOE requirements and requiring that Nashville Auto-Diesel College pay the DOE \$14,499 based on the fifth finding. The fifth finding related to Nashville Auto-Diesel College granting Federal Supplemental Educational Opportunity Grant matching funds to ineligible students. Nashville Auto-Diesel College expects to pay this amount to the DOE in the second quarter of 2005.

#### **Risks Related to Our Business**

**If we fail to effectively manage our growth, we may incur higher costs and expenses than we anticipate in connection with our growth.**

We have experienced a period of significant growth since 1999. Our continued growth has strained and may in the future strain our management, operations, employees or other resources. We will need to continue to assess the adequacy of our staff, controls and procedures to meet the demands of our continued growth. We may not be able to maintain or accelerate our current growth rate, effectively manage our expanding operations or achieve planned growth on a timely or profitable basis. If we are unable to manage our growth effectively while maintaining appropriate internal controls, we may experience operating inefficiencies that likely will increase our expected costs.

**We may not be able to successfully integrate acquisitions into our business, which may adversely affect our results of operations and financial condition.**

Since 1999, we have acquired a number of schools and we may continue to grow our business through acquisitions. The anticipated benefits of an acquisition may not be achieved unless we successfully integrate the acquired school or schools into our operations and are able to effectively manage, market and apply our business strategy to any acquired schools. Integration challenges include, among others, regulatory approvals, significant capital expenditures, assumption of known and unknown liabilities and our ability to control costs. The successful integration of future acquisitions may also require substantial attention from our senior management and the senior management of the acquired schools, which could decrease the time that they devote to the day-to-day management of our business. The difficulties of integration may initially be increased by the necessity of integrating personnel with disparate business backgrounds and corporate cultures. Management's focus on the integration of acquired schools and on the application of our business strategy to those schools could interrupt or cause loss of momentum in our other ongoing activities.

**Failure on our part to establish and operate additional schools or campuses or effectively identify suitable expansion opportunities could reduce our ability to implement our growth strategy.**

As part of our business strategy, we anticipate opening and operating new schools or campuses. Establishing new schools or campuses poses unique challenges and requires us to make investments in management and capital expenditures, incur marketing expenses and devote other resources that are different, and in some cases greater than those required with respect to the operation of acquired schools.

To open a new school or campus, we would be required to obtain appropriate state and accrediting commission approvals, which may be conditioned or delayed in a manner that could significantly affect our growth plans. In addition, to be eligible for federal Title IV Program funding, a new school or campus would have to be certified by the DOE and would require federal authorization and approvals. In the case of entirely separate, freestanding U.S. schools, a minimum of two years' operating history is required to be eligible for Title IV Program funding. We cannot be sure that we will be able to identify suitable expansion opportunities to maintain or accelerate our current growth rate or that we will be able to successfully integrate or profitably operate any new schools or campuses. Additionally, we began offering online courses in mid-2004. We have not previously offered courses online and, accordingly, these programs may not be successful. A failure by us to effectively identify suitable expansion opportunities and to establish and manage the operations of newly established schools or online offerings could slow our growth and make any newly established schools or our online programs unprofitable or more costly to operate than we had planned.

**Our success depends in part on our ability to update and expand the content of existing programs and develop new programs in a cost-effective manner and on a timely basis.**

Prospective employers of our graduates increasingly demand that their entry-level employees possess appropriate technological skills. These skills are becoming more sophisticated in line with technological advancements in the automotive, diesel, information technology, or IT, skilled trades and healthcare industries. Accordingly, educational programs at our schools must keep pace with those technological advancements. The expansion of our existing programs and the development of new programs may not be accepted by our students, prospective employers or the technical education market. Even if we are able to develop acceptable new programs, we may not be able to introduce these new programs as quickly as our competitors or as quickly as employers demand. If we are unable to adequately respond to changes in market requirements due to financial constraints, unusually rapid technological changes or other factors, our ability to attract and retain students could be impaired, our placement rates could suffer and our revenues could be adversely affected.

In addition, if we are unable to adequately anticipate the requirements of the employers we serve, we may offer programs that do not teach skills useful to prospective employers or students seeking a technical or career-oriented education which could affect our placement rates and our ability to attract and retain students, causing our revenues to be adversely affected.

**We may not be able to retain our key personnel or hire and retain the personnel we need to sustain and grow our business.**

Our success has depended, and will continue to depend, largely on the skills, efforts and motivation of our executive officers who generally have significant experience within the post-secondary education industry. Our success also depends in large part upon our ability to attract and retain highly qualified faculty, school directors, administrators and corporate management. Due to the nature of our business, we face significant competition in the attraction and retention of personnel who possess the skill sets that we seek. In addition, key personnel may leave us and subsequently compete against us. Furthermore, we do not currently carry "key man" life insurance on any of our employees. The loss of the services of any of our key personnel, or our failure to attract and retain other qualified and experienced personnel on acceptable terms, could have an adverse effect on our ability to operate our business efficiently and to execute our growth strategy.

**If we are unable to hire, retain and continue to develop and train our employees responsible for student recruitment, the effectiveness of our student recruiting efforts would be adversely affected.**

In order to support revenue growth, we need to hire new employees dedicated to student recruitment and retain and continue to develop and train our current student recruitment personnel. Our ability to develop a strong student recruiting team may be affected by a number of factors, including our ability to integrate and motivate our student recruiters; our ability to effectively train our student recruiters; the length of time it takes new student recruiters to become productive; regulatory restrictions on the method of compensating student recruiters; the competition in hiring and retaining student recruiters; and our ability to effectively manage a multi-location educational organization. If we are unable to hire, develop or retain our student recruiters, the effectiveness of our student recruiting efforts would be adversely affected.

**Competition could decrease our market share and cause us to lower our tuition rates.**

The post-secondary education market is highly competitive. Our schools compete for students and faculty with traditional public and private two-year and four-year colleges and universities and other proprietary schools, many of which have greater financial resources than we do. Some traditional public and private colleges and universities, as well as other private career-oriented schools, offer programs that may be perceived by students to be similar to ours. Most public institutions are able to charge lower tuition than our schools, due in part to government subsidies and other financial resources not available to for-profit schools. Some of our competitors also have substantially greater financial and other resources than we have which may, among other things, allow our competitors to secure strategic relationships with some or all of our existing strategic partners or develop other high profile strategic relationships or devote more resources to expanding their programs and their school network, all of which could affect the success of our marketing programs. In addition, some of our competitors already have a more extended or dense network of schools and campuses than we do, enabling them to recruit students more effectively from a wider geographic area. If we are unable to compete effectively with these institutions for students, our student enrollments and revenues will be adversely affected.

We may be required to reduce tuition or increase spending in response to competition in order to retain or attract students or pursue new market opportunities. As a result, our market share, revenues and operating margin may be decreased. We cannot be sure that we will be able to compete successfully against current or future competitors or that the competitive pressures we face will not adversely affect our revenues and profitability.

**Our financial performance depends in part on our ability to continue to develop awareness and acceptance of our programs among high school graduates and working adults looking to return to school.**

The awareness of our programs among high school graduates and working adults looking to return to school is critical to the continued acceptance and growth of our programs. Our inability to continue to develop awareness of our programs could reduce our enrollments and impair our ability to increase our revenues or maintain profitability. The following are some of the factors that could prevent us from successfully marketing our programs:

- student dissatisfaction with our programs and services;
- diminished access to high school student populations;
- our failure to maintain or expand our brand or other factors related to our marketing or advertising practices; and
- our inability to maintain relationships with automotive, diesel, healthcare, skilled trades and IT manufacturers and suppliers.

**If students fail to pay their outstanding balances, our profitability will be adversely affected.**

We offer a variety of payment plans to help students pay the portion of their education expense not covered by financial aid programs. These balances are unsecured and not guaranteed. Although we have reserved for estimated losses related to unpaid student balances, losses in excess of the amounts we have reserved for bad debts will result in a reduction in our profitability.

**An increase in interest rates could adversely affect our ability to attract and retain students.**

Interest rates have reached historical lows in recent years, creating a favorable borrowing environment for our students. Much of the financing our students receive is tied to floating interest rates. Therefore, any future increase in interest rates will result in a corresponding increase in the cost to our existing and prospective students of financing their education, which could result in a reduction in our student population and revenues. Higher interest rates could also contribute to higher default rates with respect to our students' repayment of their education loans. Higher default rates may in turn adversely impact our eligibility for Title IV Program participation, which could result in a reduction in our student population.

**Seasonal and other fluctuations in our results of operations could adversely affect the trading price of our common stock.**

Our results of operations fluctuate as a result of seasonal variations in our business, principally due to changes in total student population. Student population varies as a result of new student enrollments, graduations and student attrition. Historically, our schools have had lower student populations in our first and second quarters than in the remainder of the year because fewer new students start during the summer months. Our expenses, however, do not generally vary at the same rate as changes in our student population and revenues and, as a result, do not fluctuate significantly on a quarterly basis. We expect quarterly fluctuations in results of operations to continue as a result of seasonal enrollment patterns. Such patterns may change, however, as a result of acquisitions, new school openings, new program introductions and increased enrollments of adult students. These fluctuations may result in volatility or have an adverse effect on the market price of our common stock.

**We cannot predict our future capital needs, and if we are unable to secure additional financing when needed, our operations and revenues would be adversely affected.**

We may need to raise additional capital in the future to fund our operations, expand our markets and program offerings or respond to competitive pressures or perceived opportunities. We cannot be sure that additional financing will be available to us on favorable terms, or at all. If adequate funds are not available when required or on acceptable terms, we may be forced to cease our operations and, even if we are able to continue our operations, our ability to increase student enrollments and revenues would be adversely affected.

**Our schools' failure to comply with environmental laws and regulations governing our activities could result in financial penalties and other costs which could adversely impact our results of operations.**

We use hazardous materials at some of our schools and generate small quantities of waste, such as used oil, antifreeze, paint and car batteries. As a result, our schools are subject to a variety of environmental laws and regulations governing, among other things, the use, storage and disposal of solid and hazardous substances and waste, and the clean-up of contamination at our facilities or off-site locations to which we send or have sent waste for disposal. In the event we do not maintain compliance with any of these laws and regulations, or are responsible for a spill or release of hazardous materials, we could incur significant costs for clean-up, damages, and fines or penalties which could adversely impact our results of operations.

**Approximately 31% of our schools are concentrated in the states of New Jersey and Pennsylvania and a change in the general economic or regulatory conditions in these states could increase our costs and have an adverse effect on our revenues.**

As of March 31, 2005, we operated 32 campuses in 15 states. Ten of those schools are located in the states of New Jersey and Pennsylvania. As a result of this geographic concentration, any material change in general economic conditions in New Jersey or Pennsylvania could reduce our student enrollment in our schools located in these states and thereby reduce our revenues. In addition, the legislatures in the states of New Jersey and/or Pennsylvania could change the laws in those states or adopt regulations regarding private, for-profit post-secondary coeducation institutions which could place additional burdens on us. If we were unable to comply with any such new legislation, we could be prohibited from operating in those jurisdictions, which could reduce our revenues.

**The number of lenders and financial institutions that make federally guaranteed student loans and that guarantee Title IV loans is relatively small. The loss of any of these lenders or guarantors could cause a material adverse effect on our revenues.**

In 2004, six lenders provided funding to more than 91% of the students at the schools we owned. While we believe that other lenders would be willing to make federally guaranteed student loans to our students if loans were no longer available from our current lenders, we cannot assure you that there are other lenders who would make federally guaranteed loans to our students. If such alternative lenders were not forthcoming, our enrollment and our results of operations could be materially and adversely affected.

In addition, the primary guarantors for the Title IV loans of our students are USA Group, a subsidiary of Sallie Mae, and New Jersey Higher Education Assistance Authority, an independent agency of the State of New Jersey. These two agencies currently guarantee 91% of all federally guaranteed student loans made to students enrolled at our schools. There are six other guaranty agencies that guarantee student loans made to students enrolled at our schools. We believe that other guaranty agencies would be willing to guarantee loans to our students if any of these guarantee agencies ceased guaranteeing those loans or reduced the volume of loans they guarantee; however, if

we cannot find other guarantors, our enrollment and our revenues could be materially and adversely affected.

## **Risks Related to the Offering**

### **The price of our common stock may be volatile and you could lose all or part of your investment.**

Volatility in the market price of our common stock may prevent you from being able to sell your shares at or above the price you paid for your shares. The market price of our common stock could fluctuate significantly for various reasons, which include:

- our quarterly or annual earnings or those of other companies in our industry;
- the public's reaction to our press releases, our other public announcements and our filings with the SEC;
- changes in earnings estimates or recommendations by research analysts who track our common stock or the stocks of other companies in our industry;
- new laws or regulations or new interpretations of laws or regulations applicable to our business;
- changes in accounting standards, policies, guidance, interpretations or principles;
- changes in general conditions in the United States and global economies or financial markets, including those resulting from war, incidents of terrorism or responses to such events; and
- sales of common stock by our directors and executive officers.

In addition, in recent years, the stock market has experienced extreme price and volume fluctuations. This volatility has had a significant impact on the market price of securities issued by many companies, including companies in our industry. The price of our common stock could fluctuate based upon factors that have little or nothing to do with our company, and these fluctuations could materially reduce our stock price.

In the past, following periods of market volatility in the price of a company's securities, security holders have often instituted class action litigation. If the market value of our common stock experiences adverse fluctuations and we become involved in this type of litigation, regardless of the outcome, we could incur substantial legal costs and our management's attention could be diverted from the operation of our business, causing our business to suffer.

### **There is no existing market for our common stock and we do not know if one will develop to provide you with adequate liquidity.**

Prior to this offering, there has not been a public market for our common stock. An active market for our common stock may not develop following the completion of this offering, or if developed, may not be maintained. If an active trading market does not develop, you may have difficulty selling any of our common stock that you buy. The initial public offering price for the shares will be determined by negotiations between us and the representative of the underwriters and may not be indicative of prices that will prevail in the open market following this offering. Consequently, you may not be able to sell shares of our common stock at prices equal to or greater than the price paid by you in this offering.

### **Future sales of our common stock, including shares purchased in this offering, in the public market could lower our stock price.**

Sales of substantial amounts of our common stock in the public market following this offering by our existing stockholders, upon the exercise of outstanding stock options or by persons who acquire shares in this offering may adversely affect the market price of our common stock. Such sales could

also create public perception of difficulties or problems with our business. These sales might also make it more difficult for us to sell securities in the future at a time and price that we deem necessary or appropriate.

Upon the completion of this offering, we will have outstanding 24,710,985 shares of common stock, assuming no exercise of the underwriters' overallotment option and no exercise of outstanding options after May 31, 2005, of which:

- all of the 4,000,000 shares we and the selling stockholders are selling in this offering may be resold in the public market immediately after this offering, other than shares purchased by our affiliates; and
- 20,710,985 shares will be "restricted securities" as defined in Rule 144 under the Securities Act eligible for sale in the public market pursuant to the provisions of Rule 144, of which 20,607,210 shares are subject to lock-up agreements and will become available for resale in the public market beginning 180 days after the date of this prospectus.

With limited exceptions, these lock-up agreements prohibit a stockholder from selling, contracting to sell or otherwise disposing of any common stock or securities that are convertible or exchangeable for common stock for 180 days from the date of this prospectus, although Merrill Lynch may, in its sole discretion and at any time without notice, release all or any portion of the securities subject to these lock-up agreements. Merrill Lynch has advised us that it has no present intent or arrangement to release any shares subject to a lock-up, and will consider the release of any lock-up on a case-by-case basis. Upon a request to release any shares subject to a lock-up, Merrill Lynch would consider the particular circumstances surrounding the request, including, but not limited to, the length of time before the lock-up expires, the number of shares requested to be released, reasons for the request, the possible impact on the market or our common stock and whether the holder of our shares requesting the release is an officer, director or other affiliate of ours. As a result of these lock-up agreements, notwithstanding earlier eligibility for sale under the provisions of Rule 144, none of these shares may be sold until at least 180 days after the date of this prospectus. A total of 20,662,812 shares of common stock are subject to the lock-up agreements which amount gives effect to the exercise of options to purchase approximately an additional 110,602 shares of our common stock by certain selling stockholders immediately prior to the consummation of this offering.

We have reserved up to 5% of the shares to be sold in this offering for sale to certain of our current stockholders, and to certain of our business associates and related persons. If any of our current stockholders or certain option holders subject to lock-up agreements purchase these reserved shares, the shares will be restricted from sale under the lock-up agreements. If any of these shares are purchased by persons who are not current stockholders, such shares will not be subject to lock-up agreements.

As restrictions on resale end, our stock price could drop significantly if the holders of these restricted shares sell them or are perceived by the market as intending to sell them. These sales might also make it more difficult for us to sell securities in the future at a time and at a price that we deem appropriate.

**Anti-takeover provisions in our certificate of incorporation, our bylaws and New Jersey law could discourage a change of control that our stockholders may favor, which could negatively affect our stock price.**

Provisions in our certificate of incorporation and our bylaws and applicable provisions of the New Jersey Business Corporation Act may make it more difficult and expensive for a third party to acquire control of us even if a change of control would be beneficial to the interests of our stockholders. These provisions could discourage potential takeover attempts and could adversely affect the market price of

our common stock. For example, applicable provisions of the New Jersey Business Corporation Act may discourage, delay or prevent a change in control by prohibiting us from engaging in a business combination with an interested stockholder for a period of five years after the person becomes an interested stockholder. Furthermore, we expect that our amended and restated certificate of incorporation and amended and restated bylaws, which will be in effect at the time this offering is consummated, will:

- authorize the issuance of blank check preferred stock that could be issued by our board of directors to thwart a takeover attempt;
- prohibit cumulative voting in the election of directors, which would otherwise allow holders of less than a majority of stock to elect some directors;
- require super-majority voting to effect amendments to certain provisions of our certificate of incorporation;
- limit who may call special meetings of both the board of directors and stockholders;
- prohibit stockholder action by non-unanimous written consent and otherwise require all stockholder actions to be taken at a meeting of the stockholders;
- establish advance notice requirements for nominating candidates for election to the board of directors or for proposing matters that can be acted upon by stockholders at stockholders' meetings; and
- require that vacancies on the board of directors, including newly created directorships, be filled only by a majority vote of directors then in office.

**We can issue shares of preferred stock without shareholder approval, which could adversely affect the rights of common stockholders.**

Our certificate of incorporation permits us to establish the rights, privileges, preferences and restrictions, including voting rights, of future series of our preferred stock and to issue such stock without approval from our stockholders. The rights of holders of our common stock may suffer as a result of the rights granted to holders of preferred stock that may be issued in the future. In addition, we could issue preferred stock to prevent a change in control of our company, depriving common stockholders of an opportunity to sell their stock at a price in excess of the prevailing market price.

**Our principal stockholder will continue to own a large percentage of our voting stock after this offering, which will allow it to control substantially all matters requiring shareholder approval.**

Immediately after this offering, Stonington, our principal stockholder, will directly or indirectly hold approximately 69.9% of our outstanding shares. Accordingly, it will control us through its ability to determine the outcome of the election of our directors, to amend our certificate of incorporation and bylaws and to take other actions requiring the vote or consent of stockholders, including mergers, going private transactions and other extraordinary transactions, and the terms of any of these transactions. The ownership positions of this stockholder may have the effect of delaying, deterring or preventing a change in control or a change in the composition of our board of directors. In addition, two members of our board of directors are partners of Stonington. As a result, Stonington has an added ability to influence certain matters, such as determining compensation of our executive officers.

**We will have broad discretion in applying a portion of the net proceeds of this offering and may not use those proceeds in ways that will enhance our market value.**

Our management has broad discretion over the use of the portion of the proceeds that we receive from this offering. If we do not apply these funds effectively, we may lose significant business

opportunities. Furthermore, our stock price could decline if the market does not view our use of the proceeds from the offering favorably.

**You will suffer immediate and substantial dilution.**

The initial public offering price per share is substantially higher than the pro forma net tangible book value per share immediately after the offering. As a result, you will pay a price per share that substantially exceeds the book value of our assets after subtracting our liabilities. At the offering price of \$20.00 per share (the mid-point of the range set forth on the cover page of this prospectus), you will incur immediate and substantial dilution in the amount of \$17.60 per share. As of March 31, 2005, we also had outstanding stock options to purchase shares of our common stock at a weighted average exercise price of \$5.95 per share. To the extent these options are exercised, there will be further dilution.

## FORWARD-LOOKING STATEMENTS

This prospectus contains "forward-looking statements," which include information relating to future events, future financial performance, strategies, expectations, competitive environment, regulation and availability of resources. These forward-looking statements include, without limitation, statements regarding: proposed new programs; expectations that regulatory developments or other matters will not have a material adverse effect on our consolidated financial position, results of operations or liquidity; statements concerning projections, predictions, expectations, estimates or forecasts as to our business, financial and operating results and future economic performance; and statements of management's goals and objectives and other similar expressions concerning matters that are not historical facts. Words such as "may," "should," "could," "would," "predicts," "potential," "continue," "expects," "anticipates," "future," "intends," "plans," "believes," "estimates," and similar expressions, as well as statements in future tense, identify forward-looking statements.

Forward-looking statements should not be read as a guarantee of future performance or results, and will not necessarily be accurate indications of the times at, or by, which such performance or results will be achieved. Forward-looking statements are based on information available at the time those statements are made and/or management's good faith belief as of that time with respect to future events, and are subject to risks and uncertainties that could cause actual performance or results to differ materially from those expressed in or suggested by the forward-looking statements. Important factors that could cause such differences include, but are not limited to:

- actual or anticipated fluctuations in our results of operations;
- our failure to comply with the extensive regulatory framework applicable to our industry;
- our success in updating and expanding the content of existing programs and developing new programs in a cost-effective manner or on a timely basis;
- risks associated with the opening of new campuses;
- risks associated with integration of acquired schools, including New England Technical Institute;
- industry competition;
- our ability to continue to execute our growth strategies;
- conditions and trends in our industry;
- general and economic conditions; and
- other factors discussed under the headings "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Business" and "Regulatory Environment."

Forward-looking statements speak only as of the date the statements are made. You should not put undue reliance on any forward-looking statements. We assume no obligation to update forward-looking statements to reflect actual results, changes in assumptions or changes in other factors affecting forward-looking information, except to the extent required by applicable securities laws.

## USE OF PROCEEDS

The net proceeds from the sale of the 3,000,000 shares of common stock offered by us will be approximately \$53.4 million, based on an estimated initial public offering price of \$20.00 per share (the mid-point of the range set forth on the cover page of this prospectus), after deducting the underwriting discounts and commissions and estimated offering expenses payable by us. We will not receive any proceeds from the sale of the shares to be sold by the selling stockholders.

The primary purposes of the offering are to create a public market for our common stock, obtain additional capital and repay outstanding indebtedness under our new credit agreement, which we entered into with a syndicate of banks on February 15, 2005 with a five year term. We expect to use \$31 million of the net proceeds of this offering to repay all amounts outstanding under our new credit agreement. We expect to use the balance of the net proceeds from this offering, including any net proceeds we receive if the underwriters elect to exercise their overallotment option, for working capital and general corporate purposes, which may include the expansion of existing facilities, strategic acquisitions and the development and introduction of new programs. Any amounts repaid under our new credit agreement may be reborrowed at any time. As of April 30, 2005, we had outstanding borrowings of \$31.0 million and \$4.1 million in letters of credit under our new credit agreement. We paid interest on the amounts outstanding under our new credit agreement at an adjusted LIBOR rate, as defined in the new credit agreement, of 4.07% as of April 30, 2005. Amounts under the new credit agreement were primarily borrowed for working capital and general corporate purposes, as well as to repay amounts outstanding under our previous credit agreement, primarily borrowed in connection with our acquisition of Southwestern College, and New England Technical Institute. See "Description of Credit Agreement." We routinely consider acquiring companies in our industry. At any given time, we may be in discussions to acquire one or more companies. Depending upon the timing of any future acquisition, we may use the net proceeds of this offering toward the purchase price of such acquisitions. We are currently in discussions to acquire three schools in a single transaction, although we cannot assure you that the acquisition of these schools will ultimately be consummated. Management will have broad discretion in the allocation of the net proceeds of this offering.

The amounts actually expended for each purpose and the timing of such expenditures will depend on a number of factors, including our realization of the different elements of our growth strategy and the amount of cash generated by our operations. Pending their use as described above, the proceeds of the offering will be invested in short-term, interest-bearing securities.

An affiliate of Harris Nesbitt Corp. is the administrative agent and a lender under our new credit agreement and Fleet National Bank, an affiliate of Banc of America Securities LLC, is also a lender under our new credit agreement, and will receive a portion of the net proceeds of this offering when we repay the amounts outstanding under the new credit agreement. See "Underwriting—Other Relationships."

## DIVIDEND POLICY

We have never declared or paid dividends on our common stock. Following consummation of this offering, we do not anticipate declaring or paying any dividends on our common stock in the foreseeable future. Instead, we currently anticipate that we will retain all of our future earnings, if any, to fund the operation and expansion of our business and to use as working capital and for other general corporate purposes. Our board of directors will determine whether to pay dividends in the future based on conditions then existing, including our earnings, financial condition and capital requirements, the availability of third-party financing and the financial responsibility standards prescribed by the DOE, as well as any economic and other conditions that our board of directors may deem relevant. In addition, our ability to declare and pay dividends is subject to certain restrictions under our new credit agreement.

## CAPITALIZATION

The following table sets forth our cash and cash equivalents and our capitalization as of March 31, 2005:

- on an actual basis; and
- on an as adjusted basis, giving effect to our sale of 3,000,000 shares of our common stock in this offering (at an estimated initial public offering price of \$20.00 per share, the mid-point of the range set forth on the cover of this prospectus) and the application of the proceeds of the sale as discussed under "Use of Proceeds."

You should read this table together with the "Use of Proceeds," "Unaudited Pro Forma Financial Information," "Selected Financial Information," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Description of Capital Stock" and our consolidated financial statements, along with the notes thereto, included elsewhere in this prospectus.

	As of March 31, 2005	
	Actual	As Adjusted
	(dollars in thousands)	
<b>Cash and cash equivalents</b>	\$ 10,049	\$ 32,449
<b>Debt:</b>		
Credit agreement(1)	31,000	—
Finance obligation	9,672	9,672
Capital leases—computers	1,229	1,229
Automobile loans	105	105
Total debt	42,006	11,006
<b>Stockholders' equity:</b>		
Common stock, no par value per share, 50,000,000 shares authorized (actual) and 100,000,000 authorized (as adjusted); 21,704,785 shares issued and outstanding (actual) and 24,704,785 shares issued and outstanding (as adjusted)	62,385	115,785
Additional paid-in capital	3,821	3,821
Accumulated deficit	(6,705)	(6,705)
Total stockholders' equity	59,501	112,901
Total capitalization	\$ 101,507	\$ 123,907

- (1) On February 15, 2005, we entered into a \$100 million revolving credit agreement (including amounts available for letters of credit up to an aggregate of \$20 million) with a syndicate of banks. Amounts repaid under our new credit agreement may be reborrowed at any time until expiration of our new credit agreement in February 2010. Amounts outstanding under our new credit agreement as of April 30, 2005 were \$31.0 million and letters of credit outstanding were \$4.1 million (which letters of credit will remain outstanding upon completion of this offering). See "Description of Credit Agreement" for a description of the new credit agreement.

## DILUTION

If you invest in our common stock, your interest will be diluted to the extent of the difference between the initial public offering price per share of our common stock and the pro forma net tangible book value per share of our common stock after the offering. Dilution results from the fact that the per share offering price of the common stock is substantially in excess of the book value per share attributable to the existing stockholders for the presently outstanding stock. Our net tangible book value at March 31, 2005 was \$6.0 million, or \$0.28 per share of common stock. After giving effect to our sale of 3,000,000 shares of common stock offered by this prospectus at an estimated initial public offering price of \$20.00 per share (the mid-point of the range set forth on the cover of this prospectus) and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma net tangible book value as of March 31, 2005 would have been \$59.4 million, or \$2.40 per share. This represents an immediate increase in pro forma net tangible book value of \$2.12 per share to existing stockholders and an immediate dilution of \$17.60 per share to investors purchasing common stock in the offering. The following table illustrates this per share dilution:

Assumed initial public offering price per share of common stock		\$ 20.00
Net tangible book value per share of common stock at March 31, 2005	\$ 0.28	
Increase in net tangible book value per share of common stock attributable to this offering	2.12	
Pro forma net tangible book value per share of common stock after this offering		2.40
Dilution per share of common stock to new investors		\$ 17.60

The following table summarizes, on a pro forma basis as of March 31, 2005, the differences between existing stockholders and the new investors with respect to the number of shares of common stock purchased from us, the total consideration paid and the average price per share paid before deducting the underwriting discounts and commissions and our estimated offering expenses.

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
	(dollars in thousands, except per share amount)				
Existing holders of capital stock	21,704,785	87.9%	\$ 62,385	51.0%	\$ 2.87
Investors purchasing common stock in the offering	3,000,000	12.1%	\$ 60,000	49.0%	\$ 20.00
<b>Total</b>	<b>24,704,785</b>	<b>100%</b>	<b>\$ 122,385</b>	<b>100%</b>	<b>\$ 4.95</b>

The discussion and tables above assume no exercise of outstanding stock options after March 31, 2005. As of the consummation of this offering, we expect to have options outstanding to purchase a total of 1,874,893 shares of common stock, with a weighted average exercise price of \$6.04 per share taking into effect the exercise of options by certain of our selling stockholders prior to the consummation of the offering. To the extent that any of these options are exercised, there will be further dilution to new investors. See "Description of Capital Stock" and Note 10 of the notes to our consolidated financial statements appearing elsewhere in this prospectus. Assuming all of these options were exercisable and were exercised upon consummation of this offering, total dilution per share of common stock to new investors would increase from \$17.60 to \$17.77.

If the underwriters' overallotment option is exercised in full:

- the percentage of our shares of common stock held by our existing holders of capital stock will decrease to approximately 85.8% of the total number of shares of common stock outstanding after this offering;
- the number of shares of common stock held by investors purchasing common stock from us in this offering will increase to 3,600,000 shares, or approximately 14.2% of the total number of shares of common stock outstanding after this offering; and
- total dilution per share of common stock to new investors will decrease from \$17.60 to \$17.21.

## UNAUDITED PRO FORMA FINANCIAL INFORMATION

The following unaudited pro forma financial information for the year ended December 31, 2004 and for the three months ended March 31, 2005 is derived from (1) our historical consolidated financial statements (included elsewhere in this prospectus), (2) the historical financial statements of Southwestern College for the period from January 1, 2004 until our acquisition of Southwestern College on January 23, 2004 (not included in this prospectus), and (3) the historical financial statements of New England Technical Institute for the year ended December 31, 2004 and for the period from January 1, 2005 until our acquisition of New England Technical Institute on January 11, 2005 (not included in this prospectus). Separate balance sheet data for Southwestern College and New England Technical Institute is not presented because such data is already reflected in our historical consolidated balance sheet as of March 31, 2005. The unaudited pro forma financial statements should be read in conjunction with our audited consolidated financial statements and related notes thereto, included elsewhere in this prospectus.

The unaudited pro forma statement of operations data for the year ended December 31, 2004 and for the three months ended March 31, 2005 give effect to the acquisitions of Southwestern College and New England Technical Institute as if each had occurred on January 1, 2004. We accounted for the acquisitions of Southwestern College and New England Technical Institute under the purchase method of accounting. The unaudited pro forma financial statements presented below do not reflect any anticipated operating efficiencies or cost savings from the integration of Southwestern College and New England Technical Institute into our business. The unaudited as adjusted balance sheet data gives effect to the sale of shares of our common stock in this offering at an estimated initial public offering price of \$20.00 per share (the mid-point of the range set forth on the cover of this prospectus) and the application of the proceeds as described under "Use of Proceeds."

The unaudited pro forma consolidated financial statements reflect pro forma adjustments that are described in the accompanying notes and are based on available information and certain assumptions we believe are reasonable, but are subject to change. We have made, in our opinion, all adjustments that are necessary to present fairly the pro forma information. The unaudited consolidated pro forma financial statements do not purport to represent what our actual results of operations or financial position would have been if the acquisition and related transactions described above had occurred on such dates or to project our results of operations or financial position for any future period.

For the Year Ended December 31, 2004

	Historical	South-western(1)	New England Technical Institute(2) (audited)	Adjustments(3)	Pro Forma
(dollars in thousands, except per share data)					
<b>Statement of Operations Data:</b>					
Revenues	\$ 261,275	\$ 4	\$ 14,944		\$ 276,223
Costs and expenses:					
Educational services and facilities	104,843	68	7,870	423(a)	113,204
Selling, general and administrative(4)	130,941	111	5,085	433(b)	136,570
Loss on sale of assets	368	—	—	—	368
Total costs and expenses	236,152	179	12,955	856	250,142
Operating income	25,123	(175)	1,989	(856)	26,081
Interest income	104	1	28		133
Interest expense	(3,007)	0	(38)	(1,100)(c)(d)	(4,145)
Income (loss) before income taxes	22,220	(174)	1,979	(1,956)	22,069
Provision (benefit) for income taxes	9,242	—	0	(63)(e)(f)	9,179
Net income (loss)	\$ 12,978	\$ (174)	\$ 1,979	\$ (1,893)	\$ 12,890
Income (loss) from continuing operations per share:					
Basic	\$ 0.60	\$ (0.01)	\$ 0.09	\$ (0.09)	\$ 0.59
Diluted	0.56	(0.01)	0.09	(0.08)	0.56
Weighted average shares:					
Basic	21,676	—	—	—	21,676
Diluted	23,095	—	—	—	23,095
<b>Other Data:</b>					
Capital expenditures	\$ 23,813	—	—	—	\$ 23,813
Number of campuses	28	—	4	—	32
Average student population	16,266	—	—	—	17,362

(1) Historical data for the period from January 1, 2004 to January 23, 2004 includes certain reclassifications to conform to our presentation.

(2) Historical data for the year ended December 31, 2004 includes certain reclassifications to conform to our presentation.

(3) Represents adjustments to reflect the following:

- (a) \$0.023 million in the remaining amortization of \$0.3 million in fair market value of student contracts acquired in connection with the Southwestern College acquisition on January 23, 2004 and the amortization of \$0.4 million representing the preliminary allocation of fair market value of student contracts and other identified intangible assets acquired in connection with the New England Technical Institute acquisition on January 11, 2005.
- (b) the current amortization of \$1.3 million, which represents the preliminary allocation of fair market value of a non-compete agreement acquired in connection with the New England Technical Institute acquisition on January 11, 2005. The non-compete agreement is being amortized over a period of three years.

- (c) no pro forma interest expense adjustment recorded for the 23 day period in 2004 prior to the acquisition of Southwestern College on \$14.5 million of borrowings under our previous credit agreement as these borrowings were drawn down in December 2003.
  - (d) interest expense on \$20.0 million of borrowings under our previous credit agreement to finance the acquisition of New England Technical Institute (assuming those borrowings were outstanding as of January 1, 2004 at an average annual rate of 5.50%).
  - (e) represents the tax effects of presenting Southwestern College as a taxpayer giving effect to the historical income statement for the period indicated as well as the pro forma income statement adjustments at an effective tax rate of 39%. Prior to our acquisition, Southwestern College was an S-Corporation and therefore did not pay income taxes.
  - (f) represents the tax effects of presenting New England Technical Institute as a taxpayer giving effect to the historical income statement for the period indicated as well as the pro forma income statement adjustments at an effective tax rate of 39%. Prior to our acquisition, New England Technical Institute was an S-Corporation and therefore did not pay income taxes.
- (4) Selling, general and administrative expenses includes (a) a \$2.1 million charge for the year ended December 31, 2004 to give effect to the one-time write-off of deferred offering costs, (b) compensation costs of approximately \$1.8 million for the year ended December 31, 2004 related to the adoption of SFAS No. 123, "*Accounting for Stock Based Compensation*" and (c) a \$0.7 million one-time non-cash charge for the year ended December 31, 2004 related to the timing of rent expense for our schools during the period of construction of leasehold improvements and to align the depreciation lives of our leasehold improvements to the terms of our noncancellable leases, including renewal options.

For the Three Months Ended March 31, 2005

	Historical	New England Technical Institute(1)(2)	Adjustments(3)	Pro Forma
(dollars in thousands, except per share data)				
<b>Statement of Operations Data:</b>				
Revenues	\$ 70,869	\$ 278	—	\$ 71,147
Costs and expenses:				
Educational services and facilities	29,084	208	—	29,292
Selling, general and administrative	39,284	59	12 (a)	39,355
Loss on sale of assets	—	—	—	—
Total costs and expenses	68,368	267	12	68,647
Operating income	2,501	11	(12)	2,500
Interest income	8	—	—	8
Interest expense(4)	(1,194)	—	— (b)	(1,194)
Income (loss) before income taxes	1,315	11	(12)	1,314
Provision (benefit) for income taxes	543	—	— (c)	543
Net income (loss)	\$ 772	\$ 11	\$ (12)	\$ 771
Income (loss) from continuing operations per share:				
Basic	\$ 0.04	\$ 0.01	\$ (0.01)	\$ 0.04
Diluted	0.03	0.01	(0.01)	0.03
Weighted average shares:				
Basic	21,699	—	—	21,699
Diluted	22,965	—	—	22,965
<b>Other Data:</b>				
Capital expenditures	\$ 6,276	—	—	\$ 6,276
Number of campuses	28	4	—	32
Average student population	16,764	928	—	17,692

As of March 31, 2005

Historical	As Adjusted
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(dollars in thousands)

**Balance Sheet Data (at end of period):**

Cash and cash equivalents	\$ 10,049	\$ 32,449
Working capital (deficit)(5)	(14,782)	7,618
Total assets	156,098	178,498
Total debt(6)	42,006	11,006
Total shareholders' equity	\$ 59,501	\$ 112,901

(1) Data for the three months ended March 31, 2005, includes certain reclassifications to conform to our historical presentation.

(2) Represents data for the period from January 1, 2005 to January 11, 2005, the date of the acquisition.

(3) Represents adjustments to reflect the following:

- (a) the amortization of \$1.3 million for the period, resulting from our preliminary allocation of the excess of the fair market value of the purchase price over the net assets acquired to a non-compete agreement in connection with the New England Technical Institute acquisition. The non-compete agreement is being amortized over a period of three years.

- (b) no pro forma interest expense adjustment recorded for the 10-day period in 2005 prior to our acquisition of New England Technical Institute on \$20.0 million of borrowings under our previous credit agreement as these borrowings were drawn down in December 2004.
  - (c) the tax effects of presenting New England Technical Institute as a taxpayer giving effect to the historical income statement for the period indicated as well as the pro forma income statement adjustments at an effective tax rate of 41.5%. Prior to our acquisition, New England Technical Institute was an S-Corporation and therefore did not pay any taxes.
- (4) Interest expense includes a one-time non-cash charge of \$0.4 million resulting from the write-off of deferred finance costs under our old credit agreement.
  - (5) Working capital (deficit) is defined as current assets less current liabilities.
  - (6) Total debt consists of long-term debt including current portion, capital leases, auto loans and a finance obligation of \$9.7 million incurred in connection with a sale-leaseback transaction as further described in Note 9 to the consolidated financial statements included elsewhere in this prospectus.

## SELECTED FINANCIAL INFORMATION

The following table sets forth our selected historical consolidated financial and operating data as of the dates and for the periods indicated. You should read these data together with "Unaudited Pro Forma Financial Information," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and the notes thereto included elsewhere in this prospectus. The selected historical consolidated statement of operations data for each of the years in the three-year period ended December 31, 2004 have been derived from our audited consolidated financial statements which are included elsewhere in this prospectus. The selected historical consolidated statements of operations data for the fiscal years ended December 31, 2000 and 2001 and historical consolidated balance sheet data as of December 31, 2000, 2001 and 2002 have been derived from our consolidated financial information not included in this prospectus. Our historical results are not necessarily indicative of our future results. The selected historical unaudited consolidated statement of operations data for the three months ended March 31, 2004 and 2005 and the selected historical unaudited consolidated balance sheet data as of March 31, 2005 have been derived from our unaudited condensed consolidated financial statements which are included elsewhere in this prospectus. The selected historical unaudited consolidated balance sheet data as of March 31, 2004 have been derived from our unaudited condensed consolidated financial statements which are not included in this prospectus. In our opinion, the unaudited condensed consolidated financial statements have been prepared on the same basis as the audited financial statements and include all adjustments, consisting of only normal recurring adjustments, necessary for fair presentation of the information set forth therein. The results for any interim period are not necessarily indicative of the results that may be expected for a full year.

	Year Ended December 31,					Three Months Ended March 31,	
	2000	2001	2002	2003	2004	2004	2005
(dollars and shares in thousands, except per share amounts)							
<b>Statement of Operations Data:</b>							
Revenues	\$ 81,541	\$ 105,738	\$ 139,201	\$ 198,881	\$ 261,275	\$ 59,574	\$ 70,869
Costs and expenses:							
Educational services and facilities	37,193	52,952	66,580	85,201	104,843	24,163	29,084
Selling, general and administrative(1)	42,346	59,019	71,753	97,714	130,941	31,778	39,284
(Gain) loss on sale of assets	—	—	(1,082)	(22)	368	—	—
<b>Total costs and expenses</b>	<b>79,539</b>	<b>111,971</b>	<b>137,251</b>	<b>182,893</b>	<b>236,152</b>	<b>55,941</b>	<b>68,368</b>
Operating income (loss)	2,002	(6,233)	1,950	15,988	25,123	3,633	2,501
Gain on sale of securities	—	—	—	211	—	—	—
Interest income	772	310	212	133	104	13	8
Interest expense(2)	(479)	(1,664)	(2,937)	(2,758)	(3,007)	(842)	(1,194)
Income (loss) before income taxes	2,295	(7,587)	(775)	13,574	22,220	2,804	1,315
Provision (benefit) for income taxes	1,000	(2,942)	(101)	5,355	9,242	1,186	543
<b>Net income (loss)</b>	<b>\$ 1,295</b>	<b>\$ (4,645)</b>	<b>\$ (674)</b>	<b>\$ 8,219</b>	<b>\$ 12,978</b>	<b>\$ 1,618</b>	<b>\$ 772</b>
Income (loss) share:							
Basic	\$ 0.08	\$ (0.22)	\$ (0.03)	\$ 0.38	\$ 0.60	\$ 0.07	\$ 0.04
Diluted	0.08	(0.22)	(0.03)	0.37	0.56	0.07	0.03
Weighted average shares:							
Basic	15,987	21,355	21,662	21,667	21,676	21,668	21,699
Diluted	15,987	21,355	21,662	22,364	23,095	23,038	22,965
<b>Other Data:</b>							
Capital expenditures	\$ 2,183	\$ 7,322	\$ 3,598	\$ 13,154	\$ 23,813	\$ 6,276	\$ 3,195
Depreciation and amortization	3,249	5,474	7,201	9,879	10,749	96	56
Number of campuses	13	23	23	23	28	28	32
Average student population	5,799	7,203	9,155	12,487	16,266	15,417	17,692
<b>Balance Sheet Data:</b>							
Cash and cash equivalents	\$ 24,952	\$ 7,400	\$ 11,079	\$ 48,965	\$ 41,445	\$ 26,297	\$ 10,049
Working capital (deficit)(3)	9,673	(12,710)	(11,287)	13,402	4,570	(1,460)	(14,782)
Total assets	62,918	89,119	92,562	139,355	162,729	133,536	156,098
Total debt(4)	2,705	26,596	22,682	43,060	46,829	40,044	42,006
Total shareholders' equity	36,800	34,096	33,905	42,924	58,086	45,263	59,501

(Footnotes on following page)



- (1) Selling, general and administrative expenses includes (a) a \$2.1 million charge for the year ended December 31, 2004 to give effect to the one-time write-off of deferred offering costs, (b) compensation costs of approximately \$0.5 million, \$0.8 million and \$1.8 million for the years ended December 31, 2002, 2003 and 2004, respectively, and \$0.7 million and \$0.4 million for the three months ended March 31, 2004 and 2005, respectively, related to the adoption of SFAS No. 123, "Accounting for Stock Based Compensation" and (c) a \$0.7 million one-time non-cash charge for the year ended December 31, 2004 related to the timing of rent expense for our schools during the period of construction of leasehold improvements and to align the depreciation lives of our leasehold improvements to the terms of our noncancellable leases, including renewal options.
- (2) Interest expense includes a \$0.4 million non-cash charge for the three months ended March 31, 2005 resulting from the write-off of deferred finance costs under our old credit agreement.
- (3) Working capital (deficit) is defined as current assets less current liabilities.
- (4) Total debt consists of long-term debt including current portion, capital leases, auto loans and a finance obligation of \$9.7 million for each of the years in the four-year period ended December 31, 2004 incurred in connection with a sale-leaseback transaction as further described in Note 9 to the consolidated financial statements included elsewhere in this prospectus.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### General

We are a leading and diversified for-profit provider of career-oriented post-secondary education. We offer recent high school graduates and working adults degree and diploma programs in four areas of study: automotive technology, allied health, skilled trades and business and information technology. As of March 31, 2005, we enrolled 17,630 students at our 32 campuses across 15 states. Our campuses primarily attract students from their local communities and surrounding areas, although our four destination schools attract students from across the United States, and in some cases, from abroad.

We have experienced significant growth in recent years both organically and through acquisitions. Our organic growth has been achieved by increasing the breadth of our program offerings, increasing our marketing efforts, expanding existing facilities and starting new schools. In 2001, we acquired eight schools that we consider start-ups because they had no students or faculty at the time of acquisition. We initially opened these schools with only IT programs, but as a result of the decrease in demand for IT programs, we began adding allied health programs in the third quarter of 2002. While our profitability on a consolidated basis was negatively impacted by the start up of these schools in 2002, these start-up schools reached breakeven profitability in the fourth quarter of 2003 and as a group contributed \$31.6 million and \$42.8 million of revenues in 2003 and 2004, respectively. As we continue to grow the student population in these schools, we expect the profitability of these schools to continue to improve.

From 1999 through December 31, 2004, we obtained nine additional schools through our acquisitions of Denver Automotive & Diesel College in 2000 (one school), Career Education Institute in 2001 (two schools), Nashville Auto-Diesel College in 2003 (one school) and Southwestern College in 2004 (five schools). In addition, on January 11, 2005, we acquired the rights, title and interest in the assets used in the conduct and operation of New England Technical Institute for a purchase price of \$19.7 million. New England Technical Institute operates four schools in New Britain, Hamden, Shelton and Cromwell, Connecticut. Our campuses, a majority of which serve major metropolitan markets, are located throughout the United States. Four of our campuses are destination schools, which attract students from across the United States and, in some cases, from abroad. Our other campuses primarily attract students from their local communities and surrounding areas. All of our schools are nationally accredited and eligible to participate in federal financial aid programs. Southwestern College received an executed provisional program participation agreement from the DOE. New England Technical Institute has received an executed temporary provisional program participation agreement from the DOE.

In evaluating potential acquisitions, we seek to identify schools with the potential for program replication at our existing campuses, new areas of study, new markets with attractive growth opportunities and advanced degree programs. In many cases, these schools are under-managed and under-capitalized. We have historically been successful in integrating and growing acquired schools by leveraging our sales and marketing expertise, business management systems and our experienced management team. For example, in 2000, we acquired Denver Automotive & Diesel College which had a student population of 343, and as of March 31, 2005, we had grown its student population in excess of 200% to 1,091 students. As we continue to make and integrate our acquisitions, such as Southwestern College and New England Technical Institute, we expect our student population to continue to grow.

Our revenues consist primarily of student tuition and fees derived from the programs we offer and are presented as revenues after reductions related to scholarships and refunds for students who withdraw from our programs prior to specified dates. We recognize revenues from tuition and one-time fees, such as application fees, ratably over the length of a program. We also earn revenues from our bookstores, dormitories, cafeterias and contract training services. These non-tuition revenues are

recognized upon delivery of goods or as services are performed and represent less than 10% of our revenues.

Tuition varies by school and by program and on average we increase tuition once a year by 2% to 5%. Our ability to raise tuition is influenced by the demand for our programs and by the rate of tuition increase at other post-secondary schools. If historical trends continue, we expect to be able to continue to raise tuition annually at comparable rates.

We have historically enjoyed strong revenue growth as we have grown both organically and from acquisitions over the last several years. Our revenues increased 43% and 31%, respectively, in 2003 and 2004 over the prior years as we grew from 23 campuses at December 31, 2002 to 28 campuses at December 31, 2004. We had 32 campuses at March 31, 2005. During this same time period our average student population increased from 9,155 at December 31, 2002 to 16,266 at December 31, 2004, and to 17,692 at March 31, 2005. While we expect to be able to continue to increase our revenue and enrollments in the foreseeable future as a result of both organic growth and strategic acquisitions, we can give no assurance as to our ability to continue to increase our revenues at historical rates and expect our rate of revenue increases to moderate over time as we become a larger and more mature company.

Our operating expenses are also a function of our revenue growth. Our educational expenses and selling, general and administrative expenses as a percentage of revenue have decreased over time as our revenue has increased. Educational services and facilities expenses have decreased as a percentage of revenue from 47.8% in 2002 to 40.1% in 2004 and selling, general and administrative expenses have decreased as a percentage of revenue from 51.6% in 2002 to 50.1% in 2004. We expect that in the future these expenses will continue to decline slightly as a percentage of revenues as we achieve better operating efficiencies and utilization at our schools.

Our revenues are directly dependent on our average number of students enrolled and the particular courses they are taking. Our enrollment is influenced by the number of new students starting, re-entering, graduating from and withdrawing from our schools. In addition, our programs range from 24 to 100 weeks and students attend classes for different amounts of time per week depending on the school and program in which they are enrolled. Because we start new students every month, our total student population changes monthly. The number of students enrolling or re-entering our programs each month is driven by the demand for our programs, the effectiveness of our marketing and advertising, the availability of financial aid and other sources of funding, the number of recent high school graduates and seasonality. Our retention and graduation rates are influenced by the quality and commitment of our teachers and student services personnel, the effectiveness of our programs, the placement rate and success of our graduates and the availability of financial aid. Although similar courses have comparable tuition rates, the tuition rates vary among our numerous programs. As more of our schools receive approval to offer associate degree programs, which are longer than our diploma degree programs, we would expect our average enrollments and the average length of stay of our students to increase.

The majority of students enrolled at our schools rely on funds received under various government-sponsored student financial aid programs to pay a substantial portion of their tuition and other education-related expenses. The largest of these programs are Title IV Programs which represented approximately 81% of our cash receipts relating to revenues in 2004.

Based on our calculations, our audited financial statements for the 2003 and 2004 fiscal years reflect a composite score of 2.1 and 1.8, respectively. The DOE has confirmed that we received a passing composite score of 1.5 or more for the 2003 fiscal year. The DOE has not yet reviewed our financial statements for the 2004 fiscal year. However, as a result of the corrections of certain errors, including accounting for advertising costs, a sale leaseback transaction, rent and certain other individually insignificant adjustments, in our prior financial statements, the DOE recomputed our consolidated composite scores for the years ended December 31, 2001 and 2002 and concluded that the recomputed consolidated composite scores for those two years were below 1.0. In addition, we

identified certain additional errors in our financial statements for the year ended December 31, 2003 relating to our accounting for stock-based compensation and accrued bonuses that did not result in a recomputation of our 2003 composite score. The DOE has informed us that as a result, for a period of three years effective December 30, 2004, all of our current and future institutions have been placed on "Heightened Cash Monitoring, Type 1 status." As a result, we are subject to a less favorable Title IV fund payment system that requires us to credit student accounts before drawing down Title IV funds and are also required to timely notify the DOE with respect to certain enumerated oversight and financial events. The DOE also informed us that these corrections will be taken into consideration when each of our institutions applies for recertification of its eligibility to participate in Title IV Programs. When each of our institutions is next required to apply for recertification to participate in Title IV Programs, we expect that the DOE will also consider our audited financial statements and composite scores for our most recent fiscal year as well as for other fiscal years after 2001 and 2002. Additionally, since the DOE concluded that the previously computed composite scores for 2001 and 2002 were overstated, we agreed to pay \$165,000 to the DOE, pursuant to a settlement agreement, with respect to compliance issues related to this matter. We paid this amount on March 3, 2005.

Although no assurance can be given, we do not believe that the actions of the DOE specified above will have a material effect on our financial position or results of operations since we have always operated our business in a manner similar to an institution operating under "Heightened Cash Monitoring, Type 1 status" and accordingly, it has been our policy to credit student accounts before drawing down Title IV funds. We also do not believe the additional reporting requirements will cause an undue burden on our operations.

An institution is required to operate under "Heightened Cash Monitoring, Type 1 status," if it has a composite score between 1.0 and 1.4. If an institution's composite score is below 1.0, the institution is considered by the DOE to lack financial responsibility and, as a condition of Title IV Program participation, the institution may be required to, among other things, post a letter of credit in an amount of at least 10 to 50 percent of the institution's annual Title IV Program participation for its most recent fiscal year. A composite score under 1.0 in any future year could have an adverse effect on our operations and would result in a default under our new credit agreement and could result in an acceleration of the debt under our new credit agreement.

The operating expenses associated with an existing school do not increase proportionally as the number of students enrolled at the school increases. We categorize our operating expenses as (1) educational services and facilities and (2) selling, general and administrative.

- Major components of educational services and facilities expenses include faculty compensation and benefits, compensation and benefits of other campus administration employees, facility rent, maintenance, utilities, depreciation and amortization of property and equipment used in the provision of education services and other costs directly associated with teaching our programs and providing educational services to our students.
- Selling, general and administrative expenses include compensation and benefits of employees who are not directly associated with the provision of educational services (such as executive management, finance and central accounting, legal, human resources and business development), marketing and student enrollment expenses (including compensation and benefits of personnel employed in sales and marketing and student admissions), costs to develop curriculum, costs of professional services, bad debt expense, rent for our corporate headquarters, depreciation and amortization of property and equipment that is not used in the provision of educational services and other costs that are incidental to our operations. All marketing and student enrollment expenses are recognized in the period incurred. Costs related to the opening of new facilities, excluding related capital expenditures, are expensed in the period incurred.

We use advertising to attract a substantial portion of our yearly student enrollments. While we utilize a mix of different advertising mediums, including television, internet and direct mail, we rely

heavily on television advertising. The cost of television advertising has been increasing faster than the pace of student tuition increases and the cost of living index. Continued increases in the cost of television advertising may have a material impact on our operating margins.

Costs associated with the implementation of our student management and reporting system have increased over the last year as we began to implement a new student management and reporting system. We expect the roll-out of this system to continue through the remainder of 2005 and the first half of 2006. We believe that the investment in our student management and reporting system will improve services to students and our ability to integrate new schools into our operations, if and when new schools are opened or acquired. We anticipate that the cost to complete the continued roll-out of our new student management and reporting system in 2005 and through the first half of 2006 will be approximately \$1.2 million. We anticipate funding these costs with cash provided by operating activities and cash on hand or alternatively with borrowings under our credit agreement.

We expect our selling, general and administrative expenses to increase when we become a public company. Additional costs for legal and accounting services, compliance with Sarbanes-Oxley Act regulations and other annual costs of doing business as a public company are expected to range from \$1.5 million to \$2 million per year. We anticipate funding costs relating to being a public company with cash provided by operating activities and cash on hand or alternatively with borrowings under our credit agreement.

### **Acquisitions and Start-ups**

Acquisitions have been, and will continue to be, a component of our growth strategy. We have a team of professionals who conduct financial, operational and regulatory due diligence as well as a team that integrates acquisitions with our policies, procedures and systems. From January 1, 1999 through December 31, 2004, we have added nine schools through our acquisitions of Denver Automotive & Diesel College in 2000 (one school), Career Education Institute in 2001 (two schools), Nashville Auto-Diesel College in 2003 (one school) and Southwestern College in 2004 (five schools). Our acquisition of New England Technical Institute, which closed on January 11, 2005, added another four schools, bringing our total acquisitions to thirteen schools.

On October 25, 2000, we purchased the rights, title and interest in the assets used in the conduct and operation of Denver Automotive & Diesel College for \$1.3 million in cash, including costs related to the acquisition. We used our existing cash balances to complete the transaction. Denver Automotive & Diesel College was an under-managed school that we have grown from 343 students at the end of 2000 to 1,083 students at December 31, 2004 by introducing better management and by implementing our field-based recruiting and television marketing programs.

On March 16, 2001, we purchased the rights, title, and interest in the assets used in the conduct and operation of five schools by Computer-Ed, Inc. for \$2.5 million in cash, including costs related to the acquisition. We used our existing cash balances to complete this transaction. We merged two of these schools into one of the Computer Learning Centers, Inc. schools described below, and merged one of our schools into one of the Computer-Ed, Inc. schools we acquired. We continue to operate the remaining two schools under our Career Education Institute brand name. At the time of acquisition, these schools primarily offered IT programs and now offer business and information technology and allied health programs. This acquisition accelerated our entrance into the New England market.

In two transactions taking place on March 9, 2001 and April 6, 2001, we purchased out of bankruptcy the assets comprising nine schools operated by Computer Learning Centers, Inc. for a total of \$20.7 million in cash, including costs related to the acquisitions. These acquisitions were funded by existing cash and by borrowings under our then existing credit facility. We considered eight of these nine schools to be start-ups at the time of their acquisition because they had no students or faculty at the time of acquisition. We merged one of the existing campuses of our Cittance Institute into the ninth school located at Paramus, New Jersey and renamed it The Cittance Institute. We received all regulatory

approvals and hired staff by the end of 2001 so that all of these schools were operational under our Cittone Institute or Career Education Institute brand names. These schools offer business and information technology and allied health programs. This acquisition enabled us to rapidly expand into several of the largest markets in the United States with well-located, proven sites.

On February 14, 2003, we acquired Nashville Auto-Diesel College for approximately \$7.6 million including costs related to the acquisition, net of \$4.1 million of cash acquired. This acquisition was funded by available cash and by borrowings under our previous credit agreement. Nashville Auto-Diesel College offers associate and diploma programs in automotive and diesel mechanics and collision repair. This is our only school that owns its dormitories and, like our other destination schools in Indianapolis, Denver and Columbia, Maryland, the vast majority of Nashville Auto-Diesel College students come from outside the local market. We have been able to increase the student population and profitability in a short period of time by introducing new management techniques and through television marketing. This acquisition gave us an additional destination campus, entry into the Nashville geographic market and further expanded our auto business.

On January 23, 2004 we completed the acquisition of Southwestern College for approximately \$14.5 million in cash, including costs related to the acquisition. This acquisition was funded from borrowings under our previous credit agreement. This acquisition enabled us to enter the Ohio and Kentucky markets.

On January 11, 2005 we acquired the rights, title and interest in the assets used in the conduct and operation of New England Technical Institute for \$19.7 million including costs related to the acquisition. This acquisition was funded by borrowings under our existing credit facility. New England Technical Institute operates four schools in New Britain, Hamden, Shelton and Cromwell, Connecticut.

The following chart summarizes our recent acquisition and start-up transactions:

	Year of Acquisition	Classification of Schools			Total Number of Schools
		Merged/ Relocated	Start ups	Acquisitions	
Denver Automotive & Diesel College	2000	—	—	1	1
Career Education Institute	2001	3(1)	—	2	5
Computer Learning Centers(2)	2001	1(3)	8	—	9
Nashville Auto-Diesel College	2003	—	—	1	1
Southwestern College	2004	—	—	5	5
New England Technical Institute	2005	—	—	4	4
<b>Total</b>		<b>4</b>	<b>8</b>	<b>13</b>	<b>25</b>

- (1) Students from three Career Education Institute facilities were merged into three of our other campuses.
- (2) Represents the acquisition out of bankruptcy of nine schools in two transactions in 2001, operated as Career Education Institute or The Cittone Institute.
- (3) We moved our students from Mahwah, New Jersey into the acquired Paramus, New Jersey location.

### Critical Accounting Policies and Estimates

Our discussions of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America, or GAAP. The preparation of financial statements

in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. On an ongoing basis, we evaluate our estimates and assumptions, including those related to revenue recognition, bad debts, fixed assets, goodwill and other intangible assets, income taxes and certain accruals. Actual results could differ from those estimates. The critical accounting policies discussed herein are not intended to be a comprehensive list of all of our accounting policies. In many cases, the accounting treatment of a particular transaction is specifically dictated by GAAP and does not result in significant management judgment in the application of such principles. There are also areas in which management's judgment in selecting any available alternative would not produce a materially different result from the result derived from the application of our critical accounting policies. We believe that the following accounting policies are most critical to us in that they represent the primary areas where financial information is subject to the application of management's estimates, assumptions and judgment in the preparation of our consolidated financial statements.

**Revenue recognition.** Revenues are derived primarily from programs taught at our schools. Tuition revenues and one-time fees, such as nonrefundable application fees, and course material fees are recognized on a straight-line basis over the length of the applicable program, which is the period of time from a student's start date through his or her graduation date, including internships or externships that take place prior to graduation. If a student withdraws from a program prior to a specified date, any paid but unearned tuition is refunded. Refunds are calculated and paid in accordance with federal, state and accrediting agency standards. Other revenues, such as textbook sales, tool sales and contract training revenues are recognized as services are performed or goods are delivered. On an individual student basis, tuition earned in excess of cash received is recorded as accounts receivable, and cash received in excess of tuition earned is recorded as unearned tuition.

**Allowance for uncollectible accounts.** Based upon experience and judgment, we establish an allowance for uncollectible accounts with respect to tuition receivables. We use an internal group of collectors, augmented by third-party collectors as deemed appropriate, in our collection efforts. In establishing our allowance for uncollectible accounts, we consider, among other things, a student's status (in-school or out-of-school), whether or not additional financial aid funding will be collected from Title IV Programs or other sources, whether or not a student is currently making payments, and overall collection history. Changes in trends in any of these areas may impact the allowance for uncollectible accounts. The receivables balances of withdrawn students with delinquent obligations are reserved for based on our collection history. Although we believe that our reserves are adequate, if the financial condition of our students deteriorates, resulting in an impairment of their ability to make payments, or if we underestimate the allowances required, additional allowances may be necessary, which will result in increased selling, general and administrative expenses in the period such determination is made.

Our bad debt expense as a percentage of revenue for the years ended December 31, 2002, 2003 and 2004 was 4.1%, 3.7% and 3.5%, respectively. Our bad debt expense as a percentage of revenue for the three months ended March 31, 2004 and 2005 was 3.1% and 3.2%, respectively. Our exposure to changes in our bad debt expense could impact our operations. A 1% increase in our bad debt expense as a percentage of revenue for the years ended December 31, 2002, 2003 and 2004 would have resulted in an increase in bad debt expense of \$1.4 million, \$2.0 million and \$2.6 million, respectively.

Because a substantial portion of our revenue is derived from Title IV Programs, any legislative or regulatory action that significantly reduces the funding available under Title IV Programs or the ability of our students or schools to participate in Title IV Programs could have a material effect on the realizability of our receivables.

**Goodwill.** We assess the impairment of goodwill in accordance with SFAS No. 142, "Goodwill and Other Intangible Assets." Accordingly, we test our goodwill for impairment annually, or whenever events

or changes in circumstances indicate an impairment may have occurred, by comparing its fair value to its carrying value. Impairment may result from, among other things, deterioration in the performance of the acquired business, adverse market conditions, adverse changes in applicable laws or regulations, including changes that restrict the activities of the acquired business, and a variety of other circumstances. If we determine that an impairment has occurred, we are required to record a write-down of the carrying value and charge the impairment as an operating expense in the period the determination is made. In evaluating the recoverability of the carrying value of goodwill and other indefinite-lived intangible assets, we must make assumptions regarding estimated future cash flows and other factors to determine the fair value of the acquired assets. Changes in strategy or market conditions could significantly impact these judgments in the future and require an adjustment to the recorded balances.

In light of our contemplated public offering, along with the market experience of our principal stockholders and management, we believe that the most appropriate determination of fair value for each reporting unit is a market approach, which takes into consideration peer company multiples of revenues and earnings before interest, taxes, depreciation and amortization, or EBITDA, discounted for lack of marketability. Under this approach we utilized a 20% discount factor, which was deemed reasonable by management, to peer company multiples to determine the valuation of our reporting units. Various factors, including changes in revenues, earnings and market trends, among others, could affect the valuation of our reporting units. If any factor or combination of factors were to cause the valuation of any reporting unit to be reduced by as much as 50%, it would not result in any impairment in accordance with SFAS No. 142.

**Stock-based compensation.** We account for stock-based employee compensation arrangements in accordance with the provisions of SFAS No. 123, *"Accounting for Stock-Based Compensation."* Effective January 1, 2004, we elected to change our accounting policies from the use of the intrinsic value method of Accounting Principles Board ("APB") Opinion No. 25, *"Accounting for Stock-Based Compensation"* to the fair value-based method of accounting for options. As permitted under SFAS No. 148, *"Accounting for Stock-Based Compensation—Transitions and Disclosure—an amendment to SFAS Statement No. 123,"* we have elected to retroactively restate all periods presented. Because no market for our common stock exists, our board of directors determined the fair value of our common stock based upon several factors, including our operating performance, forecasted future operating results, and our expected valuation in an initial public offering.

We value the exercise price of options issued to employees using a market based approach. This approach takes into consideration the value ascribed to our competitors by the market. In determining the fair value of an option at the time of grant, we review contemporaneous information about our peers, which includes a variety of market multiples, including, but not limited to, revenue, EBITDA, net income, historical growth rates and market/industry focus. During 2004, the value we ascribed to stock options granted was based upon our anticipated initial public offering as well as discussions with our investment advisors. Due to the number of peer companies in our sector, we believe using public company comparisons provides a better indication of how the market values companies in the for-profit post secondary education sector.

In December 2004, the FASB issued SFAS No. 123R, *"Share Based Payment,"* which eliminated the alternative to measure stock-based compensation awards using the intrinsic value approach permitted by Accounting Principles Board, or APB, Opinion No. 25, *"Accounting for Stock-Based Compensation"* and by SFAS No. 123. We have not yet determined what impact, if any, adoption of SFAS No. 123R will have on the consolidated financial statements; however, as discussed in Note 2, we adopted the fair value method of accounting for stock-based compensation provisions of SFAS No. 123 and the retroactive transitional provisions of SFAS No. 148, *"Accounting for Stock-Based Compensation—Transition and Disclosure."* As a result, we have been recording stock-based compensation expense for all employee stock awards that were granted or modified.

## Results of Operations for the Three Months Ended March 31, 2005 Compared to the Three Months Ended March 31, 2004

The following table sets forth selected consolidated statements of operations data as a percentage of revenues for each of the periods indicated.

	Three Months Ended March 31,	
	2004	2005
Revenues	100.0%	100.0%
Costs and expenses:		
Educational services and facilities	40.6%	41.1%
Selling, general and administrative	53.3%	55.4%
Loss (gain) on sale of assets	0.0%	0.0%
	-----	-----
Total costs and expenses	93.9%	96.5%
	-----	-----
Operating income	6.1%	3.5%
	-----	-----
Gain on sale of securities	0.0%	0.0%
Interest income	0.0%	0.0%
Interest expense	(1.4)%	(1.7)%
	-----	-----
Income (loss) before income taxes	4.7%	1.8%
Provision (benefit) for income taxes	2.0%	0.8%
	-----	-----
Net income (loss)	2.7%	1.1%
	-----	-----

**Revenues.** Our revenues for the three months ended March 31, 2005 were \$70.9 million, representing an increase of \$11.3 million, or 19.0%, as compared to revenues of \$59.6 million for the three months ended March 31, 2004. Of this increase, approximately \$3.4 million, or 5.7%, is the result of the New England Technical Institute acquisition, which closed on January 11, 2005. The remainder of the increase was primarily due to an 8.9% increase in the average undergraduate full-time student enrollment, which increased to 16,764, exclusive of New England Technical Institute, for the three months ended March 31, 2005 as compared to 15,417 for the three months ended March 31, 2004, and from tuition increases, which averaged between 2% to 5% annually depending on the program.

**Educational services and facilities expenses.** Our educational services and facilities expenses for the three months ended March 31, 2005 were \$29.1 million, representing an increase of \$4.9 million, or 20.2%, from \$24.2 million for the three months ended March 31, 2004. The acquisition of New England Technical Institute on January 11, 2005 resulted in \$2.3 million of this increase. In addition, instructional expenses increased \$2.0 million over the comparable period in the prior year primarily due to increased compensation and benefits related to current and anticipated higher average student enrollments, which required additional educational and operations personnel. Additionally, for the three months ended March 31, 2005, rent expense, real estate taxes and depreciation increased by approximately \$0.3 million, \$0.1 million and \$0.1 million, respectively, as compared to the three months ended March 31, 2004 due to rent on our new Queens, New York facility in 2005 and as a result of our expanded campus facilities in Indianapolis, Indiana and Lincoln, Rhode Island during the later part of 2004. Educational services and facilities expenses as a percentage of revenues increased to 41.1% for the three months ended March 31, 2005 from 40.6% for the three months ended March 31, 2004.

**Selling, general and administrative expenses.** Our selling, general and administrative expenses for the three months ended March 31, 2005 were \$39.3 million, an increase of \$7.5 million, or 23.6%, from \$31.8 million for the three months ended March 31, 2004. Approximately \$1.1 million, or 3.5%, of this increase is due to the New England Technical Institute acquisition. The remainder of the increase was

due to (1) a \$2.6 million, or 16.1% increase in administrative costs, (2) a 35.1% increase in marketing costs as a result of increased advertising expenses associated with student leads and enrollment, (3) an 18.7% increase in sales expenses primarily attributable to additional compensation and benefit expenses related to additional sales representatives, and (4) a 16.2% increase in student services expenses as a result of our 8.9% increase in average student enrollment as well as an approximately \$0.2 million increase in bus services for our students. The \$2.6 million increase in administrative costs is primarily due to (1) an increase of approximately \$0.3 million in bad debt expense due to the approximately \$11.3 million increase in revenue, (2) an increase of \$0.5 million over the prior year period in personnel training costs mainly due to the timing of the training as compared to the prior year period, (3) an increase of \$1.3 million over the prior year period primarily due to incremental compensation and benefits due to additional administrative personnel and (4) an increase of \$0.5 million associated with expenses incurred for the three months ended March 31, 2005 to roll out a new student software and management reporting system at some of our schools. During the latter half of 2004 we significantly increased our personnel ranks to ensure that we will have an adequate infrastructure to function as a public company.

Selling, general and administrative expenses as a percentage of revenue increased to 55.4% for the three months ended March 31, 2005 from 53.3% for the three months ended March 31, 2004.

**Interest expense.** Our interest expense for the three months ended March 31, 2005 was \$1.2 million, representing an increase of \$0.4 million, or 41.8%, from \$0.8 million for the three months ended March 31, 2004. This increase was primarily due to the write-off of deferred financing costs related to our old credit agreement.

**Income taxes.** Our provision for income taxes for the three months ended March 31, 2005 was \$0.5 million, or 41.3% of pretax income, compared to \$1.2 million, or 42.3% of pretax income, for the three months ended March 31, 2004. The lower effective tax rate for the three months ended March 31, 2005 is primarily attributable to our accruing for income taxes based upon our expected effective rate for the year ending December 31, 2005.

#### Results of Operations for the Three Years Ended December 31, 2004

The following table sets forth selected consolidated statements of operations data as a percentage of revenues for each of the periods indicated.

	Year Ended December 31,		
	2002	2003	2004
Revenues	100.0%	100.0%	100.0%
Costs and expenses:			
Educational services and facilities	47.8%	42.8%	40.1%
Selling, general and administrative	51.6%	49.1%	50.1%
Loss (gain) on sale of assets	(0.8)%	0.0%	0.2%
Total costs and expenses	98.6%	91.9%	90.4%
Operating income	1.4%	8.1%	9.6%
Gain on sale of securities	0.0%	0.0%	0.0%
Interest income	0.2%	0.1%	0.1%
Interest expense	(2.1)%	(1.4)%	(1.2)%
Income (loss) before income taxes	(0.5)%	6.8%	8.5%
Provision (benefit) for income taxes	(0.1)%	2.7%	3.5%
Net income (loss)	(0.4)%	4.1%	5.0%

## Year Ended December 31, 2004 Compared to Year Ended December 31, 2003

**Revenues.** Our revenues for the year ended December 31, 2004 were \$261.3 million, representing an increase of \$62.4 million, or 31.4%, as compared to revenues of \$198.9 million for the year ended December 31, 2003. Of this increase, approximately \$7.6 million, or 12.2% of the increase, is the result of our acquisition of Southwestern College on January 23, 2004, while the remainder of the increase was primarily due to a 22.4% increase in the average undergraduate full-time student enrollment, which increased to 15,280, exclusive of Southwestern College, for the year ended December 31, 2004 as compared to 12,487 for the year ended December 31, 2003, and from tuition increases, which averaged between 2% to 5% annually depending on the program.

**Educational services and facilities expenses.** Our educational services and facilities expenses for the year ended December 31, 2004 were \$104.8 million, representing an increase of \$19.6 million, or 23.1%, as compared to educational services and facilities expenses of \$85.2 million for the year ended December 31, 2003. The increases in educational services and facilities expense for the year ended December 31, 2004 were primarily due to our acquisition of Southwestern College and higher average student enrollments, which required additional educational and operations personnel as well as books, tools and supplies. As a result, instruction compensation and benefit expenses increased by \$9.9 million and books and tool expenses increased by approximately \$2.1 million for the year ended December 31, 2004 compared to the prior year. For the year ended December 31, 2004, we also experienced increased rent expense of approximately \$3.5 million over the prior year primarily due to increased square footage of several facilities coupled with the relocation of certain existing facilities to new larger facilities. Included in the \$3.5 million increase described above is a charge of approximately \$0.7 million relating to prior periods due to changes in the way we account for rent holidays in lease terms and the depreciable lives of leasehold improvements, as more fully described in Note 18 to the audited consolidated financial statements. Educational services and facilities expenses as a percentage of revenues decreased to 40.1% for the year ended December 31, 2004 from 42.8% for the year ended December 31, 2003, primarily due to improvements in the utilization of our existing facilities resulting from higher average student enrollments and increased student-to-teacher ratios.

**Selling, general and administrative expenses.** Our selling, general and administrative expenses for the year ended December 31, 2004 was \$130.9 million, an increase of \$33.2 million, or 34.0%, as compared to selling, general and administrative expenses of \$97.7 million for the year ended December 31, 2003. Approximately \$5.1 million or 15.3% of the increase was due to the acquisition of Southwestern College. The remainder of the increase was due to (1) an 11.4% increase in sales expense resulting mainly from incremental compensation and benefit expenses related to additional sales representatives, (2) a 22.7% increase in marketing costs as a result of increased advertising expenses associated with student leads and enrollment, (3) a 24.1% increase in student services expenses as a result of our 22.4% growth in average student population, (4) a 124.1% increase in additional stock compensation expense recognized for the year ended December 31, 2004 as compared to the year ended December 31, 2003 in accordance with FASB No. 123 and (5) approximately \$2.1 million from the write-off of deferred offering costs due to a delay in filing the registration statement for this offering. During 2004 we significantly increased our personnel, including our administrative personnel, in order to ensure we had the proper infrastructure to provide a quality education to our students and meet our stockholders' and investors' expectations.

Selling, general and administrative expenses as a percentage of revenue increased to 50.1% for the year ended December 31, 2004 from 49.1% for the year ended December 31, 2003. The increase in selling, general and administrative expenses as a percentage of revenue is directly attributable to the acquisition of Southwestern College offset by better utilization of our staff. Excluding the Southwestern College acquisition, the write-off of the deferred offering costs and the additional stock compensation expense, selling, general and administrative expenses would have decreased to 48.4% of revenue for the year ended December 31, 2004.

**Interest expense.** Our interest expense for the year ended December 31, 2004 was \$3.0 million representing an increase of \$0.2 million or 9.0% from \$2.8 million at December 31, 2003. This increase was primarily due to an increase in the average debt balance outstanding under our previous credit agreement as a result of our acquisition of Southwestern College.

**Income taxes.** Our provision for income taxes for the year ended December 31, 2004 was \$9.3 million, or 41.6% of pretax income, compared to a \$5.4 million, or 39.5% of pretax income, for the year ended December 31, 2003. The higher effective tax rate for the year ended December 31, 2004 is primarily attributable to our higher federal tax bracket in 2004.

#### **Year Ended December 31, 2003 Compared to Year Ended December 31, 2002**

**Revenues.** Revenues increased by \$59.7 million, or 42.9%, to \$198.9 million in 2003 from \$139.2 million for 2002. \$21.9 million of this increase was attributable to the acquisition of Nashville Auto-Diesel College in February 2003. The remaining \$37.8 million of the increase was primarily due to a 22.6% increase in our average student enrollment (excluding Nashville Auto-Diesel College) during the year and an increase in the average tuition charge per student resulting from tuition increases which averaged between 2% and 5% annually depending on the program. Our average student enrollment, excluding Nashville Auto-Diesel College, in 2003 was 11,227 compared with 9,155 for 2002 and, including Nashville Auto-Diesel College, our average student enrollment in 2003 was 12,487, a 36.4% increase over 2002. Growth in average student population was driven by increased demand for our allied health and automotive programs and partially offset by decreased demand for our IT programs.

**Educational services and facilities expenses.** Educational services and facilities expenses increased by \$18.6 million, or 28.0%, to \$85.2 million in 2003 from \$66.6 million for 2002. Our acquisition of Nashville Auto-Diesel College accounted for 51.6%, or \$9.6 million, of this increase. The remaining increase was primarily due to incremental education expenses, such as salaries for additional teachers and supplies, books and tools, related to higher average student enrollments. As a result, compensation and benefits expenses increased by \$10.3 million for the year ended December 31, 2003 compared to the prior year. For the year ended December 31, 2003, we also experienced increased rent and utilities expense (approximately \$1.1 million) due to increased square footage at several facilities. Educational services and facilities expenses as a percentage of revenues decreased to 42.8% of revenues for 2003 from 47.8% for 2002, primarily due to improvements in the utilization of our existing facilities resulting from higher average student enrollments and increased student-to-teacher ratios.

**Selling, general and administrative expenses.** Selling, general and administrative expenses increased \$26.0 million, or 36.2%, to \$97.7 million in 2003 from \$71.8 million for 2002. Approximately \$9.5 million of this increase or 36.5% was attributed to our acquisition of Nashville Auto-Diesel College. The additional increases in selling, general and administration expenses for the year ended December 31, 2003 were primarily due to (1) a 17.9% increase in sales expense resulting mainly from incremental compensation and benefit expenses related to additional sales representatives, (2) an 18.6% increase in marketing costs as a result of increased advertising expenses associated with student leads and enrollment and (3) a 21.9% increase in student services expense as a result of our 22.6% growth in average student population. Selling, general and administrative expenses as a percentage of revenues decreased to 49.1% of revenues for 2003 from 51.6% of revenues for 2002 as we continued to increase the utilization and efficiencies of our facilities, in particular at our start-up schools and other schools offering allied health programs.

**Interest expense and income.** Interest expense decreased \$0.2 million, or 6.1%, to \$2.7 million for 2003 from \$2.9 million in 2002. This decrease was primarily due to a decrease in our average debt balance outstanding under our previous credit agreement coupled with a decrease in the average interest rate paid. Although we financed the acquisition of Nashville Auto-Diesel College in 2003 using funds drawn on our

previous credit agreement and our capital expenditures were higher in 2003 than in 2002, our improved cash flow from operations in 2003 decreased our average debt balance outstanding 7.8% to \$10.7 million in 2003 as compared to \$11.7 million in 2002. Interest income decreased \$0.1 million or 37.3% to \$0.1 million for 2003 from \$0.2 million in 2002 primarily due to lower interest rates and lower cash balances.

**Income taxes.** Income tax provision for 2003 was \$5.4 million, or 39.5% of pretax income, compared to an income tax benefit of \$0.1 million in 2002.

### Liquidity and Capital Resources

Our primary capital requirements are for facilities expansion and maintenance, acquisitions and the development of new programs. Our principal sources of liquidity have been cash provided by operating activities and borrowings under our credit agreement. The following chart summarizes the principal elements of our cash flow for the past three fiscal years and the three months ended March 31, 2004 and 2005:

#### Cash Flow Summary

	Year Ended December 31,			Three Months Ended March 31,	
	2002	2003	2004	2004	2005
	(dollars in thousands)				
Net cash provided by (used in) operating activities	\$ 9,723	\$ 27,166	\$ 26,674	\$ 957	\$ (3,059)
Net cash used in investing activities:					
Capital expenditures	(3,598)	(13,154)	(23,813)	(6,276)	(3,195)
Acquisitions of a business, net of cash acquired	—	(7,583)	(14,498)	(14,341)	(19,691)
Other	1,443	12,057	0	0	0
Total net cash used in investing activities	(2,155)	(8,680)	(38,311)	(20,617)	(22,886)
Net cash provided by (used in) financing activities	(3,889)	19,400	4,117	(3,008)	(5,451)

### Operating Activities

As of March 31, 2005, we had cash and cash equivalents of \$10.0 million, compared to cash and cash equivalents of \$41.4 million as of December 31, 2004. Historically, we have financed our operating activities and our organic growth primarily through cash generated from operations. We have financed acquisitions primarily through borrowings under our credit agreement, and cash generated from operations. Management currently anticipates that we will be able to meet both our short-term cash needs, as well as our needs to fund operations and meet our obligations beyond the next twelve months with cash generated by operations, existing cash balances, the portion of the net proceeds of this offering remaining after any repayment of our indebtedness and, if necessary, borrowings under our new credit agreement. As of April 30, 2005, we had borrowings available under our new credit agreement of approximately \$64.9 million, including a \$15.9 million sub-limit on letters of credit.

Our primary source of cash is tuition collected from our students. Our students fund their tuition payments from a variety of sources including Title IV Programs, federal and state grants, private loans and their personal resources. The significant majority of students' tuition payments are derived from Title IV Programs. Students must apply for a new loan for each academic period. Federal regulations dictate the timing of disbursements of funds under Title IV Programs and loan funds are generally provided by lenders in two disbursements for each academic year. The first disbursement is usually received approximately 30 days after the start of a student's academic year and the second disbursement is typically received at the beginning of the sixteenth week from the start of the student's

academic year. Certain types of grants and other funding are not subject to a 30-day delay. Our programs range from 30 to 84 weeks and may cover one or two academic years. In certain instances, if a student withdraws from a program prior to a specified date, any paid but unearned tuition or prorated Title IV financial aid is refunded and the amount of the refund varies by state.

The majority of students enrolled at our schools rely on funds received under various government-sponsored student financial aid programs to pay a substantial portion of their tuition and other education-related expenses. The largest of these programs are Title IV Programs which represented approximately 81% of our cash receipts relating to revenues in 2004. As a result of the significance of the Title IV funds received by our students, we are highly dependent on these funds to operate our business. Any reduction in the level of Title IV funds that our students are eligible to receive or any impact on our ability to be able to receive Title IV funds would have a significant impact on our operations and our financial condition.

As previously discussed, the DOE has informed us that all of our current and future institutions have been placed on "Heightened Cash Monitoring, Type 1 status." As a result we are subject to a less favorable Title IV fund payment system that requires us to credit student accounts before drawing down Title IV funds and are also required to timely notify the DOE with respect to certain enumerated oversight and financial events. The DOE also informed us that the corrections made to our prior financial statements will be taken into consideration when each of our institutions applies for recertification of its eligibility to participate in Title IV Programs. When each of our institutions is next required to apply for recertification to participate in Title IV Programs, we expect that the DOE will also consider our audited financial statements and composite scores for our most recent fiscal year as well as for other fiscal years after 2001 and 2002.

Although no assurance can be given, we do not believe that the actions of the DOE specified above will have a material effect on our financial position or results of operations since we have always operated our business in a manner similar to an institution operating under "Heightened Cash Monitoring, Type 1 status" and accordingly, it has been our policy to credit student accounts before drawing down Title IV funds. We also do not believe the additional reporting requirements will cause an undue burden on our operations.

An institution is required to operate under "Heightened Cash Monitoring, Type 1 status," if it has a composite score between 1.0 and 1.4. A composite score under 1.0 in any future year could have an adverse effect on our operations and would result in a default under our new credit agreement, as well as additional requirements that may be imposed by the DOE, including the posting of irrevocable letters of credit.

Net cash provided by operating activities is attributable primarily to net income adjusted for depreciation and amortization, non-cash expenses and changes in working capital items.

**Three Months Ended March 31, 2005 Compared to Three Months Ended March 31, 2004.** Net cash used in operating activities was \$3.1 million for the three months ended March 31, 2005 compared to net cash provided by operating activities of \$1.0 million for the three months ended March 31, 2004. The \$4.1 million change was primarily due to the increase in accounts payable for the three months ended March 31, 2005 being \$3.6 million less than the corresponding increase in the comparable preceding period and a \$3.3 million increase in unearned tuition offset by decreases in income taxes payable of \$2.2 million. The remaining difference resulted from changes in other working capital items, including bad debt expense and other assets.

**Year Ended December 31, 2004 Compared to Year Ended December 31, 2003.** Net cash provided by operating activities decreased to \$26.7 million in 2004 from \$27.2 million in 2003. This decrease of \$0.5 million, or 1.8%, was primarily due to a \$1.0 million increase in stock compensation expense in accordance with FASB No. 123 and a \$1.8 million increase in our provision for doubtful accounts as a

result of a \$62.4 million increase in revenue offset by decreases that resulted from changes in working capital items, including deferred income taxes and accrued expenses.

**Year Ended December 31, 2003 Compared to Year Ended December 31, 2002.** Net cash provided by operating activities increased to \$27.2 million in 2003 from \$9.7 million in 2002. This increase of \$17.5 million, or 179%, was primarily due to an \$8.9 million increase in net income and a \$2.4 million decrease in cash payments to the pension plan. The remainder of the increase resulted from changes in working capital items, including deferred income taxes and accrued expenses offset by increased accounts receivable and lower accounts payable and unearned tuition.

### **Investing Activities**

We currently lease almost all of our campuses. As we execute our growth strategy, strategic acquisitions of campuses may be considered. In addition, although our current growth strategy is to continue our organic growth, strategic acquisitions of operations will be considered. To the extent that these potential strategic acquisitions are large enough to require financing beyond available cash from operations and borrowings under our credit facilities, we may incur additional debt or issue additional debt or equity securities.

Our new credit agreement also restricts the amount of capital expenditures we may make to \$35 million for any of the four fiscal quarterly periods ending March 31, 2005, June 30, 2005, September 30, 2005 or December 31, 2005. Management does not believe that this capital expenditure limit in 2005 will have any impact on our operations.

Our cash used in investing activities is primarily related to the purchase of property and equipment and in acquiring schools. Our capital expenditures primarily result from facility expansion, leasehold improvements, and investments in classroom and shop technology and in operating systems. On January 11, 2005, we acquired New England Technical Institute for \$19.7 million in cash.

**Three Months Ended March 31, 2005 Compared to the Three Months Ended March 31, 2004.** Net cash used in investing activities increased \$2.3 million from \$20.6 million for the three months ended March 31, 2004 to \$22.9 million for the three months ended March 31, 2005. This increase is primarily attributable to an increase in cash used in acquisitions of \$5.4 million in connection with the acquisition of New England Technical Institute, offset by a decrease in capital expenditures of \$3.1 million. Under the terms of our new credit agreement, we may not make more than \$35.0 million in capital expenditures payments in each fiscal quarter in 2005.

**Year Ended December 31, 2004 Compared to the Year Ended December 31, 2003.** Net cash used in investing activities increased \$29.6 million from \$8.7 million for the year ended December 31, 2003 to \$38.3 million for the year ended December 31, 2004. This increase is primarily attributable to an increase in cash used in acquisitions of \$6.9 million in connection with the acquisition of Southwestern College as well as the receipt in the prior year of approximately \$3.0 million from the sale of securities. Additionally, \$9.0 million was released from restricted cash for the year ended December 31, 2003 in connection with the refinancing of our credit agreement and we had an increase in capital expenditures of \$10.7 million for the year ended December 31, 2004 from the year ended December 31, 2003.

**Year Ended December 31, 2003 Compared to Year Ended December 31, 2002.** Capital expenditures increased to \$13.2 million in 2003 from \$3.6 million in 2002. This increase of \$9.6 million is primarily attributable to constructing allied health training rooms in 13 of our schools and three training facilities for our electronic systems technician program.

Capital expenditures are expected to increase as we upgrade and expand current equipment and facilities or open new facilities to meet increased student enrollments. We opened a new 126,000 square foot automotive school in Indianapolis, Indiana in the second quarter of 2004 and a new 40,000 square

foot allied health and business and information technology school in Lincoln, Rhode Island in October 2004. We also took possession of our new 48,000 square foot Queens, New York automotive campus in the first quarter of 2005 with an expected opening date in 2006. Additionally, we are evaluating several other expansion opportunities. We anticipate capital expenditures to be approximately 8% to 10% of revenues. We expect to be able to fund these capital expenditures with cash generated from operating activities and proceeds from this offering.

See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Acquisitions and Start-ups" for a discussion of our investments in acquisitions in recent years.

### ***Financing Activities***

Net cash used in financing activities was \$5.5 million for the three months ended March 31, 2005 compared to \$3.0 million for the three months ended March 31, 2004. This increase is mainly attributable to debt repayments under our old credit agreement as well as payment of deferred financing fees in connection with our credit agreement in the three months ended March 31, 2005.

Net cash provided by financing activities was \$4.1 million for the year ended December 31, 2004 compared to \$19.4 million for the year ended December 31, 2003. This decrease is mainly attributable to our borrowing \$26.0 million less in 2004 than in 2003.

At December 31, 2004, our wholly-owned operating subsidiary, Lincoln Technical Institute, Inc., its subsidiaries and Southwestern College had \$35.8 million in loans outstanding and \$4.0 million in letters of credit outstanding under our previous credit agreement that was entered into as of February 11, 2003 to refinance our prior credit agreement. At December 31, 2004, the interest rate on the amounts outstanding under our previous credit agreement ranged from 5.70% to 6.75%.

On February 15, 2005, we and our subsidiaries entered into a new credit agreement with a syndicate of banks. This new credit agreement provides for a \$100 million revolving credit facility with a term of five years under which any outstanding borrowings bear interest at the rate of adjusted LIBOR (as defined in the new credit agreement) plus a margin that may range from 1.00% to 1.75% or a base rate (as defined in the new credit agreement) plus a margin that may range from 0.00% to 0.25%. At April 30, 2005, the interest rate on the amounts outstanding under the new credit agreement was 4.07%. The new credit agreement permits the issuance of letters of credit up to an aggregate amount of \$20.0 million, the amount of which reduces the availability of permitted borrowings under the new credit agreement.

Our and our subsidiaries' obligations under the new credit agreement are secured by a lien on substantially all of our and our subsidiaries' assets and any assets that we and our subsidiaries may acquire in the future, including a pledge of substantially all of our subsidiaries' common stock. In addition to paying interest on outstanding principal under the new credit agreement, we are required to pay a commitment fee to the lenders with respect to the unused amounts available under the new credit agreement at a rate that may range from 0.25% to 0.40% per year. We are charged quarterly interest at an annual rate of 1.25% as of April 30, 2005 on the outstanding balance of letters of credit issued under the new credit agreement.

The new credit agreement contains various covenants, including a number of financial covenants. Furthermore, the new credit agreement contains customary events of default as well as an event of default in the event of the suspension or termination of Title IV Program funding for our and our subsidiaries' schools aggregating 10% or more of our EBITDA (as defined in the new credit agreement) or our and our subsidiaries' consolidated total assets and such suspension or termination is not cured within a specified period. See "Description of Credit Agreement."

The following table sets forth our long-term debt for the periods indicated:

	Year Ended December 31,			March 31, 2005
	2002	2003	2004	
	(dollars in thousands)			
Credit agreement	\$ 10,460	\$ 32,000	\$ 35,750(1)	\$ 31,000
Automobile loans	132	132	113	105
Finance obligation	9,503	9,503	9,672	9,672
Capital leases—computers (with rates ranging from 6.97% to 19.9%)	2,587	1,425	1,294	1,229
Subtotal	22,682	43,060	46,829	42,006
Less current maturities	(2,085)	(3,624)	(5,311)	(311)
	\$ 20,597	\$ 39,436	\$ 41,518	\$ 41,695

(1) This credit agreement was replaced by the new credit agreement described above on February 15, 2005.

### Contractual Obligations

**Long-Term Debt.** As of December 31, 2004, our long-term debt consisted entirely of amounts borrowed under our previous credit agreement, the finance obligation in connection with our sale-leaseback transaction in 2001 and amounts due under capital lease obligations.

**Lease Commitments.** We lease offices, educational facilities and various equipment for varying periods through the year 2020 at basic annual rentals (excluding taxes, insurance, and other expenses under certain leases).

The following table contains supplemental information regarding our total contractual obligations as of March 31, 2005, measured from the end of our fiscal year, December 31, 2004:

	Payments Due by Period				
	Total	Less than 1 year	2-3 years	4-5 years	After 5 years
	(dollars in thousands)				
Credit facility (excluding interest)(1)	\$ 35,750	\$ 5,000	\$ —	\$ —	\$ 30,750
Capital leases (including interest)	1,603	372	556	400	275
Operating leases	103,138	12,095	23,262	20,336	47,445
Finance obligation	15,205	1,258	2,516	2,516	8,915
Automobile loans (including interest)	120	36	68	16	—
Total contractual cash obligations	\$ 155,816	\$ 18,761	\$ 26,402	\$ 23,268	\$ 87,385

(1) We entered into a new credit facility on February 15, 2005, with a term of five years. The amount outstanding, as of April 30, 2005, under our new credit agreement was \$31.0 million, in addition to \$4.1 million in outstanding letters of credit. Interest amounts under the credit agreement vary by term of the underlying instrument and are not fixed in nature or timing of payment. As of April 30, 2005, the interest rate under the credit agreement was 4.34%. Assuming that the amount outstanding under the credit agreement at April 30, 2005 remained outstanding for a full year and that the interest rate did not change, interest under the credit agreement for that year would be approximately \$1.3 million.

## **Off-Balance Sheet Arrangements**

We had no off-balance sheet arrangements as of December 31, 2004 or March 31, 2005.

## **Related Party Transactions**

In 2003, we entered into a multi-year management service agreement with our majority stockholder, Stonington. In accordance with this agreement we pay Stonington Partners a management fee of \$0.75 million in the first month of each year for management consulting and financial and business advisory services. Such services include valuing acquisitions and structuring their financing and assisting with new loan agreements. This agreement will terminate upon completion of this offering.

We had a consulting agreement with Hart Capital to advise us in identifying acquisition and merger targets and to assist with the due diligence reviews and negotiations with these targets. This agreement terminated by its terms in June 2004. Hart Capital is the managing member of Five Mile River Capital Partners, which is our second largest stockholder, and Steven Hart, who is the owner and President of Hart Capital, sits on our board of directors. We paid Hart Capital a monthly retainer, reimbursement of expenses and an advisory fee for its work on successful acquisitions or mergers. In accordance with the agreement, we paid Hart Capital approximately \$0.7 million, \$0.6 million and \$0.4 million for the years ended December 31, 2002, 2003 and 2004, respectively. Pursuant to the agreement, we had the obligation to make certain payments to Hart Capital with respect to acquisition opportunities identified for us by Hart Capital prior to the termination of the agreement if we consummated any such acquisition opportunities within the twelve months following the termination of the agreement. We paid Hart Capital \$0.3 million for its services in connection with the New England Technical Institute acquisition, which closed on January 11, 2005.

## **Seasonality and Trends**

Our net revenues and operating results normally fluctuate as a result of seasonal variations in our business, principally due to changes in total student population. Student population varies as a result of new student enrollments, graduations and student attrition. Historically, our schools have had lower student populations in our first and second quarters and we have experienced large class starts in the third and fourth quarters and student attrition in the first half of the year. Our expenses, however, do not vary significantly with changes in our student population and revenues. During the first half the year, we make significant investments in marketing, staff, programs and facilities to ensure that we meet our second half of the year targets and, as a result, such expenses do not fluctuate significantly on a quarterly basis. We expect quarterly fluctuation in operating results to continue as a result of seasonal enrollment patterns. Such patterns may change, however, as a result of new school openings, new program introductions, increased enrollments of adult students or acquisitions.

Operating income is negatively impacted during the initial start-up phase of new campus expansions. We incur sales and marketing costs as well as campus personnel costs in advance of the campus facility opening. Typically we begin to incur such costs approximately 15 months in advance of the campus opening with the majority of such costs being incurred in the nine-month period prior to a campus opening. During the current year, we initiated expansion efforts for one new campus, located in Queens, New York, which is scheduled to open in 2006.

## **Quantitative and Qualitative Disclosures About Market Risk**

Our principal exposure to market risk relates to changes in interest rates. At April 30, 2005, we had \$31.0 million of loans outstanding under our new credit agreement and \$4.1 million in outstanding letters of credit. Loans outstanding under our credit agreement accrue interest at a rate of 4.07%. Each 1% increase in this interest rate would add \$0.3 million per year to our interest expense. We intend to

use a portion of the proceeds from this offering to repay all outstanding amounts under our new credit agreement. See "Use of Proceeds."

### **Effect of Inflation**

Inflation has not had and is not expected to have a significant effect on our operations.

### **Recent Accounting Pronouncements**

In November 2002, the FASB issued Interpretation No. ("FIN") 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others*. FIN 45 elaborates on the existing disclosure requirements for most guarantees, including loan guarantees such as standby letters of credit. It also clarifies that at the time a company issues a guarantee, we must recognize an initial liability for the fair value of the obligations we assume under the guarantee and must disclose that information in our financial statements. The provisions related to recognizing a liability at inception of the guarantee for the fair value of the guarantor's obligations does not apply to product warranties or to guarantees accounted for as derivatives. The initial recognition and initial measurement provisions apply on a prospective basis to guarantees issued or modified after December 31, 2002. We had no guarantees which require disclosure under FIN 45 as of December 31, 2004.

In November 2002, the Emerging Issues Task Force ("EITF") reached a consensus on Issue No. 00-21 "*Accounting for Revenue Arrangements with Multiple Deliverables*" ("EITF 00-21"). Under EITF 00-21, in order to separate the accounting for multiple deliverables (products or services) provided to a customer by a vendor, the deliverables must have separable value to the customer. EITF 00-21 is effective for us for revenue arrangements entered into after January 1, 2004. The adoption of EITF 00-21 did not have a material effect on the consolidated financial statements.

In January 2003, the FASB issued FIN No. 46, *Consolidation of Variable Interest Entities*, as amended in December 2003 by FIN 46 (Revised) ("FIN 46-R"), which deferred the effective date until the first interim or annual reporting period ending after March 15, 2004. FIN 46-R requires the consolidation of an entity by an enterprise known as a "primary beneficiary," (i) if that enterprise has a variable interest that will absorb a majority of the entity's expected losses, if they occur, receive a majority of the entity's expected residual returns, if they occur, or both and (ii) if the entity is a variable interest entity ("VIE"), as defined. An entity qualifies as a variable interest entity if (i) the total equity investment at risk in the entity is not sufficient to permit the entity to finance its activities without additional subordinated financial support from other parties or (ii) the equity investors do not have the characteristics of a controlling financial interest in the entity. The initial determination of whether an entity is a variable interest entity shall be made as of the date at which an enterprise becomes involved with the entity and re-evaluated as of the date of triggering events, as defined. The adoption of FIN 46-R did not have a material effect on the consolidated financial statements.

In May 2003, the FASB issued SFAS No. 150, "*Accounting for Certain Financial Instruments with Characteristics of Liabilities, Equity, or Both*," which establishes standards for classifying and measuring as liabilities certain financial instruments that embody obligations of the issuer and have characteristics of both liabilities and equity. On November 7, 2003, the FASB deferred, indefinitely, the application of paragraphs 9 and 10 of SFAS No. 150 as it relates to mandatory redeemable non-controlling interests in consolidated subsidiaries in order to address a number of interpretation and implementation issues. The adoption of SFAS 150 did not have a material effect on the consolidated financial statements.

In December 2004, the FASB issued SFAS No. 123R, "*Share Based Payment*," which eliminated the alternative to measure stock-based compensation awards using the intrinsic value approach permitted by APB Opinion No. 25, "*Accounting for Stock-Based Compensation*" and by SFAS No. 123. We have not yet determined what impact, if any, the adoption of SFAS No. 123R will have on the consolidated

financial statements; however, as discussed in Note 2 to the financial statements included elsewhere in this prospectus, we adopted the fair value method of accounting for stock-based compensation provisions of SFAS No. 123 and the retroactive transitional provisions of SFAS No. 148, "*Accounting for Stock-Based Compensation—Transition and Disclosure*." As a result, we have been recording stock-based compensation expense for all employee stock awards that were granted or modified.

In December 2004, the FASB issued SFAS No. 153, "*Exchanges of Nonmonetary Assets, an Amendment of APB Opinion No. 29, Accounting for Nonmonetary Transactions*." SFAS No. 153 addresses the measurement of exchanges of nonmonetary assets and requires that such exchanges be measured at fair value, with limited exceptions. SFAS No. 153 amends APB Opinion No. 29 by eliminating the exception that required nonmonetary exchanges of similar productive assets be recorded on a carryover basis. The provisions of SFAS No. 153 are effective for nonmonetary asset exchanges occurring in fiscal periods beginning after June 15, 2005. We will adopt the provisions of SFAS No. 153, as required.

## BUSINESS

### Overview

We are a leading and diversified for-profit provider of career-oriented post-secondary education as measured by total enrollment and number of graduates. We offer recent high school graduates and working adults degree and diploma programs in four principal areas of study: automotive technology, allied health (which includes programs for medical administrative assistants, medical assistants, pharmacy technicians and massage therapists), skilled trades and business and information technology. At March 31, 2005, our automotive technology program, our allied health program, our skilled trades program and our business and information technology program accounted for 44.2%, 37.5%, 13.2% and 5.1%, respectively, of our total enrollment. We had 17,630 students enrolled as of March 31, 2005 and our average enrollment for the three months ended March 31, 2005 was 17,692 students, an increase of 14.8% from average enrollment of 15,417 for the three months ended March 31, 2004. For the three months ended March 31, 2005, our revenues were \$70.9 million, which represents an increase of 19.0% from the three months ended March 31, 2004. Excluding our acquisition of New England Technical Institute in January 2005, our revenues and average enrollments would have increased by 13.2% and 8.7%, respectively, compared to the three months ended March 31, 2004. For the year ended December 31, 2004, our revenues were \$261.3 million, which represents a 31.4% increase from the year ended December 31, 2003. Excluding our acquisition of Southwestern College in January 2004, our revenues and average enrollments for the year ended December 31, 2004 would have increased by 27.5% and 22.4%, respectively, compared to the year ended December 31, 2003.

As of March 31, 2005 we operated 32 campuses under seven well-established brands with long operating histories: Lincoln Technical Institute (58 years of operation), Nashville Auto-Diesel College (85 years), Denver Automotive & Diesel College (41 years), The Cittone Institute (36 years), Career Education Institute (21 years), Southwestern College (26 years) and New England Technical Institute, which we acquired on January 11, 2005 and has been in operation for 65 years. Our campuses, the majority of which serve major metropolitan markets, are located in various areas throughout the United States. Four of our campuses are destination schools, which attract students from across the United States and, in some cases, from abroad. Our other campuses primarily attract students from their local communities and surrounding areas. All of our schools are nationally accredited and eligible to participate in federal financial aid programs. Southwestern College received an executed provisional program participation agreement from the DOE. New England Technical Institute has received an executed temporary provisional program participation agreement from the DOE.

On January 11, 2005, we acquired the rights, title and interest in the assets used in the conduct and operation of New England Technical Institute for a purchase price of \$19.7 million. New England Technical Institute operates four schools in New Britain, Hamden, Shelton and Cromwell, Connecticut and provides programs in automotive technology, allied health, business and information technology and skilled trades, including culinary arts and nursing. This acquisition expands our presence in the northeastern U.S. and increased the number of campuses we operate from 28 to 32.

We believe that we provide our students with the highest quality career-oriented training available for our areas of study in our markets. We offer programs in areas of study that we believe are typically underserved by traditional providers of post-secondary education and for which we believe there exists significant demand among students and employers. Furthermore, we believe our convenient class scheduling, career focused curricula and emphasis on job placement offer our students valuable advantages that have been neglected by the traditional academic sector. By combining substantial hands-on training with traditional classroom-based training led by experienced instructors, we believe we offer our students a unique opportunity to develop practical job skills in key areas of expected job demand. We believe these job skills enable our students to compete effectively for employment opportunities and to pursue on-going salary and career advancement.

## History

We were founded in 1946 as Lincoln Technical Institute, Inc. Our programs were initially focused on automotive technical education and were subsequently expanded into adjacent fields including skilled trades, business and information technology and, most recently, allied health, in order to capitalize on our expertise in creating and delivering technical education programs. In June 1999, Stonington acquired a controlling interest in us. Following the close of that transaction, David Carney was named our Chairman and Chief Executive Officer, and has worked with our senior management to refocus our business on growing our campuses and student population, expanding our areas of study and improving our operational performance. From 1999 through December 31, 2004, we have added nine schools through our acquisitions of Denver Automotive & Diesel College in 2000 (one campus), Career Education Institute in 2001 (two campuses), Nashville Auto-Diesel College in 2003 (one campus) and Southwestern College in 2004 (five campuses). In that same time, we have also started eight new campuses and introduced more than 50 new programs of study across our campuses. In January 2005, we acquired New England Technical Institute, which increased the number of our campuses by four. As a result of these initiatives, we have significantly grown and diversified our program offerings and student population.

## Market Opportunity

The market for post-secondary education is large and growing. Expenditures on post-secondary education in the United States totaled over \$350.8 billion in the 2003-2004 academic year. The number of students in the United States obtaining some form of post-secondary education totaled 16.1 million in fall of 2002, and The National Center for Education Statistics estimates enrollments will grow to approximately 18.2 million by 2013.

Although expenditures on and enrollment in post-secondary education as a whole do not necessarily reflect a market opportunity for the career-oriented, post-secondary education sector that we serve, we believe that this sector will grow due to, among other factors, a variety of demographic and economic factors, including an increasing demand for skilled workers, an increasing wage premium for skilled workers, a growing number of high school graduates and working adults seeking post-secondary education, and market share gains from traditional academic institutions. We believe that for-profit providers will continue to increase the percentage of students served as for-profit providers are able to offer students advantages relative to traditional academic colleges and universities, including convenient course scheduling, career-oriented curricula and strong job placement opportunities. According to the DOE, over the last 25 years, enrollments at for-profit post-secondary institutions, which comprised 3.3% of total student enrollments in post-secondary institutions in 2001, have experienced a compounded annual growth rate of approximately 10% versus enrollments at traditional colleges and universities, which have had a compounded annual growth rate of approximately 1% over the same time period.

Government spending in support of post-secondary education is another significant factor supporting the growth in student enrollment. According to the DOE, total government aid to support this sector is estimated to have grown from \$45 billion in the 2000-2001 academic year to over \$80 billion for the fiscal 2006 budget. The federal government provides the majority of this assistance in the form of aid or loans to qualified students. The remainder of government aid comes from state and local government sources. Private third-party lenders also provide student financial aid.

We believe there is significant and growing demand by employers for individuals possessing skills in each of our areas of study. The U.S. Department of Labor estimates that there will be approximately 4.8 million job openings due to growth and net replacements from 2002 to 2012 in careers related to the areas of study we offer. Furthermore, we believe that each of our four areas of study have strong entry-level employment opportunities and ongoing career and salary advancement potential.

**Automotive Technology.** The U.S. Department of Labor estimates that there were approximately 1,038,000 working automotive servicers and repairers in the United States in 2002, and that this number is expected to increase by 12.5% from 2002 to 2012 due to aggregate growth and net replacements of 392,000 job openings during this period. In fact, the National Auto Dealers Association cites a current shortage of approximately 60,000 automotive technicians. In addition, the U.S. Department of Labor estimates that there were approximately 267,000 bus and truck mechanics and diesel engine specialists in the United States in 2002 and that their number is expected to increase by 14.2% by 2012 due to aggregate growth and net replacements of 107,000 jobs. Replacements are being driven by the rising average age of automotive technicians in the United States, which results in the creation of "replacement" job openings when a retiring technician exits the workforce. Growth is being driven by an increase in the number of automobiles and trucks, as well as rapid technological advancement that has raised hiring standards and increased the need for continuous training. Furthermore, the recurring need for, and expense of, training has led many automotive manufacturers to outsource training previously conducted in-house or in partnership with their local dealerships.

**Allied Health.** According to the U.S. Department of Labor, allied health represents one of the fastest growing segments of the domestic economy. Of the 30 fastest growing jobs from 2002-2012, the U.S. Department of Labor anticipates that 13 will be health-related. This growing demand for allied health professionals is being driven by technological advancements in healthcare, the aging population in the United States and an increasing awareness of health-related issues, all trends which we expect to continue for the foreseeable future. The U.S. Department of Labor estimates that there were over 5.3 million allied health positions (defined to include healthcare technicians and related support occupations) in 2002 and projects that this number will increase to 7.0 million in 2012. Similar to the growth projected in the total allied health sector, we expect strong demand within our specific program areas, which include medical administrative assistant, medical assistant and pharmacy technician. According to the U.S. Department of Labor, the number of medical assistants and pharmacy technicians is expected to increase from 576,000 in 2002 to 850,000 in 2012.

**Skilled Trades.** The skilled trades industry covers a wide variety of fields, including construction, equipment installation and repair and drafting occupations. Job growth is being driven by technological advancement, as well as a shift away from traditional training sources. Many public vocational schools, which have historically trained skilled trades professionals, are suffering from reduced funding, creating increased opportunities for non-traditional providers of skilled trades programs, such as for-profit post-secondary institutions. Specifically, our program offerings include: skilled electronic systems technicians, mechanical and architectural drafting specialists and heating, ventilation and air conditioning, or HVAC, technicians. For example, the U.S. Department of Labor estimates that there were 216,000 drafters and 249,000 HVAC installers in 2002 and employment is expected to grow to 222,000 and 328,000, respectively, in these areas by 2012. In addition to the skilled trades fields that our programs cover, there is also demand for skilled trades professionals in construction, plumbing and electrical wiring. We continually evaluate opportunities to develop or acquire the curriculum to offer programs designed to prepare our graduates to enter these and other attractive skilled trade professions.

**Business and Information Technology.** Despite recent weakness in the business and information technology sector, we believe demand still exists for business and information technology professionals. According to the U.S. Department of Labor, of the top 30 fastest growing jobs, seven are IT-related. Furthermore, we believe that the industry will be positively impacted by an economic recovery and accompanying business investment that will drive the demand for IT technicians to upgrade computer hardware and install, integrate and operate new software applications. We have focused our business and information technology program offerings on the skills that we believe will be most marketable in the business and information technology job market in the coming years. Our business and information technology programs include: software applications technology, network and PC systems technology,

network systems administration, business administration and graphic design. According to the U.S. Department of Labor, there was an aggregate of 1.2 million computer software application engineers, computer support specialists, and network and computer systems administrators in 2002 and this number is expected to grow to 1.5 million in 2012.

## **Business Strengths**

We believe that the following strengths differentiate us from our competitors:

***Program Diversification.*** We believe the breadth of our areas of study and the diversity of our offerings increase our addressable market and enhance our overall revenue stability and operational flexibility. The breadth of our areas of study improves our potential for program expansion by providing us with a broader range of areas upon which to add or expand. The diversity of our program and degree offerings broadens our addressable market by attracting a varied student population, including recent high school graduates and working adults, both men and women. Additionally, our program offerings enable us to capitalize on positive trends in certain segments of the economy while reducing our dependence on other segments, as we have recently demonstrated by expanding our allied health programs to take advantage of job growth in these areas.

***Operational Flexibility.*** Our operational infrastructure is highly flexible and enables us to adapt quickly to changing market trends. Our management team is experienced in the development of new programs and curricula that we can rapidly roll out to our schools. For example, we developed several allied health programs, including Medical Assisting, which was piloted in one school and then replicated across our system to an additional 13 schools. We also developed the Electronic System Technology program at our Melrose Park campus and to date have replicated it to five additional campuses. This program is designed to train students in cable systems, audio/visual circuits, computer networks, fiber optics, telecommunications and satellite systems, and other related specialized programs. We recently launched online associate degree completion programs and we expect to introduce other online degree completion programs, as well as 100% online degree programs. We expect our online program offerings to broaden our market and further enhance our program flexibility. We also have substantial experience with the complex regulatory environment in which we operate and we believe this enables us to efficiently obtain the required approvals for new programs, expansion and acquisitions. We are also focused on the continual evaluation of our portfolio of schools and programs to maximize our facility utilization and can rapidly reallocate classroom space and other resources as necessary to exploit market opportunities. Finally, once we enter a new market through expansion or acquisition, our marketing and recruiting programs are designed to quickly populate the new program or school. For example, in 2002, we rapidly developed our allied health program curriculum, obtained the requisite regulatory approval, redesigned some of our classrooms and began to successfully market this new program offering. While allied health accounted for only 7% of our total enrollments as of December 31, 2002, it accounted for 24% of our total enrollments as of December 31, 2003, 31.9% as of December 31, 2004 and 37.5% as of March 31, 2005.

***Strong Brands and Geographic Presence.*** We believe that our schools have established a strong competitive position in their respective local markets and significant brand recognition with prospective students and employers. The majority of our 32 campuses serve major metropolitan markets in the United States. Our Lincoln Technical Institute, Denver Automotive & Diesel College, Nashville Auto-Diesel College, The Cittone Institute, Career Education Institute, Southwestern College and New England Technical Institute brands provide us with local market representation in 15 states, while our destination schools—Denver Automotive & Diesel College, Nashville Auto-Diesel College, our Columbia, Maryland Lincoln Technical Institute School and our Indianapolis, Indiana Lincoln Technical Institute school—attract students from across the United States and, in some cases, from abroad. Unlike competitors with single or regional campus models, we are able to recruit effectively from a

national pool of potential students while also securing job placement for our graduates on a broader basis.

**Strong Marketing and Student Recruitment.** We use a variety of marketing and recruiting methods to attract students and increase enrollments. Our program combines various methods of media advertising such as television, the Internet and print media with a team of field- and campus-based recruiting representatives. Our media advertising is directed primarily at attracting high school students and working adults to our local campuses. Our field-based recruiting representatives make presentations at high schools to attract students to our local and destination campuses while our campus-based recruiting representatives field calls from our toll-free number that is included in our advertising and follow-up with potential students on an individual basis. We continuously monitor and adjust the focus of our marketing and recruiting efforts to maximize efficiency and minimize our student acquisition costs. In addition, our administrators actively work with our current students, graduates and others to encourage referrals, which have historically represented over 20% of our new enrollments.

**Experienced Management Team.** Our senior management team has over 200 years of combined experience and an average of approximately 20 years of experience in the for-profit, post-secondary education industry. Mr. David Carney, our Chief Executive Officer, has 27 years of experience with for-profit education companies, including serving as Vice President, Chief Financial Officer and Vice President of Development for the chain of technical schools owned by British Oxygen Group Limited which he grew from four schools when he started to 25 schools ten years later. Mr. Lawrence Brown, our President and Chief Operating Officer, has over 32 years of experience in the industry. He has been with us for more than 27 years, and has performed various roles such as admissions officer/director, school director, regional Vice President and Executive Vice President. Mr. Thomas McHugh, our Senior Vice President and Chief Compliance Officer, has 25 years of experience with for-profit education companies. We believe that our management team's deep understanding of the for-profit, post-secondary education industry enables us to successfully manage our operations and facilitate our growth.

## **Growth Strategy**

Our goal is to strengthen our role as a leading and diversified provider of career-oriented post-secondary education by continuing to pursue the following growth strategies:

**Expand Existing Areas of Study and Existing Facilities.** We believe we can leverage our existing operations to capitalize on the growing demand from students and employers in our local markets. We are adding new programs and degree offerings in our current areas of study and are expanding several of our campus facilities.

- **Expand Existing Areas of Study.** We are expanding our program offerings in our existing areas of study by replicating existing programs, developing new, but related, programs and increasing our degree offerings.
  - We replicate programs by taking the curriculum for an existing program at one school and introducing it to other schools across our campus base. The replication of our Electronic System Technician program, which we introduced at one school in September 2001, three schools in 2003 and two schools in 2004, is an example of the success of our program replication. We plan to further replicate our electronic system technician program at additional locations in the future.
  - The development of new, but related, programs in existing areas of study allows us to expand our program offerings and increase enrollments at a relatively low cost. For example, our recently developed pharmacy technician program leverages our existing allied

health expertise and infrastructure while attracting a new base of students and satisfying employers' evolving needs. We are currently developing three new allied health programs and one new skilled trades program.

- We believe expanding our associate degree offerings will increase our average enrollments and the average length of stay of our students, broaden our addressable market and diversify our student demographics. We currently offer associate degrees in selected programs at 16 of our campuses and are seeking to offer associate degrees at six additional campuses.

- **Expand Existing Facilities.** We are expanding our existing facilities by renovating certain schools and relocating other schools to expand capacity. This will enable us to roll out new programs and attract more students. For example, we moved to a new facility in June 2004 in Indianapolis, Indiana which accommodates 2,200 students, nearly doubling the capacity of our two other facilities in that city. This additional space will allow us to grow our student population and further diversify our product offering. We moved into a new 40,000 square foot facility in October 2004 in Lincoln, Rhode Island which allowed us to consolidate facilities into one location and more than double our classroom space. Operationally, we believe these new facilities will be more efficient to manage and will accommodate increased enrollments and programs.

**Enter New Geographic Markets and New Areas of Study.** We believe we can increase our student enrollments by entering selected new geographic markets and new areas of study. We target new markets and areas of study that we believe have significant growth potential and where we can leverage our reputation and operating expertise. We expect that our entrance into new geographic markets and areas of study will increase our diversification and potential for future program expansion.

- **Enter New Geographic Markets.** We continuously evaluate entry into markets where we can start new schools. In the summer of 2001, we acquired eight schools that we consider start-ups because they did not have any students or staff. In starting these schools, we obtained the necessary government approvals for financial aid, hired teaching professionals and administrative staff, implemented our programs, marketed the schools under new brands and successfully populated the schools with students. Our reputation, experienced regulatory personnel and management expertise enabled us to begin accepting students in all of these schools within six months of acquisition. Today, these schools enroll more than 2,500 students. Our most recent start-up is in partnership with the Greater New York Area Automobile Dealers Association and is expected to offer programs in automotive technology starting in 2006. Construction has begun on our facility in Queens, New York and this location will allow us to capitalize on the significant employer and student demand in an attractive market that we believe is currently underserved.
- **Enter New Areas of Study.** We continuously evaluate new, high-growth areas of study that are in demand by students and employers. For example, in 2002, we targeted allied health and successfully developed and launched a suite of programs in that area of study. We typically require six to 18 months to develop new programs and to obtain necessary regulatory approvals. On January 11, 2005, we acquired New England Technical Institute, which offers programs in the culinary arts and nursing, which are new programs for us. In addition, in 2005 we intend to introduce a new program for dental assistants.

**Opportunistically Pursue Strategic Acquisitions.** In evaluating potential acquisitions, we seek to identify schools with the potential for program replication at our existing campuses, new areas of study, new markets with attractive growth opportunities and advanced degree programs. We also look for schools whose operations we can improve by leveraging our sales and marketing expertise, business management systems and our experienced management team. In 2003, we acquired Nashville

Auto-Diesel College, which provided us entry into the attractive Nashville, Tennessee market. We were able to successfully leverage our expertise and improve the operating income margins at Nashville Auto-Diesel College from 3.9% to 18.0% in the twelve months following the acquisition. In January 2004, we completed our acquisition of Southwestern College and on January 11, 2005, we completed the acquisition of New England Technical Institute. We continue to evaluate attractive acquisition candidates and believe that we will be successful in locating such candidates.

***Introduce Online Education Alternatives.*** We recently launched our online initiative to capitalize on the rapidly growing demand for, and flexibility provided by, online education alternatives. Initially, we are offering our diploma graduates the opportunity to earn their associate degree online and we expect to expand our offering to include other degree completion programs as well as 100% online degree programs. We began offering online courses in mid-2004. This should broaden our addressable market and be an attractive option for students without the geographic or financial flexibility to enroll in campus-based programs. We believe that we will be able to leverage our existing programs and campuses, as well as our relationship with eCollege.com, a provider of technology and services for online learning programs, in developing our online offerings. We initially plan to use our online offerings to enable certificate and diploma automotive students and graduates to obtain an associate degree. These students or graduates must complete a series of general education courses, which are conducive to being offered online, to obtain an associate degree. We do not anticipate that these online offerings will contribute meaningfully to our 2005 revenues.

We have a two year contract with eCollege that expires December 31, 2005, and we expect to renew the contract. Under the terms of the existing contract, eCollege provides us with a website housed on eCollege servers which serves as a portal for students to access our on-line curriculum. The eCollege platform tracks all interaction between the student and the instructor. In addition, we purchased \$75,000 of prepaid professional services of which approximately \$25,000 remains to be used. The professional services were for customization of the eCollege portal and course design and development.

### **Programs and Areas of Study**

We structure our program offerings to provide our students with practical, career-oriented education and position our students for attractive entry-level job opportunities in their chosen fields. Our programs are designed to be completed in 24 to 100 weeks. Tuition ranges from \$8,000 to \$26,000, depending on the length of the program and the area of study. All of our schools offer diploma and certificate programs and currently 16 of our schools are approved to offer associate degree programs. In order to accommodate the schedules of our students and maximize classroom utilization, we typically offer courses five days a week in three shifts a day and start new classes every month. We update and expand our programs frequently to reflect the latest technological advances in the field, providing our students with the specific skills and knowledge required in the current marketplace. Classroom instruction combines lectures and demonstrations by our experienced faculty with comprehensive hands-on laboratory exercises in simulated workplace environments.

The following table lists the programs offered and the number of students enrolled in each area of study as of March 31, 2005.

**Programs Offered**

Area of Study	Associate	Diploma and Certificate(1)	Enrollment	Percent of Total Enrollment
Automotive Technology	Auto Service Management, Collision Repair, Diesel Technology, Diesel & Truck Service Management	Automotive Mechanics, Automotive Technology, Collision Repair, Diesel Truck Mechanics, Diesel Technology, Diesel & Truck Technology, Master Automotive Technology	7,792	44.2%
Allied Health	—	Medical Administrative Assisting, Medical Assisting, Pharmacy Technology, Therapeutic Massage & Body Technology	6,616	37.5%
Skilled Trades	Mechanical/Architectural Drafting, Electronics Engineering Technology	Electronic Servicing, Electronics Engineering Technology, Electronics System Technology, HVAC, Mechanical/Architectural Drafting	2,330	13.2%
Business and Information Technology	PC Systems & Networking Technology	Business Administration, Graphic Web Design, Network Systems Administrating, PC Support Technology	892	5.1%
Total:			17,630	100.0%

(1) Additional programs in development: Dental Assisting, Billing and Coding, Health Information Technology, and Electrician. Upon our acquisition of New England Technical Institute in January 2005, we added programs in nursing, electrical and culinary arts.

**Automotive Technology.** Automotive technology represents our largest area of study, with 44.2% of our enrollments as of March 31, 2005. Our automotive technology programs are 24 to 100 weeks in length, with tuition rates of \$8,000 to \$24,000. We believe we are a leading provider of automotive technology education in each of our local markets. Graduates of our programs are qualified to obtain entry level employment ranging from positions as technicians and mechanics to various apprentice level positions. Our graduates are employed by a wide variety of employers, ranging from automotive and diesel dealers, independent auto body paint and repair shops, to trucking and construction companies.

In 2002, we signed a lease on a new 48,000 square foot facility in Queens, New York that we expect to open in 2006. This school will offer courses in automotive technology and will operate under the Lincoln Technical Institute brand name in partnership with the Greater New York Area Automobile Dealers Association. The Greater New York Area Automobile Dealers Association represents over 500 dealers in New York and Connecticut that comprise a large source of potential employers for our graduates, both at Queens and at our other automotive schools. We expect that we will be able to leverage our current advertising in the New York City television market to not only offer potential students who could not travel to one of our New Jersey schools a closer-to-home opportunity, but also to gain access to the entire eastern Long Island and southern Connecticut markets.

We have a partnership with BMW that offers our automotive technology students the opportunity to work for BMW through the Service Technician Education Program (STEP). The STEP program is a "graduate" school program for individuals who have successfully earned an automotive certification either at one of our schools or any of our competitor's schools. Students who are admitted to the STEP program have their tuition paid for by BMW and upon successfully completing the program are

typically employed as BMW mechanics. The BMW STEP program commenced at our Columbia, Maryland facility in the second quarter of 2004. Our partnership with BMW signifies our high quality education capabilities and is an attractive marketing program.

All of our Lincoln Technical Institute schools, with the exception of our Allentown, Pennsylvania campus, offer programs in automotive technology, in most cases in addition to other technical programs. Denver Automotive & Diesel College and Nashville Auto-Diesel College, which we acquired in 2000 and 2003, respectively, currently offer programs exclusively in automotive technology. Denver Automotive & Diesel College, Nashville Auto-Diesel College, our Columbia, Maryland Lincoln Technical Institute school and our Indianapolis, Indiana Lincoln Technical Institute schools are destination schools, attracting students from throughout the United States and, in some cases, from abroad.

**Allied Health.** As of March 31, 2005, allied health represented our second largest area of study, with 37.5% of our total enrollments up from 7.0% in 2002. Our allied health programs are 30 to 65 weeks in length, with tuition rates of \$8,000 to \$12,000. Graduates of our programs are qualified to obtain positions such as medical administrative assistant, EKG technician, claims examiner and pharmacy technician. Our graduates are employed by a wide variety of employers, including hospitals, laboratories, insurance companies, doctors' offices and pharmacies.

Our medical assistant and medical administrative assistant programs are our largest allied health programs. In 2003, we introduced our therapeutic massage & body technology program and our pharmacy technician program which we currently offer in twelve and nine of our campuses, respectively. We expect to augment these existing allied health programs with a new program in dental assisting and we are considering adding billing and coding and health information technology to our program offerings.

We offer allied health programs at all of our Cittone Institute and Career Education Institute schools, Southwestern College, and our Allentown, Pennsylvania and Melrose, Illinois Lincoln Technical Institute schools and at select New England Technical Institute schools.

**Skilled Trades.** As of March 31, 2005, 13.2% of our students were enrolled in our skilled trades programs. Our skilled trades programs are 24 to 88 weeks in length, with tuition rates of \$8,000 to \$24,000. Our skilled trades programs include heating, ventilation and air conditioning repair, drafting and computer-aided design and electronic system technician. Graduates of our programs are qualified to obtain entry level employment positions such as cable, wiring and HVAC installers and servicers and drafting technicians. Our graduates are employed by a wide variety of employers, including residential and commercial telecommunications companies and architectural firms.

We created our own in-house electronic system technician program in 2001 by partnering with two industry groups, Electronic Systems Technician Consortium and the National Center for Construction Education and Research. We have introduced our electronic system technician program to six of our campuses and plan to expand it to additional campuses. Students in these programs are trained to install and service equipment such as alarm systems, cable infrastructure, home entertainment systems, fiber-optic wiring in homes and offices, and satellite and telecommunication systems.

We offer skilled trades programs at seven of our eight Lincoln Technical Institute campuses (all but the Philadelphia, Pennsylvania campus), our Lincoln, Rhode Island Career Education Institute campus and at select New England Technical Institute campuses.

**Business and Information Technology.** As of March 31, 2005, 5.1% of our students were enrolled in our business and information technology programs. Our business and information technology programs are 30 to 64 weeks in length, with tuition rates of \$11,000 to \$26,000. We experienced a decline in our business and information technology programs between the years 2000 and 2003 due to weakness in the

economy and reduced demand for IT professionals. We therefore reduced our exposure to this area by developing our in-house electronic system technician and allied health programs in 2001 and 2002, respectively. However, we remain committed to the IT industry and expect it to grow, especially as the economy recovers, business investment in hardware and software increases and the rapid technological advancement of computer applications continues. We have focused our current program offerings on those that are most in demand, such as our PC systems technician, network systems administrator and business administration specialist programs.

We offer business and information technology programs at all of our Cittone Institute and Career Education Institute schools, in addition to two of our Lincoln Technical Institute schools (Columbia, Maryland and Allentown, Pennsylvania campuses) and all of our Southwestern College schools.

## **Marketing and Student Recruitment**

We utilize a variety of marketing and recruiting methods to attract students and increase enrollments. Our marketing and recruiting efforts are targeted at potential students who are entering the workforce, or who are underemployed or unemployed and require additional training to enter or re-enter the workforce.

**Marketing.** Our marketing program utilizes media advertising such as television, the Internet, and various print media and is enhanced by referrals. We continuously monitor and adjust the focus of our marketing efforts to maximize efficiency and minimize our student acquisition costs.

- **Media.** Our media advertising is directed primarily at attracting students from the local areas in which our schools operate. Television advertising, which is coordinated by a national buyer, is our most successful medium, generating approximately one third of our new enrollments in 2004. Systems we have developed enable us to closely monitor and track the effectiveness of each advertisement on a daily or weekly basis and make adjustments accordingly. The Internet is our second most successful medium and its effectiveness is rapidly increasing. We also advertise via direct mail, in telephone directories and in newspapers.
- **Referrals.** Referrals from current students, high school counselors and satisfied graduates and their employers have historically represented over 20% of our new enrollments. Our school administrators actively work with our current students to encourage them to recommend our programs to potential students. We continue to build strong relationships with high school guidance counselors and instructors by offering annual seminars at our training facilities to further educate these individuals on the strengths of our programs. Graduates who have gone on to enjoy success in the workforce frequently recommend our programs, as do local business owners who are pleased with the performance of our graduates whom they have hired.

**Recruiting.** Our recruiting efforts are conducted by a group of field- and campus-based representatives who meet directly with potential students during presentations conducted at high schools, in the potential student's home or during a visit to one of our campuses.

- **Field-Based Recruiting.** Our field-based recruiting representatives make presentations at high schools to attract students to both our local and destination campuses. Our field-based representatives also visit directly with potential students in their homes. We estimate that in the year ended December 31, 2004, our 178 field-based representatives made approximately 7,492 visits (excluding representatives from Nashville Auto-Diesel College) to high schools and student homes, a 22% increase from the prior year. Over the last three years, we have recruited approximately 25% of our students directly out of high school.
- **Campus-Based Recruiting.** When a potential student is identified through our marketing and recruiting efforts, one of our 170 campus-based representatives is paired with the potential student to follow up on an individual basis. Our media advertisements contain a unique toll-free

number and our telephone system automatically directs the call to the campus nearest the caller. One of our campus-based recruiting representatives responds, typically within 24 hours, to these inquiries and other inquiries generated by our marketing efforts to explain the opportunities available within each program, schedule an appointment for the potential student to visit the school and arrange a tour of the school's facilities.

### **Student Admissions, Enrollment and Retention**

**Admissions.** In order to attend our schools, students must complete an application and pass an entry examination. While each of our programs has different admissions criteria, we screen all applications and counsel the students on the most appropriate program to increase the likelihood that our students complete the requisite coursework and obtain and sustain employment following graduation.

**Enrollment.** We enroll students continuously throughout the year, with our largest classes enrolling in late summer or early fall following high school graduation. We had 17,630 students enrolled as of March 31, 2005 and our average enrollment for the three months ended March 31, 2005 was 17,692 students, an increase of 14.8% from March 31, 2004. Excluding our acquisition of New England Technical Institute in January 2005, our average enrollments would have increased by 8.7%. We had 16,664 students enrolled as of December 31, 2004 and our average enrollment for the year ended December 31, 2004 was 16,226 students, an increase of 30.3% from December 31, 2003. Excluding our acquisition of Southwestern College in January 2004, our average enrollments would have increased by 22.4%. For the year ended December 31, 2003, we had average enrollments of 12,487 students, a 36.4% increase over average enrollments of 9,155 in 2002. Excluding our acquisition of Nashville Auto-Diesel College in February 2003, our average enrollments were 11,227 students, a 22.6% increase over the prior year.

**Retention.** To maximize student retention, the staff at each school is trained to recognize the early warning signs of a potential drop and to assist and advise students on academic, financial, employment and personal matters. We monitor our retention rates by instructor, course, program and school. When we notice that a particular instructor or program is experiencing a higher than normal dropout rate, we quickly determine the cause of the problem and attempt to correct it. When we notice that a student is having trouble academically, we provide tutoring.

### **Job Placement**

We believe that securing employment for our graduates is critical to our ability to attract high quality students. In addition, high job placement rates result in low student loan default rates, an important requirement for continued participation in Title IV Programs. See "Regulatory Environment—Regulation of Federal Student Financial Aid Programs." Accordingly, we dedicate significant resources to maintaining an effective graduate placement program. Our non-destination schools work closely with local employers to ensure that we are training students with skills that employers want. Each school has an advisory council made up of local employers who provide us with direct and immediate feedback on how well we are preparing our students to succeed in the workplace. This enables us to tailor our programs to the market. For example, part of a student's grade is dependent upon attendance and appearance because employers want their employees to be punctual and to have a professional appearance. The placement staff in each of our destination schools maintains databases of potential employers throughout the country, allowing us to place students in the market of their choice upon graduation. We also have internship programs that provide our students with opportunities to work with employers prior to graduation. For example, some of the students in our automotive programs have the opportunity to complete a portion of their hands-on training while working with a potential employer. In addition, some of our allied health students are required to participate in an internship program during which they work in the field as part of their career training.

Students that participate in these programs often go on to work for the same business upon graduation. We also assist students with resume writing, interviewing and other job search skills.

Our placement rates in 2002, 2003 and 2004 were 83.3%, 84.6% and 86.7%, respectively, of our graduates obtaining employment in their field prior to March 1 of the year following the year of their graduation. Throughout this period, our placement rate for our automotive technology graduates has consistently exceeded 89.0%. Many of our automotive technology graduates are employed by dealership and repair centers. Many of our non-auto graduates are placed with local employers such as small businesses, national chains and doctors' offices.

### **Faculty and Employees**

We hire our faculty in accordance with established criteria, including relevant work experience, educational background and accreditation and state regulatory standards. We require meaningful industry experience of our teaching staff in order to maintain the quality of instruction in all of our programs and to address current and industry-specific issues in our course content. In addition, we provide intensive instructional training and continuing education, including quarterly instructional development seminars, annual reviews, technical upgrade training, faculty development plans and weekly staff meetings.

The staff of each school typically includes a school director, a director of graduate placement, an education director, a director of student services, a financial-aid director, an accounting manager and a director of admissions, all of whom are industry professionals with experience in our areas of study.

As of December 31, 2004, we had approximately 2,350 employees, including 818 full-time faculty and 275 part-time instructors, and 239 of our teaching professionals at four of our campuses are represented by unions. These employees are covered by collective bargaining agreements that expire in 2005 through 2006. Contract negotiations with regard to the two collective bargaining agreements expiring in 2005 are expected to begin in July and August of this year. We believe that we have good relationships with these unions.

We have had no work stoppages at any of our campuses in the past 20 years.

### **Intellectual Property**

Lincoln Educational Services®, Lincoln Technical Institute®, Lincoln Tech®, LTI®, New England Technical Institute®, NETI®, New England Tech®, Center for Culinary Arts®, The Cittance Institute®, DOC® and DOC and design (a logo for our "Doctors Office Classroom" program) are our registered trademarks. CEI, Career Education Institute, is our registered mark in various states.

### **Competition**

The for-profit post-secondary education industry is highly competitive and highly fragmented, with no one provider controlling significant market share. Direct competition between career-oriented schools and traditional four-year colleges or universities is limited. Thus, our main competitors are other for-profit, career-oriented schools, as well as public and private two-year junior and community colleges. Competition is generally based on location, the type of programs offered, the quality of instruction, placement rates, reputation, recruiting and tuition rates. Public institutions are generally able to charge lower tuition than our schools, due in part to government subsidies and other financial sources not available to for-profit schools. In addition, some of our private competitors have a more extended or dense network of schools and campuses than we do, which enables them to recruit students more efficiently from a wider geographic area. Nevertheless, we believe that we are able to compete effectively in our local markets because of the diversity of our program offerings, quality of instruction, the strength of our brands, our reputation and our success in placing students with employers.

We compete with every institution that is eligible to receive Title IV funding. This includes four-year not-for-profit public and private colleges and universities, community colleges and all for-profit institutions whether they are four years, two years or less. Our competition differs in each market depending on the curriculum that we offer. For example, a school offering automotive, allied health and skilled trades programs will have a different group of competitors than a school offering allied health, business/IT and skilled trades. Also, because schools can add new programs within six to twelve months, new competitors can emerge relatively quickly. Moreover, with the introduction of online learning, the number of competitors in each market has increased because students can now stay local but learn from a non-local institution.

Notwithstanding the above, today we mainly compete with community colleges and other career schools, both for-profit and not-for-profit. We focus on programs that are in high demand and are offered by as few competitors as possible. We compete against community colleges by seeking to offer more frequent start dates, more flexible hours, better instructional resources, more hands on training, shorter program length and greater assistance with job placement. We compete against the other career schools by seeking to offer a higher quality of education, higher quality instructional equipment and a better overall value. On average each of our schools has at least three direct competitors and at least a dozen indirect competitors. As we continue to add courses and degree programs, our addressable market increases and thus we face increased competition.

While competition with four-year institutions is more limited, we do compete with two-year traditional private and public institutions.

## **Facilities**

We lease all of our facilities, except for our former Indianapolis, Indiana campus, our Nashville, Tennessee campus and our Cincinnati (Tri-County) campus, which we own. Four of our facilities (Union, New Jersey; Allentown, Pennsylvania; Philadelphia, Pennsylvania; and Grand Prairie, Texas) are also accounted for by us under a finance lease obligation as further described in Note 12 to the audited consolidated financial statements included elsewhere in this prospectus. We continue to re-evaluate our facilities to maximize our facility utilization and efficiency and to allow us to introduce new programs and attract more students. We entered into a 15-year lease for a 126,000 square foot facility in Indianapolis, which replaced our existing facility in that city. We also entered into a ten-year lease for a 40,000 square foot facility in Lincoln, Rhode Island, which replaced our existing facilities in that city. In addition, in July 2002, we signed a lease for a new 48,000 square-foot facility in Queens, New York, which we expect to open in 2006. During 2003, we moved all of our Boston, Massachusetts students into our Somerville, Massachusetts campus. All of our existing leases expire between October 2005 and November 2020, with the exception of one lease representing a total of 10,000 square feet that we lease on a month-to-month basis. We currently have our former Indianapolis, Indiana campus, which we own, up for sale. Accordingly, these assets were classified as available for sale as of July 1, 2004.

The following table provides information relating to our facilities as of March 31, 2005, including our corporate offices:

Location	Brand	Approximate Square Footage
Union, New Jersey	Lincoln Technical Institute	56,000
Mahwah, New Jersey	Lincoln Technical Institute	79,000
Allentown, Pennsylvania	Lincoln Technical Institute	26,000
Philadelphia, Pennsylvania	Lincoln Technical Institute	30,000
Columbia, Maryland	Lincoln Technical Institute	91,000
Indianapolis, Indiana(1)	Lincoln Technical Institute	182,000
Melrose Park, Illinois	Lincoln Technical Institute	67,000
Grand Prairie, Texas	Lincoln Technical Institute	48,000
Denver, Colorado	Denver Automotive & Diesel College	78,000
Nashville, Tennessee	Nashville Auto-Diesel College	278,000
Edison, New Jersey	Cittone Institute	64,000
Mt. Laurel, New Jersey	Cittone Institute	26,000
Philadelphia, Pennsylvania	Cittone Institute	29,000
Northeast Philadelphia, Pennsylvania	Cittone Institute	25,000
Plymouth Meeting, Pennsylvania	Cittone Institute	30,000
Paramus, New Jersey	Cittone Institute	27,000
Boston, Massachusetts(2)	Career Education Institute	7,000
Brockton, Massachusetts	Career Education Institute	10,000
Lincoln, Rhode Island	Career Education Institute	40,000
Lowell, Massachusetts	Career Education Institute	20,000
Somerville, Massachusetts	Career Education Institute	33,000
Norcross, Georgia	Career Education Institute	27,000
Marietta, Georgia	Career Education Institute	16,000
Henderson, Nevada	Career Education Institute	27,000
Dayton, Ohio	Southwestern College	9,000
Franklin, Ohio	Southwestern College	14,000
Cincinnati, Ohio	Southwestern College	10,000
Cincinnati (Tri-County), Ohio	Southwestern College	15,000
Florence, Kentucky	Southwestern College	9,000
West Orange, New Jersey	Corporate Offices	41,000
New Britain, Connecticut	New England Technical Institute	19,000
Cromwell, Connecticut	New England Technical Institute	12,000
Hamden, Connecticut	New England Technical Institute	13,000
Shelton, Connecticut	New England Technical Institute	32,000

- (1) Our Indianapolis, Indiana school is currently comprised of two facilities: a 55,900 square foot facility that we own and a 126,000 square foot facility that we lease. We have classified these assets as available for sale on July 1, 2004.
- (2) The lease for this facility expired on February 28, 2005 and we did not renew the lease.

### Legal Proceedings

In the ordinary conduct of our business, we are subject to periodic lawsuits, investigations and claims, including, but not limited to, claims involving students or graduates and routine employment matters. Although we cannot predict with certainty the ultimate resolution of lawsuits, investigations and claims asserted against us, we do not believe that any currently pending legal proceeding to which we are a party will have a material adverse effect on our business or financial condition.

Since May 2002, we have been involved in litigation brought by two former employees acting as "relators" under the *qui tam* provisions of the federal False Claims Act, 31 U.S.C. §§ 3729-33, or FCA. The relators have alleged that we violated Title IV Program requirements that prohibit the payment of

commissions, bonuses or other incentive payments to admissions and recruitment personnel based upon their success in securing enrollments, and that our participation in the federal student aid programs under these circumstances constituted actionable "false claims" within the meaning of federal law. The "relators" are seeking to recover, on behalf of themselves and the United States government, treble damages and a civil penalty of \$5,000-\$10,000 for each action that violated the FCA as well as their costs and reasonable attorney fees. The relators are pursuing the litigation against us on their own, without the involvement or support of the U.S. Department of Justice, which had given notice, after investigation, of its intention not to participate in the case. On September 3, 2003, after full briefing of the issues by the parties, the district court granted our motion and dismissed the entire action, with prejudice. The relators appealed the ruling to the United States Court of Appeals for the Fifth Circuit, which affirmed the District Court's dismissal of the case on October 15, 2004. The relators subsequently served upon us a petition for a Writ of Certiorari with the Supreme Court of the United States and the petition was docketed in the Supreme Court on March 10, 2005. The Supreme Court denied the writ on May 16, 2005.

## REGULATORY ENVIRONMENT

Students attending our schools finance their education through a combination of family contributions, individual resources and federal financial aid programs. Each of our schools participates in the federal programs of student financial aid authorized under Title IV Programs, which are administered by the DOE. For the year ended December 31, 2004, approximately 81% (calculated on a cash basis of accounting) of our revenues were derived from the Title IV Programs. Students obtain access to federal student financial aid through a DOE prescribed application and eligibility certification process. Student financial aid funds are generally made available to students at prescribed intervals throughout their predetermined expected length of study. Students typically use the funds received from the federal financial aid programs to pay their tuition and fees. The transfer of funds from the financial aid programs are to the student, who then applies those funds to the cost of their education.

In connection with the students' receipt of federal financial aid, our schools are subject to extensive regulation by governmental agencies and licensing and accrediting bodies. In particular, the Title IV Programs, and the regulations issued thereunder by the DOE, subject us to significant regulatory scrutiny in the form of numerous standards that each of our schools must satisfy in order to participate in the various federal student financial aid programs. To participate in the Title IV Programs, a school must be authorized to offer its programs of instruction by the applicable state education agencies in the states in which it is physically located, be accredited by an accrediting commission recognized by the DOE and be certified as an eligible institution by the DOE. The DOE defines an eligible institution to consist of both a main campus and its additional locations, if any. Each of our schools is either a main campus or an additional location of a main campus. Each of our schools is subject to extensive regulatory requirements imposed by state education agencies, accrediting commissions, and the DOE. Our schools also participate in other federal and state financial aid programs that assist students in paying the cost of their education.

### State Authorization

Each of our schools must be authorized by the applicable education agencies in the states in which the school is physically located and, in some cases other states, in order to operate and to grant degrees, diplomas or certificates to its students. State agency authorization is also required in each state in which a school is physically located in order for the school to become and remain eligible to participate in Title IV Programs. Currently, each of our schools is authorized by the applicable state education agencies in the states in which the school is physically located and in which it recruits students.

Our schools are subject to extensive, ongoing regulation by each of these states. State laws typically establish standards for instruction, qualifications of faculty, location and nature of facilities and equipment, administrative procedures, marketing, recruiting, financial operations and other operational matters. State laws and regulations may limit our ability to offer educational programs and to award degrees, diplomas or certificates. Some states prescribe standards of financial responsibility that are different from, and in certain cases more stringent than, those prescribed by the DOE. Some states require schools to post a surety bond. Currently, we have posted surety bonds on behalf of our schools and education representatives with multiple states in a total amount of approximately \$8.6 million. These bonds are backed by \$2.4 million of letters of credit.

If any of our schools fail to comply with state licensing requirements, they are subject to the loss of state licensure or accreditation. If any one of our schools lost its authorization from the education agency of the state in which the school is located, that school and its related main campus and/or additional locations would lose its eligibility to participate in Title IV Programs, be unable to offer its programs and we could be forced to close that school. If one of our schools lost its state authorization from a state other than the state in which the school is located, the school would not be able to recruit

students in that state. We believe that each of our schools is in substantial compliance with the applicable education agency requirements in each state in which it is physically located.

Due to state budget constraints in other states in which we operate, it is possible that those states may reduce the number of employees in, or curtail the operations of, the state education agencies that authorize our schools. A delay or refusal by any state education agency in approving any changes in our operations that require state approval could prevent us from making such changes or could delay our ability to make such changes.

**Accreditation**

Accreditation is a non-governmental process through which a school submits to ongoing qualitative review by an organization of peer institutions. Accrediting commissions primarily examine the academic quality of the school's instructional programs, and a grant of accreditation is generally viewed as confirmation that the school's programs meet generally accepted academic standards. Accrediting commissions also review the administrative and financial operations of the schools they accredit to ensure that each school has the resources necessary to perform its educational mission.

Accreditation by an accrediting commission recognized by the DOE is required for an institution to be certified to participate in Title IV Programs. In order to be recognized by the DOE, accrediting commissions must adopt specific standards for their review of educational institutions. Fourteen of our campuses are accredited by the Accrediting Commission of Career Schools and Colleges of Technology and 18 of our campuses are accredited by the Accrediting Council for Independent Colleges and Schools. Both of these accrediting commissions are recognized by the DOE. The following is a list of the dates in which each campus was accredited by its accrediting commission and the date by which its accreditation must be renewed.

**Accrediting Commission of Career Schools and Colleges of Technology Reaccreditation Dates**

School	Last Accreditation Letter	Next Accreditation
Philadelphia, PA	December 4, 2003	May 1, 2008
Union, NJ	February 1, 2004	February 1, 2009
Mahwah, NJ*	August 1, 1999	August 1, 2009
Melrose Park, IL	November 1, 2005	November 1, 2009
Denver, CO	March 2, 2001	February 1, 2006
Columbia, MD	March 6, 2002	February 1, 2007
Grand Prairie, TX	September 7, 2001	September 7, 2006
Allentown, PA	December 9, 2002	January 1, 2007
Nashville, TN	May 1, 2002	May 1, 2007
Indianapolis, IN	December 9, 2002	November 1, 2007
New Britain, CT	January 1, 2003	January 1, 2008
Shelton, CT**	September 1, 2003	September 1, 2005
Cromwell, CT**	November 22, 2004	November 22, 2006
Hamden, CT**	July 1, 2002	July 1, 2007

\* Branch campus of main campus in Union, NJ

\*\* Branch campus of main campus in New Britain, CT

## Accrediting Council for Independent Colleges and Schools Reaccreditation Dates

School	Last Accreditation Letter	Next Accreditation
Brockton, MA****	April 14, 2005	December 31, 2008
Henderson, NV****	April 14, 2005	December 31, 2008
Lincoln, RI	April 14, 2005	December 31, 2008
Lowell, MA**	December 7, 2004	December 31, 2008
Somerville, MA	December 7, 2004	December 31, 2008
Center City, PA*	April 30, 2003	December 31, 2006
Edison, NJ	April 30, 2003	December 31, 2006
Marietta, GA****	April 14, 2005	December 31, 2008
Mt. Laurel, NJ*	April 30, 2003	December 31, 2006
Norcross, GA****	April 14, 2005	December 31, 2008
Paramus, NJ*	April 30, 2003	December 31, 2006
Philadelphia, PA*	April 30, 2003	December 31, 2006
Plymouth Meeting, PA*	April 30, 2003	December 31, 2006
Dayton, OH	August 23, 2004(1)	December 31, 2005
Vine Street, OH***	August 23, 2004(1)	December 31, 2005
Northland Blvd., OH***	August 23, 2004(1)	December 31, 2005
Franklin, OH***	August 23, 2004(1)	December 31, 2005
Florence, KY***	August 23, 2004(1)	December 31, 2005

- \* Branch campus of main campus in Edison, NJ
- \*\* Branch campus of main campus in Somerville, MA
- \*\*\* Branch campus of main campus in Dayton, OH
- \*\*\*\* Branch campus of main campus in Lincoln, NJ

(1) Date of letter reconfirming accreditation upon acquisition. The last accreditation letter was dated May 1, 2002.

If one of our schools fails to comply with accrediting commission requirements, the institution and its main and/or branch campuses are subject to the loss of accreditation. If any one of our schools lost its accreditation, students attending that school would no longer be eligible to receive Title IV Program funding, and we could be forced to close that school. Our Edison school (including its branch campuses in Mt. Laurel, Paramus, Philadelphia, Northeast Philadelphia and Plymouth Meeting) and our Somerville school (including its branch campus in Lowell) are presently under financial review with the Accrediting Council for Independent Colleges and Schools. Under financial review, the schools are required to submit to the Accrediting Council for Independent Colleges and Schools financial reports on a quarterly basis. While under financial review, an institution must obtain approval from the Accrediting Council for Independent Colleges and Schools before applying to add a new non-main location and may be required to request permission to submit a new program application. We believe that each of our schools is in substantial compliance with its respective accrediting commission's standards.

### Nature of Federal and State Support for Post-Secondary Education

The federal government provides a substantial part of its support for post-secondary education through Title IV Programs, in the form of grants and loans to students who can use those funds at any institution that has been certified as eligible by the DOE. Most aid under Title IV Programs is awarded on the basis of financial need, generally defined as the difference between the cost of attending the

institution and the expected amount a student and his or her family can reasonably contribute to that cost. All recipients of Title IV Program funds must maintain a satisfactory grade point average and progress in a timely manner toward completion of their program of study. In addition, each school must ensure that Title IV Program funds are properly accounted for and disbursed in the correct amounts to eligible students.

Students at our schools receive grants and loans to fund their education under the following Title IV Programs: (1) the Federal Family Education Loan program, (2) the Federal Pell Grant, or Pell, program, (3) the Federal Supplemental Educational Opportunity Grant program, and (4) the Federal Perkins Loan, or Perkins, program.

**Federal Family Education Loan.** Under the Federal Family Education Loan program, banks and other lending institutions make loans to students or their parents. If a student or parent defaults on a loan, payment is guaranteed by a federally recognized guaranty agency, which is then reimbursed by the DOE. Students with financial need qualify for interest subsidies while in school and during grace periods. For the year ended December 31, 2004, we derived approximately 60% respectively of our Title IV revenues (calculated on the cash basis of accounting) from the Federal Family Education Loan program.

**Pell.** Under the Pell program, the DOE makes grants to students who demonstrate the greatest financial need. For the year ended December 31, 2004, we derived less than 20% of our revenues (calculated on the cash basis of accounting) from the Pell program.

**Federal Supplemental Educational Opportunity Grant.** The Federal Supplemental Educational Opportunity Grant program grants are designed to supplement Pell grants for students with the greatest financial needs. An institution is required to make a 25% matching contribution for all funds received from the DOE under this program. For the year ended December 31, 2004, we received less than 1% of our revenues (calculated on the cash basis of accounting) from the Federal Supplemental Educational Opportunity Grant program.

**Perkins.** Perkins loans are made from a revolving institutional account, 75% of which is capitalized by the DOE and the remainder by the institution. Each institution is responsible for collecting payments on Perkins loans from its former students and lending those funds to currently enrolled students. Defaults by students on their Perkins loans reduce the amount of funds available in the applicable school's revolving account to make loans to additional students, but the school does not have any obligation to guarantee the loans or repay the defaulted amounts. For the year ended December 31, 2004, we derived less than 1% of our revenues (calculated on the cash basis of accounting) from the Perkins program.

#### **Other Financial Assistance Programs**

Some of our students receive financial aid from federal sources other than Title IV Programs, such as the programs administered by the U.S. Department of Veterans Affairs and under the Workforce Investment Act. In addition, many states also provide financial aid to our students in the form of grants, loans or scholarships. The eligibility requirements for state financial aid and these other federal aid programs vary among the funding agencies and by program. Several states that provide financial aid to our students are facing significant budgetary constraints. We believe that the overall level of state financial aid for our students is likely to decrease in the near term, but we cannot predict how significant any such reductions will be or how long they will last.

In addition to Title IV and other government-administered programs, all of our schools are eligible to participate in alternative loan programs for their students. Alternative loans fill the gap between what the student receives from all financial aid sources and what the student may need to cover the full

cost of their education. Students or their parents can apply to a number of different lenders for this funding at current market interest rates.

### Reorganization

We were founded in 1946 as Lincoln Technical Institute, Inc. In February 2003, we reorganized our corporate structure to create a holding company, Lincoln Educational Services Corporation. The ownership of Lincoln Educational Services Corporation was identical to that of Lincoln Technical Institute, Inc. immediately prior to this reorganization. We subsequently began operating our entire organization under the Lincoln Educational Services Corporation name; however, before this reorganization, all of our interaction with the DOE, state and federal regulators and accrediting agencies was conducted by Lincoln Technical Institute, Inc.

### Regulation of Federal Student Financial Aid Programs

To participate in Title IV Programs, an institution must be authorized to offer its programs by the relevant state education agencies, be accredited by an accrediting commission recognized by the DOE and be certified as eligible by the DOE. The DOE will certify an institution to participate in Title IV Programs only after the institution has demonstrated compliance with the Higher Education Act and the DOE's extensive regulations regarding institutional eligibility. The DOE defines an institution to consist of both a main campus and its additional locations, if any. Under this definition, for DOE purposes, we have the following 14 institutions, collectively consisting of 14 main campuses and 18 additional locations:

Brand	Main Campus(es)	Additional Location(s)
<b>Lincoln Technical Institute</b>	Indianapolis, IN Philadelphia, PA Columbia, MD Grand Prairie, TX Melrose Park, IL Union, NJ Allentown, PA	Mahwah, NJ (additional location of Union)
<b>Denver Automobile &amp; Diesel College</b>	Denver, CO	—
<b>Nashville Auto Diesel College</b>	Nashville, TN	—
<b>Cittone Institute</b>	Edison, NJ	Mount Laurel, NJ Paramus, NJ Philadelphia, PA Plymouth Meeting, PA Northeast Philadelphia, PA
<b>Career Education Institute</b>	Lincoln, RI Somerville, MA	Brockton, MA (Lincoln) Norcross, GA (Lincoln) Marietta, GA (Lincoln) Henderson, NV (Lincoln) Lowell, MA (Somerville)
<b>Southwestern College</b>	Dayton, OH	Cincinnati, OH Franklin, OH Tri-County, Cincinnati, OH Florence, KY
<b>New England Technical Institute</b>	New Britain, CT	Shelton, CT Cromwell, CT Hamden, CT

All of our main campuses, including their additional locations, are currently certified by the DOE to participate in Title IV Programs. New England Technical Institute received an executed temporary provisional program participation agreement from the DOE after its change in ownership. Southwestern College has received an executed provisional program participation agreement from the DOE. The DOE agreed that the addition of the holding company to our ownership structure in 2003 would not constitute a change in ownership of our institutions resulting in a change of control provided that certain conditions were met, including that the holding company execute the program participation agreement for each institution. See "Regulatory Environment—Reorganization" for a description of our reorganization in 2003. The holding company has executed a program participation agreement for each of our institutions except for New England Technical Institute which has executed a temporary provisional program participation agreement. In addition, the DOE requested that the institutions submit audited financial statements of both the holding company and the subsidiary companies as consolidating statements. We expect to submit to the DOE consolidating information for the 2004 fiscal year for Lincoln Technical Institute and Southwestern College.

The DOE, accrediting commissions and state education agencies have responsibilities for overseeing compliance of schools with Title IV Program requirements. As a result, each of our schools is subject to detailed oversight and review, and must comply with a complex framework of laws and regulations. Because the DOE periodically revises its regulations and changes its interpretation of existing laws and regulations, we cannot predict with certainty how the Title IV Program requirements will be applied in all circumstances.

Significant factors relating to Title IV Programs that could adversely affect us include the following:

**Congressional Action.** Political and budgetary concerns significantly affect Title IV Programs. Congress must reauthorize the Higher Education Act approximately every five years. The last reauthorization took place in 1998. Consequently, Congress recently began the process of reviewing and reauthorizing the Higher Education Act again, a process that is expected to be concluded in 2005. We believe that this reauthorization will likely result in numerous changes to the Higher Education Act. At this time, we cannot predict with certainty what changes Congress will make.

In addition, Congress reviews and determines federal appropriations for Title IV Programs on an annual basis. Congress can also make changes in the laws affecting Title IV Programs in the annual appropriations bills and in other laws it enacts between the Higher Education Act reauthorizations. Because a significant percentage of our revenues are derived from Title IV Programs, any action by Congress that significantly reduces Title IV Program funding or the ability of our schools or students to participate in Title IV Programs could reduce our student enrollment and our revenues. Congressional action may also increase our administrative costs and require us to modify our practices in order for our schools to comply fully with Title IV Program requirements.

**The "90/10 Rule."** A proprietary institution, such as each of our institutions, loses its eligibility to participate in Title IV Programs if, on a cash accounting basis, it derives more than 90% of its revenues for any fiscal year from Title IV Programs. Any institution that violates this rule becomes ineligible to participate in Title IV Programs as of the first day of the fiscal year following the fiscal year in which it exceeds 90%, and is unable to apply to regain its eligibility until the next fiscal year. If one of our institutions violated the 90/10 Rule and became ineligible to participate in Title IV Programs but continued to disburse Title IV Program funds, the DOE would require the institution to repay all Title IV Program funds received by the institution after the effective date of the loss of eligibility.

We have calculated that, for each of our 2002, 2003 and 2004 fiscal years, none of our institutions derived more than 86.6% of its revenues from Title IV Programs. For our 2004 fiscal year, our institutions' 90/10 Rule percentages ranged from 73.3% to 86.6%. We regularly monitor compliance

with this requirement to minimize the risk that any of our institutions would derive more than the maximum percentage of its revenues from Title IV Programs for any fiscal year.

**Student Loan Defaults.** An institution may lose its eligibility to participate in some or all Title IV Programs if the rates at which the institution's current and former students default on their federal student loans exceed specified percentages. The DOE calculates these rates based on the number of students who have defaulted, not the dollar amount of such defaults. The DOE calculates an institution's cohort default rate on an annual basis as the rate at which borrowers scheduled to begin repayment on their loans in one year default on those loans by the end of the next year. An institution whose Federal Family Education Loan cohort default rate is 25% or greater for three consecutive federal fiscal years (which correspond to our fiscal years) loses eligibility to participate in the Federal Family Education Loan and Pell programs for the remainder of the federal fiscal year in which the DOE determines that such institution has lost its eligibility and for the two subsequent federal fiscal years. An institution whose Federal Family Education Loan cohort default rate for any single federal fiscal year exceeds 40% may have its eligibility to participate in all Title IV Programs limited, suspended or terminated by the DOE.

None of our institutions has had a Federal Family Education Loan cohort default rate of 25% or greater for any of the federal fiscal years 2000, 2001 and 2002, the three most recent years for which the DOE has published such rates. Nine of our 14 institutions (which include 23 of 32 campuses) had default rates less than 10% for these years. The following table sets forth the Federal Family Education Loan cohort default rates for each of our 14 DOE numbered institutions for those fiscal years.

Institution	2000	2001	2002
Union, NJ	4.4%	4.2%	5.9%
Indianapolis, IN	9.1%	5.8%	8.41%
Philadelphia, PA	9.5%	15.2%	13.7%
Columbia, MD	4.4%	5.7%	7.1%
Allentown, PA	4.1%	2.7%	7.1%
Melrose Park, IL	5.9%	5.6%	11.9%
Grand Prairie, TX	11.7%	10.7%	14.3%
Edison, NJ	4.4%	2.9%	4.1%
Denver, CO	9.0%	10.4%	8.4%
Nashville, TN	7.4%	5.5%	5.0%
Lincoln, RI	3.7%	5.1%	6.2%
Somerville, MA	1.2%	2.5%	6.2%
Dayton, OH	16.6%	0.0%	0.0%
New Britain, CT	2.8%	2.8%	3.9%

An institution whose cohort default rate under the Federal Family Education Loan program is 25% or greater for any one of the three most recent federal fiscal years, or whose cohort default rate under the Perkins program exceeds 15% for any federal award year (the twelve-month period from July 1 through June 30), may be placed on provisional certification status by the DOE. None of our institutions have a Federal Family Education Loan cohort default rate above 25% for any of the three most recent fiscal years for which the DOE has published rates.

An institution whose Perkins cohort default rate is 50% or greater for three consecutive federal award years loses eligibility to participate in the Perkins program for the remainder of the federal award year in which DOE determines that the institution has lost its eligibility and for the two

subsequent federal award years. None of our institutions has had a Perkins cohort default rate of 50% or greater for any of the last three federal award years. The DOE also will not provide any additional federal funds to an institution for Perkins loans in any federal award year in which the institution's Perkins cohort default rate is 25% or greater. Denver Automotive & Diesel College and New England Technical Institute are our only institutions participating in the Perkins program. Denver Automotive & Diesel College's cohort default rate was 22.86% for students scheduled to begin repayment in the 2002-2003 federal award year. The DOE has not provided any federal funds for Perkins loans to Denver Automotive & Diesel College. Denver Automotive & Diesel College continues to make loans out of its existing Perkins loan fund. New England Technical Institute is provisionally certified by the DOE based on its change in ownership and on a finding by the DOE prior to the change in ownership that New England Technical Institute had not transmitted certain data related to the Perkins program to the National Student Loan Data System during periods prior to the acquisition. New England Technical Institute's cohort default rate was 4.35% for students scheduled to begin repayment in the 2002-2003 federal award year.

**Financial Responsibility Standards.** All institutions participating in Title IV Programs must satisfy specific standards of financial responsibility. The DOE evaluates institutions for compliance with these standards each year, based on the institution's annual audited financial statements, as well as following a change in ownership resulting in a change of control of the institution.

The most significant financial responsibility measurement is the institution's composite score, which is calculated by the DOE based on three ratios:

- the equity ratio, which measures the institution's capital resources, ability to borrow and financial viability;
- the primary reserve ratio, which measures the institution's ability to support current operations from expendable resources; and
- the net income ratio, which measures the institution's ability to operate at a profit.

The DOE assigns a strength factor to the results of each of these ratios on a scale from negative 1.0 to positive 3.0, with negative 1.0 reflecting financial weakness and positive 3.0 reflecting financial strength. The DOE then assigns a weighting percentage to each ratio and adds the weighted scores for the three ratios together to produce a composite score for the institution. The composite score must be at least 1.5 for the institution to be deemed financially responsible without the need for further oversight. If an institution's composite score is below 1.5, but is at least 1.0, it is in a category denominated by the DOE as "the zone." Under the DOE regulations, institutions that are in the zone are deemed to be financially responsible for a period of up to three years but are required to accept payment of Title IV Program funds under the cash monitoring or reimbursement method of payment, to be provisionally certified and to provide to the DOE timely information regarding various oversight and financial events.

If an institution's composite score is below 1.0, the institution is considered by the DOE to lack financial responsibility. If the DOE determines that an institution does not satisfy the DOE's financial responsibility standards, depending on its composite score and other factors, that institution may establish its financial responsibility on an alternative basis by, among other things:

- posting a letter of credit in an amount equal to at least 50% of the total Title IV Program funds received by the institution during the institution's most recently completed fiscal year;
- posting a letter of credit in an amount equal to at least 10% of such prior year's Title IV Program funds, accepting provisional certification, complying with additional DOE monitoring requirements and agreeing to receive Title IV Program funds under an arrangement other than the DOE's standard advance funding arrangement; and/or

- complying with additional DOE monitoring requirements and agreeing to receive Title IV Program funds under an arrangement other than the DOE's standard advance funding arrangement.

The DOE has evaluated the financial condition of our institutions on a consolidated basis. DOE regulations permit the DOE to examine our financial statements, including the financial statements of each institution and the financial statements of any related party. Based on our calculations, our audited financial statements for the 2003 and 2004 fiscal years reflect a composite score of 2.1 and 1.8, respectively. However, as a result of the corrections of certain errors in our prior financial statements, including accounting for advertising costs, a sale leaseback transaction, rent and other individually insignificant adjustments, the DOE recomputed our previously submitted consolidated composite scores for the years ended December 31, 2001 and 2002 and concluded that the recomputed consolidated composite scores for those two years were below 1.0. In addition, we identified certain additional errors in our financial statements for the year ended December 31, 2003 relating to our accounting for stock-based compensation and accrued bonuses that did not result in a recomputation of our 2003 composite score. The DOE has informed us that as a result, for a period of three years effective December 30, 2004, all of our current and future schools have been placed on "Heightened Cash Monitoring, Type 1 status" and are required to timely notify the DOE with respect to certain enumerated oversight and financial events. The DOE also informed us that these corrections will be taken into consideration when each of our institutions applies for recertification of its eligibility to participate in Title IV Programs. When each of our institutions is next required to apply for recertification to participate in Title IV Programs, we expect that the DOE will also consider our audited financial statements and composite scores for our most recent fiscal year as well as for other fiscal years after 2001 and 2002. Additionally, since the DOE concluded that the previously computed composite scores for 2001 and 2002 were overstated, we have agreed to pay \$165,000 to the DOE, pursuant to a settlement agreement, with respect to compliance issues related to this matter. We paid this amount on March 3, 2005. Although no assurance can be given, we do not believe that actions of the DOE specified above will have a material effect on our financial position or results of operations.

**Return of Title IV Funds.** An institution participating in Title IV Programs must calculate the amount of unearned Title IV Program funds that have been disbursed to students who withdraw from their educational programs before completing them, and must return those unearned funds to the DOE or the applicable lending institution in a timely manner, which is generally within 30 days from the date the institution determines that the student has withdrawn.

If an institution is cited in an audit or program review for returning Title IV Program funds late for 5% or more of the students in the audit or program review sample, the institution must post a letter of credit in favor of the DOE in an amount equal to 25% of the total amount of Title IV Program funds that should have been returned for students who withdrew in the institution's previous fiscal year. Southwestern College made late returns of Title IV Program funds in excess of the DOE's prescribed threshold, most of which predated our acquisition of Southwestern College. As a result, in accordance with DOE regulations, we have submitted a letter of credit to the DOE in the amount of \$28,400. Nashville Auto-Diesel College made late returns of Title IV Program funds in excess of the DOE's prescribed threshold during periods that predated our acquisition of Nashville Auto-Diesel College. As a result, in accordance with DOE regulations, we submitted a letter of credit to the DOE in the amount of \$327,000. Based on the absence of late returns of Title IV Program funds in excess of the DOE's prescribed thresholds in Nashville Auto-Diesel College's compliance audits for the 2002 fiscal year after our acquisition and for the 2003 fiscal year, we were allowed to have this letter of credit expire in accordance with its terms in March 2004. Our other institutions were not required to submit a letter of credit based on the results of their 2002 and 2003 compliance audits.

**School Acquisitions.** When a company acquires a school that is eligible to participate in Title IV Programs, that school undergoes a change of ownership resulting in a change of control as defined by

the DOE. Upon such a change of control, a school's eligibility to participate in Title IV Programs is generally suspended until it has applied for recertification by the DOE as an eligible school under its new ownership, which requires that the school also re-establish its state authorization and accreditation. The DOE may temporarily and provisionally certify an institution seeking approval of a change of control under certain circumstances while the DOE reviews the institution's application. The time required for the DOE to act on such an application may vary substantially. DOE recertification of an institution following a change of control will be on a provisional basis. Our expansion plans are based, in part, on our ability to acquire additional schools and have them certified by the DOE to participate in Title IV Programs. Our expansion plans take into account the approval requirements of the DOE and the relevant state education agencies and accrediting commissions. Southwestern College received an executed provisional program participation agreement from the DOE. In connection with our acquisition of New England Technical Institute, we have received an executed temporary provisional program participation agreement from the DOE and are in the process of obtaining a final approval of the New England Technical Institute acquisition from the DOE. We expect the DOE approval issued to New England Technical Institute at the conclusion of the pending change in ownership approval process to be provisional although we can provide no assurance as to the timing and content of the DOE's response to the pending change in ownership application.

**Change of Control.** In addition to school acquisitions, other types of transactions can also cause a change of control. DOE, most state education agencies and our accrediting commissions have standards pertaining to the change of control of schools, but these standards are not uniform. DOE regulations describe some transactions that constitute a change of control, including the transfer of a controlling interest in the voting stock of an institution or the institution's parent corporation. For a company that is privately held, but not closely held, which is the status of our company prior to the offering, DOE regulations provide that a change of ownership resulting in a change of control occurs if any person either acquires or ceases to hold at least 25% of the company's total outstanding voting stock and that person gains or loses actual control of the corporation. With respect to a publicly traded corporation, which will be the status of our company after the offering, DOE regulations provide that a change of control occurs in one of two ways: (a) if there is an event that would obligate the corporation to file a Current Report on Form 8-K with the Securities and Exchange Commission disclosing a change of control or (b) if the corporation has a shareholder that owns at least 25% of the total outstanding voting stock of the corporation and is the largest shareholder of the corporation, and that shareholder ceases to own at least 25% of such stock or ceases to be the largest shareholder. These standards are subject to interpretation by the DOE.

A significant purchase or disposition of our common stock could be determined by the DOE to be a change of control under this standard. Most of the states and our accrediting commissions include the sale of a controlling interest of common stock in the definition of a change of control. A change of control under the definition of one of these agencies would require the affected school to reaffirm its state authorization or accreditation. The requirements to obtain such reaffirmation from the states and our accrediting commissions vary widely.

The DOE and both of our accrediting agencies have confirmed that this offering will not be a change of control under their respective standards. Each school has received confirmation from the educational agency that authorizes the school to operate in the state in which it is physically located that the offering will not be a change of control with the exception of our five schools in Pennsylvania, our school in Texas, and our school in Kentucky. Our Pennsylvania schools will be subject to review by the Pennsylvania Department of Education to reaffirm their approvals as a result of this offering. Although we expect the Pennsylvania Department of Education to reaffirm the approvals of our Pennsylvania schools after this offering, there can be no assurance that the agency will reaffirm those approvals. The Texas Workforce Commission has not yet determined whether the offering will be a change of control. We expect the Texas Workforce Commission to make a determination prior to the

consummation of this offering. If the Texas Workforce Commission determines that the offering is a change of control, our Texas school would be required to submit a change in ownership application to the Texas Workforce Commission and to obtain the Texas Workforce Commission's approval prior to the consummation of this offering. We have been informed that the Kentucky State Board for Proprietary Education will determine whether the offering constitutes a change of control after the offering takes place. If the agency determines that the offering is a change of control, our Kentucky school would be required to submit a change in ownership application to the Kentucky State Board for Proprietary Education.

A change of control could occur as a result of future transactions in which our company or schools are involved. Some corporate reorganizations and some changes in the board of directors are examples of such transactions. Moreover, once we become a publicly traded company, the potential adverse effects of a change of control could influence future decisions by us and our stockholders regarding the sale, purchase, transfer, issuance or redemption of our stock. In addition, the adverse regulatory effect of a change of control also could discourage bids for your shares of common stock and could have an adverse effect on the market price of your shares.

**Opening Additional Schools and Adding Educational Programs.** For-profit educational institutions must be authorized by their state education agencies and fully operational for two years before applying to the DOE to participate in Title IV Programs. However, an institution that is certified to participate in Title IV Programs may establish an additional location and apply to participate in Title IV Programs at that location without reference to the two-year requirement, if such additional location satisfies all other applicable DOE eligibility requirements. Our expansion plans are based, in part, on our ability to open new schools as additional locations of our existing institutions and take into account the DOE's approval requirements.

A student may use Title IV Program funds only to pay the costs associated with enrollment in an eligible educational program offered by an institution participating in Title IV Programs. Generally, an institution that is eligible to participate in Title IV Programs may add a new educational program without DOE approval if that new program leads to an associate level or higher degree and the institution already offers programs at that level, or if that program prepares students for gainful employment in the same or a related occupation as an educational program that has previously been designated as an eligible program at that institution and meets minimum length requirements. If an institution erroneously determines that an educational program is eligible for purposes of Title IV Programs, the institution would likely be liable for repayment of Title IV Program funds provided to students in that educational program. Our expansion plans are based, in part, on our ability to add new educational programs at our existing schools. We do not believe that current DOE regulations will create significant obstacles to our plans to add new programs.

Some of the state education agencies and our accrediting commission also have requirements that may affect our schools' ability to open a new campus, establish an additional location of an existing institution or begin offering a new educational program. Our Edison school (including its branch campuses in Mt. Laurel, Paramus, Philadelphia, Center City and Plymouth Meeting) and our Somerville school (including its Lowell branch campus) are presently under financial review with the Accrediting Council for Independent Colleges and Schools. Under financial review, the school is required to submit financial reports to the Accrediting Council for Independent Colleges and Schools on a quarterly basis. While on financial review, an institution must obtain approval from the Accrediting Council for Independent Colleges and Schools before applying to add a new non-main location and may be required to request permission to submit a new program application. We do not believe that these standards will create significant obstacles to our expansion plans.

**Administrative Capability.** The DOE assesses the administrative capability of each institution that participates in Title IV Programs under a series of separate standards. Failure to satisfy any of the standards may lead the DOE to find the institution ineligible to participate in Title IV Programs or to place the institution on provisional certification as a condition of its participation. These criteria require, among other things, that the institution:

- complies with all applicable federal student financial aid regulations;
- has capable and sufficient personnel to administer the federal student financial aid programs;
- has acceptable methods of defining and measuring the satisfactory academic progress of its students;
- refers to the Office of the Inspector General any credible information indicating that any applicant, student, employee or agent of the school has been engaged in any fraud or other illegal conduct involving Title IV Programs;
- provides financial aid counseling to its students; and
- submits in a timely manner all reports and financial statements required by the regulations.

Failure by an institution to satisfy any of these or other administrative capability criteria could cause the institution to lose its eligibility to participate in Title IV Programs, which would have a material adverse effect on our business and results of operations.

Other standards provide that an institution may be found to lack administrative capability and be placed on provisional certification if its student loan default rate under the Federal Family Education Loan program is 25% or greater for any of the three most recent federal fiscal years, or if its Perkins cohort default rate exceeds 15% for any federal award year. None of our institutions have a Federal Family Education Loan cohort default rate above 25% for any of the three most recent fiscal years for which the DOE has published rates. Denver Automotive & Diesel College and New England Technical Institute are our only institutions participating in the Perkins program. Denver Automotive & Diesel College's cohort default rate was 22.86% for students scheduled to begin repayment in the 2002-2003 federal award year. The DOE has not provided any federal funds for Perkins loans to Denver Automotive & Diesel College. Denver Automotive & Diesel College continues to make loans out of its existing Perkins loan fund. As it was prior to when we acquired it, New England Technical Institute is provisionally certified by the DOE based on its change in ownership and on a finding by the DOE prior to the change in ownership that New England Technical Institute had not transmitted certain data related to the Perkins program to the National Student Loan Data System during periods prior to the acquisition. New England Technical Institute's cohort default rate was 4.35% for students scheduled to begin repayment in the 2002-2003 federal award year.

**Ability to Benefit Regulations.** Under certain circumstances, an institution may elect to admit non-high school graduates, or "ability to benefit," students, into certain of its programs of study. In order for ability to benefit students to be eligible for Title IV Program participation, the institution must comply with the ability to benefit requirements set forth in the Title IV Program requirements. The basic evaluation method to determine that a student has the ability to benefit from the program is the student's achievement of a minimum score on a test approved by the DOE and independently administered in accordance with DOE regulations. In addition to the testing requirements, the DOE regulations also prohibit ability to benefit student enrollments from constituting 50% or more of the total enrollment of the institution. We changed our policy and stopped admitting ability to benefit students in 2003. We subsequently acquired Southwestern College in 2004 and New England Technical Institute in 2005, both of which currently enroll ability to benefit students. With the exception of Southwestern College and New England Technical Institute, we expect to continue this policy and our other schools do not expect to admit ability to benefit students in the future.

On or about May 10, 2002, the DOE Office of Inspector General issued a final audit report to the Philadelphia, Pennsylvania Lincoln Technical Institute school concerning an Office of Inspector General audit of the Philadelphia Lincoln Technical Institute school's administration of ability to benefit testing. The report was issued under OIG audit control number A03-B0013 and covered the administration of ATB testing requirements at the Philadelphia Lincoln Technical Institute school from July 1, 1997 through November 7, 2000. The findings presented in the Office of Inspector General report cited alleged deficiencies with respect to aspects of ability to benefit test administration. We disagreed with the Office of Inspector General findings and recommendations and submitted detailed comments to the DOE's Philadelphia Case Management Team explaining our position. On October 31, 2003, we entered into a settlement agreement with the DOE constituting a complete accord and satisfaction and final resolution of the findings in the Office of Inspector General final audit report.

**Restrictions on Payment of Commissions, Bonuses and Other Incentive Payments.** An institution participating in Title IV Programs may not provide any commission, bonus or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any person or entity engaged in any student recruiting or admission activities or in making decisions regarding the awarding of Title IV Program funds. In November 2002, the DOE published new regulations which attempt to clarify this so-called "incentive compensation rule." Failure to comply with the incentive compensation rule could result in loss of ability to participate in Title IV Programs or in fines or liabilities. We believe that our current compensation plans are in compliance with the Higher Education Act and the DOE's new regulations, although we cannot assure you that the DOE will not find deficiencies in our compensation plans.

**Eligibility and Certification Procedures.** Each institution must periodically apply to the DOE for continued certification to participate in Title IV Programs. The institution must also apply for recertification when it undergoes a change in ownership resulting in a change of control. The institution also may come under DOE review when it undergoes a substantive change that requires the submission of an application, such as opening an additional location or raising the highest academic credential it offers. The DOE agreed that the addition of the holding company to our ownership structure in 2003 would not constitute a change in ownership of our schools resulting in a change of control provided that certain conditions were met, including that the holding company execute the program participation agreement for each institution. See "Regulatory Environment—Reorganization" for a description of our reorganization in 2003. The holding company has executed a program participation agreement for each of our institutions, except for New England Technical Institute, which has executed a temporary provisional program participation agreement. In addition, the DOE requested that the institutions submit audited financial statements of both the holding company and the subsidiary companies as consolidating statements. We expect to submit consolidating information for the 2004 fiscal year for Lincoln Technical Institute and Southwestern College.

The DOE may place an institution on provisional certification status if it determines that the institution does not fully satisfy certain administrative and financial standards or if the institution undergoes a change in ownership resulting in a change of control. The DOE may withdraw an institution's provisional certification with the institution having fewer due process protections than if it were fully certified. In addition, the DOE may more closely review an institution that is provisionally certified if it applies for approval to open a new location, add an educational program, acquire another school or make any other significant change. Provisional certification does not otherwise limit an institution's access to Title IV Program funds. Southwestern College received an executed provisional program participation agreement from the DOE. In connection with our acquisition of New England Technical Institute, we have received an executed temporary provisional program participation agreement from the DOE and are in the process of obtaining final approval of the New England Technical Institute acquisition from the DOE. We expect the DOE approval issued to New England Technical Institute at the conclusion of the pending change in ownership approval process to be

provisional although we can provide no assurance as to the timing and content of the DOE's response to the pending change in ownership application.

All institutions are recertified on various dates for various amounts of time. The following table sets forth the expiration dates for each of our institutions' current program participation agreement:

Institution	Expiration Date of Current Program Participation Agreement
Allentown, PA	September 30, 2007
Columbia, MD	September 30, 2007
Philadelphia, PA	September 30, 2007
Denver, CO	December 31, 2009
Lincoln, RI	March 31, 2008
Nashville, TN	June 30, 2008
Somerville, MA	March 31, 2008
Edison, NJ	September 30, 2007
Union, NJ	September 30, 2007
Grand Prairie, TX	March 31, 2009
Indianapolis, IN	March 31, 2009
Melrose Park, IL	March 31, 2009
Dayton, OH	March 31, 2008*
New Britain, CT	March 31, 2005**

\* Provisionally certified.

\*\* The temporary provisional program participation agreement continues on a month-to-month basis until the DOE makes a determination on the institution's application for approval of the change in ownership. The institution is waiting for final DOE approval of the change in ownership.

**Compliance with Regulatory Standards and Effect of Regulatory Violations.** Our schools are subject to audits, program reviews, and site visits by various regulatory agencies, including the DOE, the DOE's Office of Inspector General, state education agencies, student loan guaranty agencies, the U.S. Department of Veterans Affairs and our accrediting commissions. In addition, each of our institutions must retain an independent certified public accountant to conduct an annual audit of the institution's administration of Title IV Program funds. The institution must submit the resulting audit report to the DOE for review.

The DOE conducted a program review at Southwestern College and issued an initial program review report in which it identified potential instances of noncompliance with DOE requirements. The report contained nine findings in which the DOE contended that Southwestern College did not identify the specific date each Title IV transaction was posted to a student's account, did not provide adequate financial aid counseling to its eligible students applying for Title IV assistance, did not have certain internal control procedures, did not make timely refunds to certain students, did not have satisfactory academic progress that met regulatory requirements, did not have a system between the financial aid and fiscal offices to regularly reconcile student financial aid awards and disbursements, did not maintain adequate records to support expenditures in the Federal Pell Grant and Federal Supplemental Educational Opportunity Grant programs, and awarded Federal Supplemental Educational Opportunity Grant program funds in amounts below the minimum award amount for an academic year. The report also included a finding that the overall findings reflected a lack of administrative capability on the part of the institution. That finding also stated that the DOE was aware of the change in ownership of Southwestern College and that DOE reviewers discussed with school personnel the expectation that Southwestern College would correct the deficiencies. Southwestern College has submitted an initial response to the report, has provided additional information requested by the DOE, and is waiting for a response or determination from the DOE.

The DOE also conducted a program review at Nashville Auto-Diesel College and issued a final program review determination stating that it had taken the required corrective actions to resolve four of five findings of noncompliance with DOE requirements and requiring that Nashville Auto-Diesel College pay the DOE \$14,499 based on the fifth finding. The first four findings contended that Nashville Auto-Diesel College had failed to properly prorate the Federal Pell Grant award for one student, had underawarded Federal Pell Grants to seven students, had improperly awarded a Federal Pell Grant award to one student, and had made an unequal Federal Supplemental Educational Opportunity Grant program award to one student. The fifth finding related to Nashville Auto-Diesel College granting Federal Supplemental Educational Opportunity Grant matching funds to ineligible students. Nashville Auto-Diesel College expects to pay the \$14,499 amount to the DOE in the second quarter of 2005.

If one of our schools failed to comply with accrediting or state licensing requirements, such school and its main and/or branch campuses could be subject to the loss of state licensure or accreditation, which in turn could result in a loss of eligibility to participate in Title IV Programs. If the DOE determined that one of our institutions improperly disbursed Title IV Program funds or violated a provision of the Higher Education Act or DOE regulations, the institution could be required to repay such funds and related costs to the DOE and lenders, and could be assessed an administrative fine. The DOE could also place the institution on provisional certification and/or transfer the institution to the reimbursement or cash monitoring system of receiving Title IV Program funds, under which an institution must disburse its own funds to students and document the students' eligibility for Title IV Program funds before receiving such funds from the DOE. The DOE has informed us that as a result of our recomputed composite scores for the 2001 and 2002 fiscal years, all of our current and future institutions have been placed on "Heightened Cash Monitoring, Type 1 status" for a period of three years effective December 30, 2004 and are required to timely notify the DOE with respect to certain enumerated oversight and financial events. The DOE has also informed us that these accounting charges will be taken into consideration when each of our institutions applies for recertification of its eligibility to participate in Title IV Programs.

An institution that is operating under "Heightened Cash Monitoring, Type 1 status," is required to credit student accounts before drawing down funds under Title IV Programs and to draw down funds in an amount no greater than the previous disbursement to students and parents. Additionally, the institution's compliance audit will be required to contain verification that this did occur throughout the year. In addition to the above, the DOE has required us to comply with certain requirements prescribed for institutions operating in "the zone," which is indicative of a composite score between 1.0 and 1.4. Those requirements include providing timely information regarding any of the following oversight and financial events:

- any adverse action, including a probation or similar action, taken against the institution by its accrediting agency;
- any event that causes the institution, or related entity to realize any liability that was noted as a contingent liability in the institution's or related entity's most recent audit financial statement;
- any violation by the institution of any loan agreement;
- any failure of the institution to make a payment in accordance with its debt obligations that results in a creditor filing suit to recover funds under those obligations;
- any withdrawal of owner's equity from institution by any means, including declaring a dividend; or
- any extraordinary losses, as defined in accordance with Accounting Principles Board Opinion No. 30.

Operating under the zone requirements may also require the institution to submit its financial statement and compliance audits earlier than the date previously required and require the institution to provide information about its current operations and future plans. An institution that continues to fail to meet the financial responsibility standards set by the DOE or does not comply with the zone requirements may lose its eligibility to continue to participate in Title IV funding or it may be required to post irrevocable letters of credit, for an amount determined by the DOE that is not less than 50% of the Title IV Program funds received by the institution during its most recently completed fiscal year.

Significant violations of Title IV Program requirements by us or any of our institutions could be the basis for a proceeding by the DOE to limit, suspend or terminate the participation of the affected institution in Title IV Programs or to civil or criminal penalties. Generally, such a termination extends for 18 months before the institution may apply for reinstatement of its participation. There is no DOE proceeding pending to fine any of our institutions or to limit, suspend or terminate any of our institutions' participation in Title IV Programs.

We and our schools are also subject to complaints and lawsuits relating to regulatory compliance brought not only by our regulatory agencies, but also by third parties, such as present or former students or employees and other members of the public. If we are unable to successfully resolve or defend against any such complaint or lawsuit, we may be required to pay money damages or be subject to fines, limitations, loss of federal funding, injunctions or other penalties. Moreover, even if we successfully resolve or defend against any such complaint or lawsuit, we may have to devote significant financial and management resources in order to reach such a result.

**Lenders and Guaranty Agencies.** In 2004, seven lenders provided funding to more than 91% of the students at the schools we owned during that year: Bank One, N.A., SLMA Wilmington Trust, Citibank Student Loan Corporation, SunTrust Bank, JPMorgan Chase Bank, Educaid (Wachovia), and ASAP Union Bank & Trust. While we believe that other lenders would be willing to make federally guaranteed student loans to our students if loans were no longer available from our current lenders, there can be no assurances in this regard. In addition, the Higher Education Act requires the establishment of lenders of last resort in every state to ensure that loans are available to students at any school that cannot otherwise identify lenders willing to make federally guaranteed loans to its students.

Our primary guarantors for Title IV loans are USA Group, a subsidiary of Sallie Mae, and New Jersey Higher Education Assistance Authority, an independent agency of the State of New Jersey. These two agencies currently guarantee 91% of all federally guaranteed student loans made to students enrolled at our schools. There are six other guaranty agencies that guarantee student loans made to students enrolled at our schools. We believe that other guaranty agencies would be willing to guarantee loans to our students if any of the guaranty agencies ceased guaranteeing those loans or reduced the volume of loans they guarantee, although there can be no assurances in this regard.

## MANAGEMENT

### Directors and Executive Officers

We expect that the following persons will be our executive officers and directors at the time of this offering:

Name	Age as of May 1, 2005	Position Held
David F. Carney(1)	65	Chief Executive Officer and Chairman of the Board of Directors
Lawrence E. Brown	57	President, Chief Operating Officer
Scott M. Shaw	42	Senior Vice President, Strategic Planning & Development
Cesar Ribeiro	41	Vice President, Chief Financial Officer and Treasurer
Alexandra M. Luster	40	Vice President and General Counsel
Thomas McHugh	57	Senior Vice President and Chief Compliance Officer
Stephen M. Buchenot	49	Group Vice President of Operations
Deborah Ramentol	52	Group Vice President of Operations
Edward B. Abrams	54	Group Vice President of Operations
Ronald L. Beall	61	Group Vice President of Operations
Anthony A. Stanziani	47	Group Vice President of Operations
Alexis P. Michas(1)(3)(4)	47	Director
James J. Burke, Jr.(1)(3)(4)	53	Director
Steven W. Hart(3)	48	Director
Jerry G. Rubenstein(2)(5)	75	Director
John Petillo(2)(5)	58	Director
Paul Glaske(3)(4)(5)	71	Director
Peter S. Burgess(2)(5)	62	Director

- (1) Member of the executive committee.
- (2) Member of the audit committee.
- (3) Member of the compensation committee.
- (4) Member of the governance committee.
- (5) Independent director.

*David F. Carney* joined us in 1999 as Chief Executive Officer and Chairman of the Board of Directors, prior to which he served as a consultant following the sale of his two school companies to Computer Learning Centers, Inc. Previously, Mr. Carney spent 20 years in various capacities with British Oxygen Group Limited, including CFO and Vice President of Development of the Education Services Division which operated 25 technical schools. From 1990 to 1992, Mr. Carney was President of the Massachusetts Association of Private Career Schools. Mr. Carney received a B.S. from Seton Hall University. Mr. Carney has over 27 years of experience in the career education industry.

*Lawrence E. Brown* joined us in 1973 and currently serves as our President and Chief Operating Officer. Prior to taking this position, Mr. Brown held various positions with us including Assistant Director, Executive Director, Regional Vice President, Vice President of Operations and Executive Vice President. Mr. Brown oversees the operations of each of our 32 campuses. He has also served as President of the Private Career Schools of New Jersey and State Captain of the Skills 2000 lobbying effort for the reauthorization of the Higher Education Act of 1992. Mr. Brown received a B.A. from

Northern Illinois University. Mr. Brown has over 32 years of experience in the career education industry.

*Scott M. Shaw* joined us in 2001 and currently serves as our Senior Vice President, Strategic Planning & Development, prior to which he was a partner at Stonington where he had been since 1994. As a partner at Stonington, Mr. Shaw was responsible for identifying, evaluating and acquiring companies and then assisting in the oversight of these companies through participation on the board of directors. In addition, Mr. Shaw worked closely with senior management to develop long-term strategic plans, to evaluate acquisition and new investment opportunities, to assist with refinancings, and to execute on the final sale of the company either to the public or to another company. Mr. Shaw also served as a consultant to Merrill Lynch Capital Partners Inc., a private investment firm associated with Merrill Lynch & Co., Inc. from 1994 through 2000. Mr. Shaw holds an M.B.A. from the Wharton School of Business and a B.A. from Duke University.

*Cesar Ribeiro* joined us in 2004 as Vice President, Chief Financial Officer and Treasurer. From September 2002 through June 2004, Mr. Ribeiro was self-employed providing both consulting services and private money management services. Prior to that, he was an audit partner with Arthur Andersen LLP, where he had been since 1987. Mr. Ribeiro holds a B.S. from Rutgers University.

*Alexandra M. Luster* joined us in 1995 and currently serves as our Vice President and General Counsel, prior to which she practiced law in the private arena for four years. Mrs. Luster received a B.A. from Fordham University and her Juris Doctor from Seton Hall University School of Law.

*Thomas McHugh* joined us in 2000 and currently serves as our Senior Vice President and Chief Compliance Officer. Mr. McHugh is responsible for all financial aid issues with a focus on insuring that our policies and actions with regard to financial aid are in compliance with applicable federal regulations. From 1998 to 2000, Mr. McHugh was the Director of Review and Analysis for Computer Learning Centers, Inc. Mr. McHugh is a graduate of Fordham University and holds a Master's Degree from Rutgers University. Mr. McHugh has over 25 years of experience in the career education industry.

*Stephen M. Buchenot* joined us in 1996 and has held various management positions with us, prior to which he worked for National Education Corporation and Allied Education Corporation. Currently he oversees the operations of five of our schools. Mr. Buchenot received a B.A. from Loyola University, Chicago, Illinois. Mr. Buchenot has 22 years of experience in the career education industry.

*Deborah Ramentol* has held various management positions with us since joining us in 1974. Currently, she oversees the operation of eight schools. She has served on the Administrative Board of the Private Career School Association of New Jersey for 11 years. She was also on the Skills 2000 Team supporting state-level lobbying efforts during the 1998 Reauthorization of the Higher Education Act. Mrs. Ramentol has 30 years of experience in the career education industry.

*Edward B. Abrams* joined us in 2001, prior to which he worked for Computer Learning Centers, Inc. from 1996 to 2001 where he was responsible for opening the Atlanta, Georgia region as area manager with full operation responsibilities for both the Marietta and Norcross campuses. Prior to working for Computer Learning Centers, Inc., Mr. Abrams worked for Wilfred American Education Corporation where he had responsibility for starting up several schools including operations in Philadelphia, Boston and New York City along with acquisition responsibility in Washington D.C. and Paramus, New Jersey and served as a district vice president of operations with responsibility for over \$25 million in revenue. Mr. Abrams oversees the operation of eight schools, five of which are the newly acquired Southwestern College schools. He received a B.S. in Business from Nathaniel Hawthorne College, Antrim, New Hampshire. Mr. Abrams has more than 31 years experience in the career education industry.

*Ronald L. Beall* joined us in 2000, prior to which he worked for Career Blazers, an owner and operator of IT schools, as Chief Operating Officer from 1999 to 2000. From 1997 to 1999 he was a

regional school director for Ultrasound Diagnostic School, a Whitman Education School. Mr. Beall has more than 30 years experience in the career education industry.

*Anthony A. Stanziani* joined us in 2004 after seven years with The Chubb Institute as Regional Vice President of its Northeast Region. He was President and owner of The Teff School in White Plains, NY from 1987 to 1997, following a progressive nine-year career with The Westchester Business Institute, a degree granting institution of higher learning, in which his last position was Senior Vice President. Additionally, Mr. Stanziani serves as the Chairman of the New York State Advisory Council for Licensed Trade and Registered Business Schools. Formerly, he served as the Vice Chairman of the Commission of the Accrediting Council for Continuing Education and Training (ACCET); member of the NYS Advisory Council for Higher Education; President of NYS Registered Business School Association; Vice President of the Coalition of NYS Career Schools; Vice President of the Dystrophic Epidermolysis Bullosa Researchers of America; and Founder and President of the April Ann Stumpf Memorial Fund. He possesses a B.S. in Business Administration and Accounting and a M.S. in Organizational Leadership from Mercy College, Dobbs Ferry, New York.

*Alexis P. Michas* has served on our board of directors since 1999. He has been the Managing Partner and a director of Stonington since 1994. Mr. Michas also served as a consultant to Merrill Lynch Capital Partners, Inc., a private investment firm associated with Merrill Lynch & Co., Inc., from 1994 through 2000. Mr. Michas received a B.A. from Harvard University and an M.B.A. from Harvard University Graduate School of Business Administration. Mr. Michas also is a director of BorgWarner Inc. and Perkin Elmer, Inc.

*James J. Burke, Jr.* has served on our board of directors since 1999. He has been a partner and director of Stonington since 1994. Mr. Burke also served as a consultant to Merrill Lynch Capital Partners, Inc., a private investment firm associated with Merrill Lynch & Co., Inc., from 1994 through 2000. Mr. Burke was formerly Chairman of Eerie World Entertainment L.L.C., a restaurant company that was reorganized under Chapter 11 of the U.S. Bankruptcy Code in 2001. He received a B.A. from Brown University and an M.B.A. from Harvard University Graduate School of Business Administration. Mr. Burke also serves on the board of directors of Ann Taylor Stores Corporation.

*Steven W. Hart* has served on our board of directors since 1999. Mr. Hart is the owner and President of Hart Capital LLC, a private investment fund that invests primarily in the education sector, which is the managing member of Five Mile River Capital Partners LLC. Mr. Hart has more than 20 years of experience as a principal investing in and managing companies in a wide range of industries, and has actively served in several not-for-profit capacities. From 1995 to 2003, he served as Chairman of the Investment Advisory Council which advises the State Treasurer regarding the management of the State of Connecticut Retirement Plans & Trust Funds. From 1996 to 2003, he served as Trustee and then Chairman of the Stanford University Business School Endowment Trust. Mr. Hart is on the Board of Trustees of the South Street Seaport Museum and of Emagination Foundation, Inc. Mr. Hart received a B.A. in Mathematics and Economics from Wesleyan University and an M.B.A. from Stanford University Graduate School of Business.

*Jerry G. Rubenstein* has served on our board of directors since 1999. Mr. Rubenstein has organized and managed several entrepreneurial ventures, including OMNI Management Associates, where he has served as President since 1979. Mr. Rubenstein currently serves on the boards of directors of The Philadelphia Chamber Music Society (as Chairman), Marlboro Music School, Inc., The Curtis Institute of Music and Foreign Policy Research Institute. Mr. Rubenstein received his bachelor of business administration from the City College of New York.

*John Petillo* has served on our board of directors since 2004. Dr. Petillo is currently the President of the University of Medicine and Dentistry of New Jersey. During his career in the education industry, Dr. Petillo served as Chancellor of Administration for the Archdiocese of Newark where he was responsible for over 240 parishes and 200 schools. In addition, he served as Chancellor of Seton Hall University for 13 years as well as President of Blue Cross Blue Shield of New Jersey. Dr. Petillo served as Chairman,

President and Chief Executive Officer of Cane Advantage and as regional Vice President of First Union Insurance. Dr. Petillo currently serves as Vice-Chairman of the board of directors of the Newark Alliance. Dr. Petillo received his Bachelor of Arts and Master of Arts from Seton Hall University, a master of divinity from Darlington School of Theology and a doctorate from Fordham University.

*Paul Glaske* has served on our board of directors since 2004. Mr. Glaske was Chairman and Chief Executive Officer from April 1992 until his retirement in 1999 of Blue Bird Corporation, a leading manufacturer of school buses, motorhomes and a variety of other vehicles. He currently serves on the board of directors of BorgWarner Inc., Camcraft, Inc., Energy Transfer Partners, the Texas Association of Business, and is currently the Chairman of the Board of Trustees of LeTourneau University. Mr. Glaske earned his B.S. in Business Administration from Bob Jones University and his M.B.A. from Pepperdine University.

*Peter S. Burgess, CPA* was elected to our board of directors on July 8, 2004. In 1999, Mr. Burgess retired from Arthur Andersen LLP where he was an accounting and business advisory partner serving numerous manufacturing, insurance and financial services enterprises. Following his retirement, he has provided consulting services specializing in litigation support, mergers and acquisitions and audit committee responsibilities under securities exchange requirements and the Sarbanes-Oxley Act. Mr. Burgess is also Chairman of the Audit Committee of PMA Capital Corporation and serves as a director of Duncaster Inc., a not-for-profit continuing care retirement community. Mr. Burgess earned a B.S. in Business Administration from Lehigh University.

## **Our Board of Directors**

Upon completion of this offering, our board will consist of eight persons. We are currently a controlled corporation under the rules of The Nasdaq National Market as Stonington holds, and will continue to hold after the offering, over 50% of the voting power of our company. As required by the rules of The Nasdaq National Market, our independent directors will hold regularly scheduled meetings at which only independent directors are present.

Our executive officers are appointed by the board on an annual basis and serve until their successors have been duly elected. There are no family relationships among any of our directors or executive officers.

### ***Committees of the Board***

At the time of this offering, we expect that our board will have an executive committee, an audit committee, a compensation committee and a governance committee. The composition, duties and responsibilities of these committees are set forth below. Committee members will hold office for a term of one year. After this offering, our board may designate new committees, as it deems appropriate, to assist with its responsibilities.

#### ***The Executive Committee***

We expect that our board will designate an executive committee consisting of at least three directors. It is currently anticipated that Messrs. Carney (Chairman), Burke and Michas will serve on the executive committee. When the board of directors is not in session and between board meetings, or when it would not be practical for the full board to meet to review or act upon any matter, the executive committee will have and may exercise all the powers and authority of the board of directors in the management of our business and affairs, except as provided (1) in our amended and restated certificate of incorporation, (2) in our bylaws, or (3) by any action of the board of directors.

#### ***Audit Committee***

We expect that our board will designate an audit committee consisting of at least three directors, at least one of whom is an "audit committee financial expert" as defined in the rules of the SEC. It is

currently anticipated that Mr. Burgess (Chairman), Dr. Petillo and Mr. Rubenstein will serve on the audit committee. Mr. Burgess and Mr. Rubenstein are "audit committee financial experts." Each member of the audit committee will be able to read and understand financial statements at the time such member is appointed. The composition of the audit committee will satisfy the independence requirements of The Nasdaq National Market and the SEC.

The audit committee will have at least four regular meetings each year. The result of each meeting is to be reported at the next regular meeting of our board.

The audit committee will have the responsibility for overseeing:

- our accounting and financial reporting processes;
- the quality and integrity of our financial statements;
- the quality and integrity of our system of internal controls;
- our compliance with laws and regulations;
- our independent auditor's qualifications and independence; and
- the audit of our financial statements by a qualified independent auditor.

To fulfill these responsibilities, the audit committee will:

- be aware of the current areas of greatest financial risk to us and understand management's assessment and management of the risks;
- consider the effectiveness of our disclosure controls and procedures to promote timely, accurate, compliant and meaningful disclosure in our periodic reports filed with the SEC;
- periodically review with the independent auditors their assessment as to the adequacy of our structure of internal controls over financial accounting and reporting, and their qualitative judgments as to the accounting principles employed and related disclosures by us and the conclusions expressed in our financial reports;
- review with management and the independent auditors our accounting policies and practices to ensure they meet the requirements with respect to the FASB, the SEC and the American Institute of Certified Public Accountants;
- select, evaluate and, if necessary, replace our independent auditors;
- actively engage in dialogue with the independent auditors with respect to any disclosed relationships or services that may impact the objectivity or independence of the independent auditors;
- engage advisors, as the committee determines is necessary, to carry out its duties;
- meet with the independent auditors, the internal auditors and senior management to review the scope and methodology of the proposed audit;
- discuss with management policies and practices regarding earnings press releases, as well as financial information and earnings guidelines provided to analysts and rating agencies;
- set clear hiring policies with respect to any current or former employees of our independent auditors; and
- establish procedures for the receipt, retention and treatment of complaints we receive regarding our internal accounting controls or auditing matters and for the confidential, anonymous submission by employees of their concerns regarding our internal accounting controls and auditing matters.

### **Compensation Committee**

We expect that our board will designate a compensation committee that will consist of at least three directors. It is currently anticipated that Messrs. Burke (Chairman), Glaske, Hart and Michas will serve on the compensation committee. The composition of the compensation committee will not satisfy the independence requirements of The Nasdaq National Market because we are a controlled company. The compensation committee will meet at least twice during each fiscal year. The primary responsibility of the compensation committee will be to develop and oversee the implementation of our philosophy with respect to the compensation of our officers. In that regard, the compensation committee will:

- develop and maintain a compensation policy and strategy that creates a direct relationship between pay levels and corporate performance and returns to stockholders;
- recommend compensation and benefit plans to our board for approval;
- review and approve annual corporate and personal goals and objectives to serve as the basis for the chief executive officer's compensation, evaluate the chief executive officer's performance in light of the goals and, based on such evaluation, determine the chief executive officer's compensation;
- determine the annual total compensation for our named executive officers;
- with respect to our equity-based compensation plans, approve the grants of stock options and other equity-based incentives as permitted under our compensation plans;
- review and recommend compensation for non-employee directors to our board; and
- review and recommend employment agreements, severance arrangements and change of control plans that provide for benefits upon a change in control, or other provisions for our executive officers and directors, to our board. It is intended that arrangements for change of control benefits for our executive officers will be considered by the compensation committee after this offering.

### **Governance Committee**

We expect that our board will designate a governance committee that will consist of at least three directors. It is currently anticipated that Messrs. Michas (Chairman), Burke and Glaske will serve on the governance committee. The composition of the governance committee will not satisfy the independence requirements of The Nasdaq National Market because we are a controlled company. The governance committee will:

- identify individuals qualified to serve as our directors;
- recommend qualified individuals for election to our board of directors at annual meetings of stockholders; and
- monitor compliance with and recommend changes to corporate governance guidelines to our board.

To fulfill these responsibilities, the governance committee will:

- review periodically the composition of our board;
- identify and recommend director candidates for our board;
- recommend to our board nominees for election as directors;
- recommend to our board the composition of certain committees of the board;
- review periodically our corporate governance guidelines and recommend governance issues that should be considered by our board;

- review periodically our committees' charters, duties and powers and operations and the working relationship between each committee and the board;
- review periodically our code of conduct and obtain confirmation from management that the policies included in the code of conduct are understood and implemented; and
- consider, discuss and recommend ways to improve our board's effectiveness.

### **Director Compensation**

After this offering, each non-employee director will receive a \$25,000 annual retainer, \$60,000 in restricted stock awards, an annual restricted stock award of \$30,000 payable at the annual meeting or restricted stock unit award to receive shares of our common stock under our 2004 Non-Employee Directors Restricted Stock Plan (described in more detail below) and \$1,000 per board meeting attended in person or by telephone. The chairman of each committee of the board will receive an additional \$500 per board meeting attended.

Non-employee directors on committees of the board will each receive an additional payment of \$1,000 for each committee meeting attended on a day other than the day of a board meeting for which that director has been compensated. The audit committee chairman will receive an additional \$10,000 annual retainer.

### **Compensation Committee Interlocks and Insider Participation**

Upon completion of this offering, none of our executive officers will serve on the compensation committee or board of directors of any other company of which any of the members of our compensation committee or any of our directors is an executive officer. While serving as one of our officers, Mr. Carney will not serve as a member of our compensation committee.

### **Limitation of Liability and Indemnification**

Our certificate of incorporation and bylaws limit the liability of directors to the maximum extent permitted by New Jersey law. Specifically, a director will not be personally liable for monetary damages for breach of fiduciary duty as a director, except liability for:

- any breach of their duty of loyalty to us or our stockholders;
- acts or omissions not in good faith or which involve a knowing violation of the law; or
- any transaction from which the director derived an improper personal benefit.

The limitation of liability does not apply to liabilities arising under the federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission.

Our bylaws provide that we will indemnify our directors and officers and may indemnify our employees and other agents to the fullest extent permitted by law. We believe that indemnification under our bylaws covers at least negligence and gross negligence on the part of indemnified parties. Our bylaws also provide that we shall advance expenses incurred by a director or officer in advance of the final disposition of any action or proceeding and we may advance expenses incurred by our employees or other agents in advance of the final disposition of any action or proceeding. Our bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in his or her capacity as an officer, director, employee or other agent. We believe that these bylaw provisions and indemnification agreements are necessary to attract and retain the services of highly qualified persons as directors and officers.

The limited liability and indemnification provisions in our certificate of incorporation and bylaws may discourage stockholders from bringing a lawsuit against our directors for breach of their fiduciary duty and may reduce the likelihood of derivative litigation against our directors and officers, even though a derivative action, if successful, might otherwise benefit us and our stockholders. A stockholder's investment in us may be adversely affected to the extent we pay the costs of settlement or damage awards against our directors and officers under these indemnification provisions.

At present, there is no pending litigation or proceeding involving any director, officer or employee in which indemnification is sought, nor are we aware of any threatened litigation that may result in claims for indemnification.

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

## Executive Compensation

The table below sets forth summary information concerning the compensation awarded to our chief executive officer and our four most highly compensated executive officers other than our chief executive officer during 2004. The individuals listed below are referred to in this prospectus as our "named executive officers."

**Summary Compensation Table**

Name & Principal Position	Year	Annual Compensation		Other Annual Compensation(1)	Long-Term Compensation Awards		All Other Compensation (2)
		Salary	Bonus		Restricted Stock Award(s)	Securities Underlying Options SARs	
David F. Carney <i>Chairman of the Board and Chief Executive Officer</i>	2004	\$ 360,000	\$ 460,000	—	—	—	\$ 3,900
Lawrence E. Brown <i>President and Chief Operating Officer</i>	2004	300,000	213,792	—	—	—	3,900
Scott M. Shaw <i>Senior Vice President, Strategic Planning and Business Development</i>	2004	270,000	192,595	—	—	—	3,900
Stephen M. Buchenot <i>Group Vice President</i>	2004	175,000	69,360	—	—	—	3,900
Deborah Ramentol <i>Group Vice President</i>	2004	175,000	73,533	—	—	—	3,900

(1) In accordance with the rules of the SEC, other annual compensation in the form of perquisites and other personal benefits has been omitted because such perquisites and other personal benefits constitute less than the lesser of \$50,000 or ten percent of the total salary and bonus reported for the named executive officers during fiscal 2004.

(2) The compensation disclosed in this column represents matching contributions made by us under our 401(k) Plan to each of our named executive officers during fiscal 2004.

## Option Grants During 2004 Fiscal Year

We did not grant any stock options to our named executive officers during fiscal 2004.

### Aggregated Option Exercises in 2004 Fiscal Year and 2004 Fiscal Year-End Option Values

The table below sets forth information related to stock options exercised by the named executive officers during the 2004 fiscal year and the number and value of stock options held as of December 31, 2004.

Name	Shares Acquired on Exercise (#)	Value Realized	Number of Securities Underlying Unexercised Options as of December 31, 2004		Value of Unexercised In-the-Money Options at FY-End (1)	
			Exercisable	Unexercisable	Exercisable	Unexercisable
David F. Carney	0	0	238,682	223,768	\$ 3,844,785	\$ 3,316,620
Lawrence E. Brown	0	0	147,052	148,848	2,326,518	2,074,692
Scott M. Shaw	0	0	142,638	142,862	2,267,661	2,012,289
Stephen M. Buchenot	0	0	18,226	23,899	277,216	280,734
Deborah Ramentol	0	0	18,226	23,899	277,216	280,734

(1) There was no public market for our common stock on December 31, 2004. Accordingly these values have been calculated in accordance with the rules of the SEC, on the basis of an initial public offering price per share of \$20.00 (the mid-point of the range set forth on the cover page of this prospectus), less the applicable per share exercise price.

### Pension Plan

We maintain a qualified defined benefit pension plan (the "Pension Plan"), which is currently frozen. Benefit accruals under the Pension Plan were frozen for non-union employees as of December 31, 1994. As of such date, the annual pension benefits that would be payable at age 65 under the Pension Plan to our eligible named executive officers, calculated on the basis of a single-life annuity, are as follows: Mr. Brown: \$25,913.88; Mr. Buchenot: \$2,672.28; and Ms. Ramentol: \$10,204.08. Messrs. Carney and Shaw are not eligible for pension benefits under the Pension Plan. The pension benefits available under the Pension Plan are not subject to any reduction for Social Security or other offset amounts.

### Compliance with Section 16(a) of the Exchange Act

During fiscal year 2004, none of our executive officers, directors or greater than 10% stockholders were required to comply with Section 16(a) of the Securities Exchange Act of 1934, as amended, with respect to our common stock because our company had not yet become public, and therefore, such persons were not subject to the reporting requirements under Section 16.

### Employment-Related Arrangements

The employment agreements for each of David F. Carney, Lawrence E. Brown, Scott M. Shaw, and Cesar Ribeiro were amended on March 1, 2005. The descriptions of the employment agreements below reflect these amendments.

#### ***Employment Agreement with David F. Carney***

***Employment Period.*** We have entered into an employment agreement, dated January 1, 2005, as amended on March 1, 2005, with David F. Carney, which agreement supersedes the employment agreement, dated January 1, 2003, between us and Mr. Carney. The agreement provides that Mr. Carney will serve as our Chairman and Chief Executive Officer. The initial period of his employment term will terminate on January 1, 2007.

*Compensation and Benefits.* We have agreed that we will compensate Mr. Carney with a minimum annual base salary of \$375,000. Mr. Carney will also be eligible to earn an annual bonus for each calendar year during the term of his employment, pursuant to the terms of our key management team incentive compensation plan in effect for such calendar year. The amount of such bonus will be based upon our achievement of revenue, EBIT margin and net income targets and Mr. Carney's achievement of key non-financial performance objectives, in each case established each year by our board of directors or our compensation committee. Mr. Carney will also be included, to the extent eligible, in all of our 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 are established for, or made available to, our senior executives. We currently provide Mr. Carney with an automobile for business and personal use and pay for associated costs, including automobile insurance, parking and fuel, in accordance with our practices as consistently applied to other key employees. In addition, we will furnish Mr. Carney with coverage by our customary director and officer indemnification arrangements, subject to applicable law.

*Involuntary Termination.* In the event that during Mr. Carney's employment term, there is an "Involuntary Termination" (as defined hereinafter) of Mr. Carney's employment, we will pay him: (1) two times the amount of his base salary, as is then in effect; (2) two times the average of his annual bonus; (3) all outstanding reasonable travel and other business expenses incurred as of the date of his termination; and (4) the employer portion of the premiums necessary to continue his health care coverage for the earlier of (A) one year and (B) the date on which he is covered under another group health plan. Mr. Carney will also be entitled to (1) the continued use of an automobile and payment of associated costs by us for the greater of (A) one year and (B) the remainder of his employment term and (2) receive any other accrued compensation and benefits otherwise payable to him as of the date of his termination. All the aforementioned payments would be paid by us in a lump-sum amount no later than 30 days after the date of his termination. This lump sum payment may be deferred for six months, if necessary, to comply with the American Jobs Creation Act of 2004. For purposes of Mr. Carney's employment agreement, "Involuntary Termination" means the termination of his employment (1) by us (or any successor thereto) without "Cause" (as defined in his employment agreement) or (2) by Mr. Carney for "Good Reason" (as defined in his employment agreement).

*Termination for Cause, Death or Disability; Resignation Other than for Good Reason.* In the event that during Mr. Carney's employment term, Mr. Carney's employment is terminated by us for Cause, or Mr. Carney resigns from his employment other than for Good Reason, we will pay him (or his estate, if applicable) his accrued but unpaid base salary earned through the date of termination, unreimbursed expenses, plus any other accrued but unpaid employee benefits earned through the date of his termination, including, without limitation, any annual bonus due but not yet paid for a completed calendar year.

*Change in Control.* Upon a Change in Control (as defined in his employment agreement), of which an initial public offering does not constitute a change in control, we (or our successor) will continue the employment of Mr. Carney, and Mr. Carney will continue performing services for us for a period of two years commencing on the date of the Change in Control and ending on the second anniversary thereof. Upon a Change in Control, all outstanding stock options granted by us or any of our affiliates to Mr. Carney will become fully vested and immediately exercisable on the date of the Change in Control.

During a 30-day period commencing on the first anniversary of the date of the Change in Control, Mr. Carney will have the right to resign from his employment with us (or our successor) for any reason and receive an amount equal to (i) one times the amount of his base salary, as is then in effect, and (ii) one times the average of his annual bonus paid to him for the two years immediately prior to the year in which such resignation occurs. If, however, such resignation constitutes an Involuntary Termination (as defined above), he will receive payments in accordance with an Involuntary

Termination. All of the aforementioned payments would be paid by us in a lump-sum amount no later than 30 days after the date of his termination.

*Reduction in Payments.* The employment agreement contains an Internal Revenue Code, as amended (referred to as the "Code") Section 280G "cusp" provision. In the event that any payment or distribution by us to or for the benefit of Mr. Carney pursuant to the terms of the employment agreement or otherwise would be considered a "parachute payment" and the amount of the parachute payment, after deduction of all relevant taxes, including excise taxes imposed by Code Section 4999, is less than the amount Mr. Carney would receive if he was paid three times his average "base amount" less \$1.00, then the aggregate amounts constituting the parachute payment will be reduced (or returned by Mr. Carney if already paid to him) to an amount that will equal three times his average "base amount" less \$1.00.

*Noncompetition.* Mr. Carney is subject to a noncompetition restrictive covenant during the term of his employment and for one year thereafter, although the covenant will not apply if his employment is terminated due to an Involuntary Termination or he resigns during the 30-day period commencing on the first anniversary of a Change in Control.

*Nonsolicitation.* Mr. Carney is subject to a nonsolicitation restrictive covenant of clients, employees and key consultants during the term of this employment and for one year thereafter.

*Confidentiality.* Mr. Carney is subject to a confidentiality restrictive covenant of unlimited duration.

*Arbitration.* Any dispute or controversy arising under or in connection with Mr. Carney's employment agreement that cannot be mutually resolved by him and us will be settled exclusively by arbitration in West Orange, New Jersey. The cost of the arbitration will be borne by the parties in the manner determined by the arbitrators.

*Waiver and Release.* Our obligations under Mr. Carney's employment agreement are subject to Mr. Carney executing and delivering a waiver and release (relating to his release of claims against us) in a form reasonably and mutually agreed upon.

#### ***Employment Agreement with Lawrence E. Brown***

We have entered into an employment agreement, dated January 3, 2005, as amended on March 1, 2005, with Lawrence E. Brown, which agreement supersedes the employment agreement, dated January 1, 2003, between us and Mr. Brown. The terms of this employment agreement are identical to those set forth in Mr. Carney's employment agreement described above, except that, pursuant to his employment agreement, Mr. Brown will serve as President and Chief Operating Officer, and he will receive a minimum annual base salary of \$330,000. In addition, in the event of an Involuntary Termination of Mr. Brown's employment term, he shall only be entitled to receive a payment of one and one half times his base salary and annual bonus.

#### ***Employment Agreement with Scott M. Shaw***

We have entered into an employment agreement, dated January 3, 2005, with Scott M. Shaw, as amended on March 1, 2005, which agreement supersedes the employment agreement, dated January 1, 2003, between us and Mr. Shaw. The terms of this employment agreement are identical to those set forth in Mr. Carney's employment agreement described above, except that, pursuant to his employment agreement, Mr. Shaw will serve as Senior Vice President, Strategic Planning and Business Development, and he will receive a minimum annual base salary of \$280,000. In addition, in the event of an Involuntary Termination of Mr. Shaw's employment term, he shall only be entitled to receive a payment of one times his base salary and annual bonus.

## ***Employment Agreement with Cesar Ribeiro***

We have entered into an employment agreement, dated January 3, 2005, as amended on March 1, 2005, with Cesar Ribeiro. The terms of this employment agreement are identical to those set forth in Mr. Carney's employment agreement described above, except that, pursuant to his employment agreement, Mr. Ribeiro will serve as Vice President, Chief Financial Officer and Treasurer, and he will receive a minimum annual base salary of \$250,000. In addition, in the event of an Involuntary Termination of Mr. Ribeiro's employment term, he shall only be entitled to receive a payment of one times his base salary and annual bonus.

### **Existing Employee Benefit Plans**

#### ***Management Stock Option Plan***

We have granted awards under our Management Stock Option Plan since the plan became effective on January 1, 2002. Upon completion of this offering, all awards outstanding under our Management Stock Option Plan will continue to be subject to the terms and conditions of the plan; however, no further awards will be granted under the plan.

*Awards.* Our Management Stock Option Plan permits the grant of nonqualified stock options and incentive stock options to purchase shares of our common stock (we collectively refer to nonqualified stock options and incentive stock options as "options"). The terms and conditions of an option grant are set forth in a related option agreement.

*Shares Subject to Plan.* We have reserved up to 2,087,835 shares of our common stock underlying options pursuant to the plan. The maximum number of shares of common stock that may be issued in connection with incentive stock options is 1,043,917. The plan contains standard anti-dilution provisions.

*Administration.* The plan is administered by our board of directors or by our compensation committee of our board. Our board and our compensation committee have the discretion to select those to whom options will be granted (from among those eligible) and to determine the exercise price, the duration and other terms and conditions of the options, subject to the terms of the plan. Our board may authorize our compensation committee to exercise any and all of the powers and functions of our board pursuant to the plan. Our board or our compensation committee will have the authority to interpret and construe the plan, and any interpretation or construction of the provisions of the plan or of any options granted under the plan by our board or our compensation committee will be final and conclusive. No member of our compensation committee or of our board will be liable for any action or determination made in good faith with respect to the plan or any options granted under it.

*Eligibility.* Options may be granted to our key employees, consultants and non-employee directors or to key employees, consultants and non-employee directors of our subsidiaries who are selected by our board or our compensation committee.

*Exercise Price.* Our board or our compensation committee determines the exercise price of the options, although the price for an incentive stock option must not be less than 100% of the fair market value of a share of our common stock on the date of grant, as determined in good faith by our compensation committee in accordance with Section 422 of the Code.

*Vesting of Options.* Our board or our compensation committee may designate options as service options or performance options and provide vesting schedules for such grants. Generally, one-half of the options granted in any one option grant vest automatically over a five-year period (20% of the options vesting each year), so long as the participant remains employed by us or any of our subsidiaries or the director remains a member of our board or the board of any of our subsidiaries (we refer to these options as the "service options"). The other one-half generally vest at a rate of up to 20% per year subject to our achievement of certain predetermined financial performance goals (we refer to these options as the "performance options"). Performance options will vest and become exercisable on the April 15th following

the year in which the target performance goals are achieved, so long as the participant remains employed by us or any of our subsidiaries or is no longer employed due to an involuntary termination (as defined in the management stockholders agreement). If the goals for a fiscal year are not achieved, none of the performance options subject to vesting for such fiscal year will become exercisable and such options will instead remain eligible to vest and become exercisable if certain cumulative goals are achieved. However, each performance option will become fully vested and immediately exercisable on the seventh anniversary of the date on which the performance option was granted.

*Change in Control.* In the event of a change in control (as defined in the plan), of which an initial public offering does not constitute a change in control, all outstanding unvested service options and all outstanding performance options will become fully vested and immediately exercisable on the effective date of such change in control. In the event of an initial public offering, performance options not yet vested will no longer be exercisable by their terms and will vest and become exercisable as if they were service options.

*Duration of Options.* Generally, options will terminate immediately upon an employee ceasing to be an employee, a consultant ceasing to be a consultant and a director ceasing to be a member of our board or the board of one of our subsidiaries. Options granted under the plan will terminate upon the earliest to occur of (i) the tenth anniversary of the date of the option agreement and (ii) the following dates: (a) the six-month anniversary of the date of death of the participant; (b) unless otherwise provided in an agreement between the participant and us, the 30-day anniversary of the date of the participant's retirement or disability (as defined in the management stockholders agreement) if the participant retires or is disabled while an employee, consultant or director, or the 30-day anniversary of the date of involuntary termination of the participant; and (c) immediately upon a participant's termination of employment, consultancy or directorship for cause or upon a participant's voluntary resignation; provided, however, in the event of (b) above, performance options will terminate on the 30-day anniversary of the later of (A) such termination of employment and (B) April 15th of the year in which such termination of employment occurred.

*Cash-Out.* Our board or our compensation committee may also, in its sole discretion, cancel the vested portion of options held by a participant whose employment, consultancy or directorship has terminated in exchange for a cash payment equal to the excess of the fair value price of the option (as defined in the plan) over the exercise price, multiplied by the number of shares of common stock subject to such cancelled options; provided, however, that our board or our compensation committee not exercise this right in contemplation of a change in control or an initial public offering. In addition, our board or our compensation committee may cancel any outstanding options in exchange for a cash payment to a participant equal to the excess of the fair market value (as determined in good faith by our board) of the consideration received per Stonington Share by Stonington (as defined in the management stockholders agreement) in any sale to a person which is not an affiliate (as defined in the management stockholders agreement) of us or Stonington of all the then issued and outstanding Stonington Shares over the exercise price of the option, multiplied by the number of shares of common stock subject to such cancelled options, effective upon consummation of such event.

*Termination; Amendment.* The plan will terminate upon, and no options will be granted after, the close of business on January 1, 2012, unless it is terminated sooner by all 2,087,035 option shares being granted and either fully exercised or cancelled as provided for in the plan. Our board may amend, suspend or discontinue this plan at any time, subject to applicable law, although our board may not alter or amend or discontinue or revoke or otherwise impair any outstanding options that have been granted and remain unexercised in a manner adverse to the holders, subject to anti-dilution provisions.

#### **401(k) Plan**

We maintain a plan qualified under Section 401(k) of the Code. Under our 401(k) plan, a participant may contribute a maximum of 25% of his or her pre-tax salary, commissions and bonuses

through payroll deductions, up to the statutorily prescribed annual limit (\$13,000 in calendar year 2004). The percentage elected by more highly compensated participants may be required to be lower. In addition, at the discretion of our board of directors, we may make discretionary matching and/or profit-sharing contributions into our 401(k) plan for eligible employees, which may be subject to vesting requirements.

With respect to each of the named executive officers, the following matching contributions were made on their behalf under our 401(k) plan for 2004: \$3,900 for Mr. Carney; \$3,900 for Mr. Brown; \$3,900 for Mr. Shaw; \$3,900 for Mr. Buchenot; and \$3,900 for Ms. Ramentol.

### ***Retirement Plan***

We maintain a pension plan for certain employees, which is a defined benefit pension plan intended to qualify under Section 401(a) and Section 501(a) of the Code. This plan was frozen at December 31, 1994 for non-union employees. Our benefits are funded through employer contributions. Our employees are eligible to participate in the pension plan when they have satisfied the years of service and age requirements. The pension plan provides a benefit upon normal retirement (which is age 65) equal to: 1.5% of "average monthly earnings" (as defined in the pension plan) multiplied by the number of the participant's years of service up to a maximum of 35 years plus any past service accrued benefit. Average monthly earnings are generally the participants' average of monthly earnings, which includes items includible as compensation as described in the applicable Code regulations.

Participants generally become 100% vested in their benefits under the pension plan when they complete five years of service unless the plan is denied as a "top heavy plan" (as defined in the pension plan).

Benefits under the pension plan are normally payable in the form of a single-life annuity in the case of unmarried participants, and in the form of a joint and survivor annuity in the case of married participants. The pension plan has been frozen for non-union employees since December 31, 1994.

With respect to each of the named executive officers, the estimated credited full years of service under the pension plan as of the date of this prospectus are as follows: Mr. Carney, 0 years; Mr. Brown, 24 years; Mr. Shaw, 0 years; Mr. Buchenot, 12 years; and Ms. Ramentol, 29 years.

### **New Employee Benefit Plans**

We also intend to adopt a number of new employee benefit plans prior to the completion of this offering. We expect these plans to be substantially as follows:

#### ***2005 Long-Term Incentive Plan***

Upon completion of the offering, a new incentive compensation plan will go into effect, which we refer to in this prospectus as the incentive plan.

*Eligibility.* Any employee, officer or consultant of our company or any of our subsidiaries (as defined in the incentive plan) may be selected by our compensation committee to participate in the incentive plan.

*Administration.* The incentive plan will be administered by our compensation committee. As administrator of the incentive plan, our compensation committee has the authority, among other things, to determine eligibility to receive awards, the type of awards to be granted, the number of shares of stock subject to, or cash amount payable in connection with, the awards and the terms and conditions of each award (including vesting, forfeiture, payment, exercisability and performance periods and targets).

Our compensation committee will have the authority to interpret and construe the incentive plan, and all determinations made by our compensation committee in administering and interpreting the incentive plan will be final and conclusive for all purposes. Our compensation committee may delegate

its authority under the incentive plan to one or more designees, or our board of directors may take administrative action with respect to the plan. No member of our board, our compensation committee or its designees will be liable for any action or determination made in good faith with respect to the incentive plan. The company will indemnify each such person against any such liability arising under the incentive plan, absent a showing of such person's fraud, willful misconduct or failure to act in good faith.

*Awards.* One or more of the following awards may be granted to participants under the incentive plan:

- stock options;
- restricted share units;
- performance share units;
- stock appreciation rights; and
- other equity awards.

All awards under the incentive plan are made in the discretion of our compensation committee. For this reason, it is not possible to determine the benefits or amounts of the awards that will be received by any particular employee or consultant of our company or any of our subsidiaries in the future under the incentive plan. No awards will be granted under the incentive plan until after the completion of this offering.

*Stock Options.* Stock options may be granted under the incentive plan, including incentive stock options (referred to as "ISOs"), which will comply in all respects with the provisions of Section 422 of the Code and nonqualified stock options (referred to as "NSOs"). The option exercise price (or the method for determining the exercise price) of all stock options granted under the incentive plan will be determined by our compensation committee at the time of grant, except that any ISO will not be granted at a price that is less than 100% of the fair market value of the stock on the date the exercise price is fixed. Stock options may be exercised as determined by our compensation committee, but in no event after the tenth anniversary of the date of grant. Our compensation committee will determine the form of payment of the exercise price of an option at the time of grant.

*Restricted Share Units.* A restricted share unit entitles a participant to receive, upon the lapse of certain restrictions, one or more shares of common stock in consideration for his or her employment or service with our company or our subsidiaries. Our compensation committee may, in its sole discretion, pay cash in lieu of shares or in combination with shares upon the lapse of restrictions applicable to a restricted share unit.

*Performance Share Units.* A performance share unit entitles a participant to receive, upon the satisfaction of certain conditions and/or lapse of restrictions, a target number of shares of common stock based upon the achievement of specified performance targets over a specified performance period. Performance share units will be settled, in the sole discretion of our compensation committee, through the delivery of shares of common stock, payment in cash or a combination of both.

*Stock Appreciation Rights ("SAR").* A SAR entitles a participant to receive, upon satisfaction of certain conditions, an amount equal in value to the difference between the fair market value of a share of stock on the date of exercise of the SAR over the exercise price of the SAR. The exercise price (or method for determining the exercise price) of a SAR will be fixed by our compensation committee at the time of grant. SARs will be settled, in the sole discretion of our compensation committee, through the delivery of shares of common stock, payment in cash or a combination of both. A SAR may be granted alone or in tandem with a stock option.

*Other Awards.* Our compensation committee will have the authority to specify the terms and provisions of other forms of equity related awards not described above.

*Performance Based Awards.* Our compensation committee may determine whether any award granted under the incentive plan is intended to be "performance-based compensation" under Section 162(m) of the Code and may act to preserve the deductibility of these awards for federal income tax purposes. Any awards designated as performance-based compensation will be conditioned on the achievement of one or more performance targets, to the extent required by Section 162(m) of the Code. The performance targets that may be used by our compensation committee for such awards will be based on measurable and attainable financial goals for our company, one or more of our subsidiaries or any combination of such entities, including net income, revenues, cash flow, operating margin, operating revenues, pre-tax operating income, operating income growth, return on assets, total shareholder return, share price, return on equity, diluted earnings per share or earnings per share growth, or any combination of the above as selected by our compensation committee, and quantifiable non-financial goals.

Each participant granted a performance-based award is assigned a target number payable if performance targets are achieved. If a participant's performance exceeds his or her performance targets, awards may be greater than 100% but no more than 200% of the target number. Our compensation committee retains the right to reduce any award if it believes that individual performance does not warrant the award calculated. In the event that all members of our compensation committee are not "outside directors" (as defined in Section 162(m) of the Code), the grant and terms of awards intended to qualify as performance-based compensation will be made by a subcommittee of our compensation committee consisting of two or more outside directors.

*Shares Reserved for Issuance.* Subject to certain adjustments, the maximum number of shares of our common stock that may be issued for all purposes under the incentive plan will be an aggregate of 1.0 million shares plus any shares of common stock remaining available for issuance under the prior plan. Any shares of our common stock that (i) correspond to awards under the incentive plan or the management stock option plan that are forfeited or expire for any reason without having been exercised or settled or (ii) are tendered or withheld to pay the exercise price of an award or to satisfy a participant's tax withholding obligations will be added back to the maximum number of shares available for issuance under the incentive plan. Shares of our common stock issued pursuant to awards under the incentive plan may be either treasury shares or authorized and unissued shares.

The maximum number of shares of common stock that may be subject to stock options granted to any participant during any calendar year is 150,000 shares. The maximum number of shares of common stock that may be subject to awards (other than stock options) granted to any participant during any calendar year is 150,000 shares. The maximum number of shares of common stock that may be subject to incentive stock options is 500,000 shares. The incentive plan contains standard anti-dilution provisions.

*Termination of Employment; Change in Control and Acceleration Generally.* Our compensation committee has the authority to determine the effect, if any, on the vesting, exercisability, payment or lapse of restrictions applicable to an award of a participant upon his or her termination of employment with our company and any of our subsidiaries or upon a change in control (as defined in the incentive plan) of our company, which effect may be specified at the time of grant or at a subsequent time. In connection with a participant's termination of employment, however, if such termination is for cause (as defined in the participant's award document under the incentive plan) or if our compensation committee fails to take any action to the contrary, any unexercised stock options (whether vested or not) and any unvested restricted share units, performance share units, stock appreciation rights or other awards granted to such participant will lapse and become void as of the date of such termination.

In all other circumstances, our compensation committee may, in its sole discretion, accelerate the vesting or payment of any award, the lapse of restrictions on any award or the date on which any award first becomes exercisable.

*Amendment and Termination.* Our board may, at any time, terminate, amend, modify or suspend the incentive plan, except that no amendment may be made that (i) increases the maximum number of shares available for issuance under the incentive plan without shareholder approval or (ii) adversely impairs or alters the rights of a participant with respect to any award outstanding without such participant's consent, unless necessary to comply with applicable laws or to ensure that an award is not subject to interest and penalties under Section 409A of the Code. Unless terminated earlier, the incentive plan will terminate on the tenth anniversary of the date on which it is approved by stockholders, except with respect to awards that are then outstanding.

*No Repricing.* The incentive plan explicitly prohibits our compensation committee from taking any action that has the effect of repricing a stock option or stock appreciation rights, unless our compensation committee is making adjustments pursuant to the incentive plan's standard anti-dilution provision.

*Certain Federal Income Tax Consequences of Options.* Certain of the federal income tax consequences to participants granted options under the incentive plan and our company relating to such options are set forth below in the following general summary.

A participant who is an employee and who is granted an ISO will not recognize income at the time of grant or exercise of such ISO. No federal income tax deduction will be allowable to our company upon the grant or exercise of such ISO. However, upon the exercise of an ISO, any excess in the fair market price of the shares of common stock over the exercise price constitutes a tax preference item that may have alternative minimum tax consequences for the participant. When the participant sells such shares more than one year after the date of transfer of such shares and more than two years after the date of grant of such ISO, the participant will normally recognize a long-term capital gain or loss equal to the difference, if any, between the sale prices of such shares and the exercise price, and our company will not be entitled to a federal income tax deduction with respect to such capital gain or loss. If the employee does not hold such shares for the required holding period, when the participant sells such shares, the employee will recognize ordinary compensation income and possibly capital gain or loss in such amounts as are prescribed by the Code and the regulations thereunder and the company will generally be entitled to a federal income tax deduction in the amount of such ordinary compensation income.

A participant who is granted a NSO will not recognize income at the time of grant of such stock option. When the participant exercises such NSO, the participant will recognize ordinary compensation income equal to the difference, if any, between the exercise price paid and the fair market value, as of the date of exercise, of the shares the participant receives. The tax basis of such shares to the participant will be equal to the exercise price paid plus the amount includible in the employee's gross income. If the participant disposes of any shares of common stock received upon the exercise of his or her NSO, the participant will recognize capital gain or loss equal to the difference between his or her tax basis in such shares and the amount of sale proceeds that the participant realizes on the disposition of such shares. The gain or loss will be either short term or long term, depending on the holding period, which will commence on the date on which the participant recognized taxable income in respect of such shares. Subject to the applicable provisions of the Code and the regulations thereunder (including Section 162(m)), when the participant exercises such NSO, our company will generally be entitled to a federal income tax deduction in respect of the NSO in an amount equal to the ordinary compensation income recognized by the participant.

#### ***2005 Non-Employee Directors Restricted Stock Plan***

Upon completion of the offering, a new restricted stock plan for non-employee directors will go into effect, which we refer to in this prospectus as the directors' plan.

*Eligibility.* Only directors who are not employees of our company or any of our subsidiaries may participate in the directors' plan.

*Administration.* The directors' plan will be administered by our compensation committee or such other committee appointed by our board. Our compensation committee will have the authority to interpret and construe the provisions of the directors' plan and to make all administrative rules, procedures and determinations with respect to the directors' plan in accordance with the terms of such plan. Our compensation committee may designate one or more of our employees to carry out the day-to-day aspects of our compensation committee's responsibilities under the directors' plan.

*Shares Reserved for Issuance.* Subject to certain adjustments, the maximum number of shares of our common stock that may be issued for all purposes under the directors' plan will be an aggregate of 100,000 shares. Shares of our common stock issued under the directors' plan may be either treasury shares or authorized and unissued shares. The directors' plan contains a standard anti-dilution provision.

*Awards.* An award of restricted stock or restricted stock units may be made to a non-employee director under the directors' plan. Awards made under this plan are granted for no consideration other than the provision of services or for such other consideration as our compensation committee may determine or as may be required by applicable law.

Initial awards under the directors' plan are subject to the discretion of our compensation committee. For this reason, it is not possible to determine the benefits or amounts of the initial awards that will be received by non-employee directors under the director's plan. No awards will be granted under the directors' plan until after the completion of this offering. As of the date of this prospectus, we have seven non-employee directors.

*Restricted Stock Awards.* Subject to a deferral election, on the first day of the month following the later of the month in which (i) a non-employee director becomes a non-employee director and (ii) the date of completion of this offering, a non-employee director will receive a one-time award of restricted shares of our common stock equal to \$60,000 (based on the fair market value of a share of our common stock on the date of grant) or such other amount as our compensation committee may determine from time to time.

Subject to a deferral election, as of the date of each annual meeting of our stockholders commencing in 2006, each non-employee director will automatically receive an award of restricted shares of our common stock equal to \$30,000 (based on the fair market value of a share of common stock on the date of grant). Notwithstanding the foregoing sentence, if a non-employee director (i) will not continue to serve as a director on our board immediately after the relevant annual meeting or (ii) became a director on our board within 60 days or less of the relevant annual meeting, then such non-employee director will not receive any annual award of restricted stock for such year.

An award of restricted stock vests at a rate of 33 <sup>1</sup>/<sub>3</sub>% on each of the first, second and third anniversaries of the date of grant, subject to our compensation committee's authority to accelerate the vesting of the award upon a change in control (as defined in the incentive plan). Restricted stock will not be transferable until the later of the date on which it becomes vested (other than by the laws of descent and distribution) and six months following the date of grant. A non-employee director will have the right to vote and receive dividends upon receiving an award of restricted stock.

*Deferral Election; Restricted Stock Unit Awards.* Each non-employee director will be given the opportunity to make an irrevocable election to defer under our deferral plan (described in detail below) receipt of all or any portion of an award of restricted stock otherwise receivable by him or her. Any such election to defer must be made by the non-employee director within the time specified by our

compensation committee no later than December 31 of the taxable year prior to the year in which the applicable award of restricted stock would otherwise be made to such director.

Where a non-employee director makes such a deferral election, he will receive a number of restricted stock units in lieu of, and equal to, the number of shares of restricted stock that is subject to the deferral election. Whereas a restricted stock award results in the immediate distribution of shares of our common stock, which remain subject to applicable vesting and transfer restrictions, a restricted stock unit award is a contractual right to receive shares of our common stock at a later date upon the satisfaction of certain vesting and settlement conditions.

The non-employee director will receive an award of these restricted stock units on the same date that the award of restricted stock subject to the deferral election would have been granted. An award of restricted stock units will vest at a rate of 33 <sup>1</sup>/<sub>3</sub>% on each of the first, second and third anniversaries of the date of grant, subject to our compensation committee's authority to accelerate the vesting of the award upon a change in control. Upon an award of restricted stock units, or portion thereof, becoming vested, no shares of common stock will be issued to the non-employee director. Instead, the restricted stock units will be credited to the non-employee director's account under our deferral plan on the applicable vesting date. Any restricted stock units credited to the deferral plan will be held as restricted stock units until such time as they are settled through the delivery of shares of common stock in accordance with the terms and conditions of our deferral plan. In addition, upon an award of restricted stock units, or portion thereof, becoming vested, the non-employee director will be entitled to have any dividend equivalents earned as of the applicable vesting date that correspond to such restricted stock units distributed in whole shares of our common stock.

Restricted stock units will not be transferable (other than by the laws of descent and distribution). A non-employee director will have no rights as a stockholder in our company with respect to restricted stock units held by him until shares of our common stock underlying such units are distributed.

*Termination of Service.* In the event that a non-employee director's service on our board terminates, our compensation committee has the authority to accelerate the vesting of an award, which action may be taken at the time of grant or at a subsequent time. In the absence of any action by our compensation committee to the contrary, upon such termination of service, such non-employee director's award will, to the extent unvested, be immediately forfeited as of such date of termination.

*Amendment and Termination.* Our board may, at any time, terminate, amend, modify or suspend the directors' plan, except that no amendment may be made (i) where required by applicable law or exchange rules, unless stockholder approval is obtained, or (ii) that adversely alters or affects the rights of a non-employee director with respect to any award outstanding without such director's consent. Unless terminated earlier, the directors' plan will terminate on the tenth anniversary of the date on which it is approved by stockholders, except with respect to awards that are then outstanding.

### **2005 Deferred Compensation Plan**

Upon completion of the offering, a new deferred compensation plan will go into effect, which we refer to in this prospectus as the deferral plan. The deferral plan is intended to be an unfunded plan.

*Administration.* Our compensation committee (or its designee) will administer the plan. All determinations, interpretations and action taken by our compensation committee with respect to the deferral plan will be final and binding on all persons. No member of our compensation committee will be liable to any person for any action taken or omitted in good faith in connection with the administration or interpretation of the deferral plan. We will indemnify and hold any of our employees or directors, including any member of our compensation committee, harmless against all expenses and liabilities arising out of any action taken or omitted in good faith in administering the deferral plan.

*General Terms.* A select group of management and highly compensated employees whose annualized base salary for the preceding calendar year is not less than dollar amount specified by our compensation committee (such limit will initially be \$170,000) may participate in the deferral plan. An employee who satisfies this eligibility criteria may elect to defer on an annual basis up to a maximum of 10% of the total cash compensation due to him or her from our company or our subsidiaries (before deductions to any savings plans). The types of compensation subject to and excluded from the deferral election are illustrated in the deferral plan.

The deferral plan permits our non-employee directors to defer the total cash payments due to them in connection with their service on our board or any committee of our board, including annual retainer fees and committee fees. Non-employee directors are also permitted to defer all or a portion of the restricted stock receivable by them under the directors' plan (described above) in the form of restricted stock units. Our compensation committee has the discretion to exclude an otherwise eligible employee or non-employee director from participating in the deferral plan if such exclusion is in the best interests of our company or necessary or advisable to comply with the requirements of applicable law.

Participants who make deferral elections under the deferral plan will elect the deferral period and manner of payment for deferred amounts. Deferral elections made under the deferral plan will be irrevocable, unless our compensation committee determines otherwise. The deferral period may generally not be less than three years. Participants will be fully vested in amounts deferred by them under the deferral plan.

Participants may invest cash amounts deferred by them under the deferral plan among various notional investment alternatives designated by our compensation committee. Cash amounts deferred under the deferral plan will be credited (or debited) periodically to reflect the return, if any, on such notional investments.

Restricted stock unit amounts deferred under the deferral plan by a non-employee director will remain in the form of restricted stock units until such units are settled in shares of our common stock at the end of the applicable deferral period. A non-employee director participant who has deferred restricted stock units under the deferral plan will earn dividend equivalents with respect to the shares of our common stock underlying such units. The dividend equivalents will be credited to the non-employee director participant's account under the deferral plan and distributed in whole shares of our common stock at the same time a distribution of shares is made with respect to the corresponding restricted stock units.

Within a reasonable period following the end of the applicable deferral period, the participant (pursuant to his or her payment election) will receive cash amounts deferred (and any related credits earned) under the deferral plan in the form of cash in (i) a single lump-sum payment, (ii) up to 10 annual installments over 10 years or (iii) up to 120 monthly installments over 10 years, unless the committee determines otherwise. Within a reasonable period following the end of the applicable deferral period, non-employee director participants who have elected to defer restricted stock units under the deferral plan will have such units (and any related dividend equivalents earned) distributed in the form of whole shares of our common stock.

Our compensation committee will at all times have the right to accelerate the distribution of any amounts deferred by a participant under the deferral plan to the extent permitted by Section 409A of the Code.

*Termination of Employment or Service and Change in Control.* In the event of an employee participant's separation from service for any reason other than retirement or a non-employee director participant's service on our board is terminated, all amounts deferred by such participant (including credits and dividend equivalents earned) in the deferral plan will be distributed as soon as practicable

following the date of his or her termination, unless our compensation committee determines otherwise. At least 30 days prior to a change in control (as defined in the incentive plan), or on such date specified by our compensation committee that is less than 30 days prior to the date of the change in control, all amounts deferred by participants (including credits and dividend equivalents earned) under the deferral plan will be distributed to such participants.

*Amendment and Termination.* Our compensation committee may, at any time, terminate, amend, or modify the deferral plan, except that no amendment or termination may adversely affect the rights of a participant in any deferral account that has been established prior to such amendment or termination without such participant's consent. Notwithstanding the foregoing sentence, our compensation committee may make any amendment or modification necessary or proper to conform with any law or governmental regulation, to avoid being subject to interest and penalties under Section 409A of the Code or to prevent any tax assessment against amounts deferred under the plan prior to the distribution of such amounts.

## CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

### Consulting Agreements

We entered into a Management Services Agreement with Stonington dated January 23, 2003 pursuant to which Stonington provides us and our board of directors with management consulting and business advisory services upon our request. Stonington is our largest stockholder and officers of Stonington serve on our board of directors. We pay Stonington an annual fee of \$750,000 and provide reimbursement for reasonable expenses. The agreement will terminate upon the completion of this offering.

We had a consulting agreement with Hart Capital to advise us in identifying acquisition and merger targets and to assist with the due diligence reviews and negotiations with these targets. This agreement terminated by its terms in June 2004. Hart Capital is the managing member of Five Mile River Capital Partners LLC, which is our second largest stockholder and Steven Hart, who is the owner and President of Hart Capital, sits on our board of directors. We paid Hart Capital a monthly retainer, reimbursement of expenses and an advisory fee for its work on successful acquisitions or mergers. In accordance with the agreement, we paid Hart Capital approximately \$0.7 million, \$0.6 million and \$0.4 million for the years ended December 31, 2002, 2003 and 2004, respectively. Pursuant to the agreement, we had the obligation to make certain payments to Hart Capital with respect to acquisition opportunities identified for us by Hart Capital prior to the termination of the agreement if we consummated any such acquisition opportunities within the twelve months following the termination of the agreement. We paid Hart Capital \$0.3 million for its services in connection with the New England Technical Institute acquisition, which closed on January 11, 2005.

### Stockholders' Agreement

On September 15, 1999, we entered into a Stockholders' Agreement with affiliates of Stonington and Hart Capital. Under this agreement, as amended, Stonington agreed that so long as Hart Capital and Steven Hart owned at least 5% of the outstanding shares of our common stock, Stonington would vote all of the shares of our common stock that it owns in favor of Steven Hart or his designee in elections of members of our board of directors. Hart Capital also agreed to vote all of the shares of our common stock that it owns in favor of Stonington's designees in elections of members of our board of directors, as well as in the same manner as Stonington in other matters requiring stockholder approval. The Stockholders' Agreement grants Stonington a right of first refusal in the sale of any shares of common stock by Hart Capital, Steven Hart and their transferees so long as Stonington and/or its affiliates own at least 20% of the then outstanding common stock.

The Stockholders' Agreement also sets forth certain "tag along" and "drag along" rights relating to sales of our common stock. The "tag along" rights require Stonington to offer to include certain of the shares of our common stock held by Hart Capital, Steven Hart and their transferees in a sale by Stonington of 45% or more of the outstanding shares of our common stock. The "drag along" rights obligate Hart Capital, Steven Hart and their transferees to participate pro rata in certain sales of our common stock by Stonington. We also granted Hart Capital, Steven Hart and their transferees the right, under certain circumstances, to have shares of our common stock owned by them included in a registration statement that we file for the public offering of our common stock. Hart Capital and Steven Hart have exercised this right to sell shares of our common stock in this offering.

We expect that, prior to the consummation of this offering, Steven W. Hart and certain trusts for the benefit of Mr. Hart's children will enter into a stockholder's agreement, on comparable terms to the Stockholders' Agreement, with respect to shares of our common stock acquired pursuant to the exercise of options.

## Management Stockholders Agreement

On January 1, 2002, we entered into a Management Stockholders Agreement with an affiliate of Stonington and a number of our management employees who own shares of our common stock or stock options. The agreement significantly restricts the ability of these management stockholders to transfer their shares before we become a public company. The agreement also sets forth certain "tag along" and "drag along" rights relating to sales of our common stock. The agreement gives the management stockholders and us corresponding "put" and "call" rights for a management stockholder's shares in the event of the management stockholder's death, disability, retirement or involuntary termination prior to a public offering of our stock. We also granted the management stockholders the right, under certain circumstances, to have shares of our common stock owned by them included in a registration statement that we file for the public offering of our common stock.

## Registration Rights Agreement

Prior to the completion of this offering, we anticipate entering into a registration rights agreement with our principal stockholder, Stonington. Pursuant to the registration rights agreement, Stonington shall have four "demand" registration rights. Pursuant to these demand rights, at any time following the closing of this offering, Stonington may request, subject to the lock-up agreements described under "Underwriting," that we, at our expense, file a registration statement under the Securities Act of 1933 to cover the restricted shares of our common stock that they own, as long as the aggregate offering price of the proposed transaction to be registered is greater than \$25 million or represents an offering of at least 10% of our outstanding common stock. Upon receipt of such request, we generally will be required to use our reasonable best efforts to effect such registration. We will not be required to effect a requested registration, however, if we have effected one such registration which is still in effect, or if the request is made at any time up to 180 days following the effective date of any registered offering we have made to the general public, other than this offering, in which Stonington shall have been able to effectively register all the restricted stock as to which registration has been requested. We may also delay filing a registration statement or withhold efforts to cause a registration statement to become effective if our board of directors determines in good faith that such registration will materially and adversely interfere with or affect the negotiation or completion of any material transaction we are considering or will involve initial or continuing disclosure obligations that are not in our stockholders' best interests.

The registration rights agreement also provides for "piggyback" rights with respect to the restricted shares of our common stock held by Stonington. Accordingly, if we propose to register, or decide to register following the exercise of a "demand" registration right as described above, any of our common stock for sale to the public following completion of this offering, we are required to give written notice of our intention to do so to Stonington and to use our reasonable best efforts to include in the registration statement the number of restricted shares of our common stock beneficially owned and requested to be registered by Stonington. If Stonington were to include shares in a registration statement where we also include shares, this would not count as a "demand" under this agreement even if Stonington requested the registration statement pursuant to its rights under this agreement before we decided to include any shares in or effectuate any registration statement. To the extent Stonington includes shares of our common stock in any registration statement, such inclusion would trigger incidental registration rights under the Stockholders' Agreement (including incidental registration rights of our second largest stockholder, Hart Capital) and the Management Stockholders Agreement, subject to reduction of such shares under certain circumstances by an underwriter. If a reduction of shares is necessary, stockholders who request to participate in the registration pursuant to this proposed new registration rights agreement or the Stockholders' Agreement or Management Stockholders Agreement will do so pro rata based on the numbers of shares held by such stockholders

on a fully diluted basis, except that we will have first priority to register shares of our common stock if we initiate the registration for our own account.

### **Management Loans**

On January 1, 2002, David F. Carney, our Chief Executive Officer and Chairman of the Board of Directors, Lawrence E. Brown, our President and Chief Operating Officer and Scott M. Shaw, our Senior Vice President, Strategic Planning and Development issued personal recourse secured promissory notes to us in the amount of \$0.2 million, \$0.1 million and \$0.1 million, respectively. The notes were issued in connection with a loan to the executives named above in order to purchase shares of our common stock. The loans bore interest at a rate of 5.6% per year, payable annually. Mr. Carney paid all amounts outstanding under his promissory note in the first quarter of 2004. Messrs. Brown and Shaw paid all amounts outstanding under their promissory notes on March 24, 2005.

### **Initial Public Offering**

We are paying the expenses of this offering, including those of the selling stockholders, other than underwriting discounts and commissions attributable to the shares being sold by the selling shareholders. See "Underwriting."

## PRINCIPAL AND SELLING STOCKHOLDERS

The following table sets forth information regarding the beneficial ownership of our common stock as of May 31, 2005, as adjusted to reflect the sale of shares in the offering by:

- each person known to us to beneficially own more than 5% of the outstanding shares of common stock;
- each of the executive officers identified in the summary compensation table;
- each of our directors;
- all directors and executive officers as a group; and
- each selling stockholder.

Footnote (1) on the following page provides a brief explanation of what is meant by the term "beneficial ownership." For the purpose of calculating the percentage of shares beneficially owned by any stockholder, the number of shares of common stock deemed outstanding "prior to offering" includes shares of common stock subject to options held by beneficial owners that are currently exercisable or exercisable within 60 days of May 31, 2005. This table assumes the overallotment option granted to the underwriters is not exercised.

For purposes of the calculation of beneficial ownership percentages, shares of common stock subject to options and warrants are considered outstanding and beneficially owned by the person holding the options or warrants but are not treated as outstanding for purposes of computing the percentage ownership of any person. As of May 31, 2005, there were 21,710,985 shares of common stock outstanding. Immediately following this offering 24,821,587 shares of common stock will be outstanding which amount includes the exercise of options to purchase 110,602 shares of our common stock by certain selling stockholders immediately prior to the consummation of this offering.

The number of shares of common stock outstanding "After Offering" includes the additional shares of common stock offered by us in the offering. Except as indicated in the footnotes to this table and subject to applicable community property laws, the persons named in this table have the sole voting power with respect to all shares of common stock listed as beneficially owned by them.

Name of Beneficial Owner(1)	Before Offering		Number of Shares Offered in this Offering	After Offering	
	Number of Shares of Common Stock Beneficially Owned	Percent of Common Stock Beneficially Owned		Number of Shares of Common Stock Beneficially Owned	Percent of Common Stock Beneficially Owned
<b>Selling Stockholders:</b>					
Hart Capital LLC(2)	3,132,100	13.6%	945,000	2,187,100	8.4%
Steven W. Hart(3)	3,293,600	14.3%	1,000,000	2,293,600	8.8%
<b>Principal Stockholders:</b>					
Back to School Acquisition, L.L.C.(4)	18,165,500	79.1%	—	18,165,500	69.9%
<b>Directors and Executive Officers:</b>					
David F. Carney(5)(6)	449,855	2.0%	—	449,855	1.7%
Lawrence E. Brown(5)(7)	271,937	1.2%	—	271,937	1.0%
Scott M. Shaw(5)(8)	265,863	1.2%	—	265,863	1.0%
Cesar Ribeiro(5)(9)	8,000	*	—	8,000	*
Alexandra M. Luster(5)(10)	16,125	*	—	16,125	*
Thomas McHugh(5)(11)	18,500	*	—	18,500	*
Stephen M. Buchenot(5)(12)	25,939	*	—	25,939	*
Deborah Ramentol(5)(13)	25,939	*	—	25,939	*
Edward B. Abrams(5)(14)	25,939	*	—	25,939	*
Ronald L. Beall(5)(15)	12,150	*	—	12,150	*
Anthony Stanziani(5)(16)	1,400	*	—	1,400	*
Alexis P. Michas(17)	18,165,500	79.1%	—	18,165,500	69.9%
James J. Burke, Jr.(18)	18,165,500	79.1%	—	18,165,500	69.9%
Steven W. Hart(19)	3,293,600	14.3%	1,000,000	2,293,600	8.8%
Jerry G. Rubenstein(20)	34,526	*	—	34,526	*
John Petillo(21)	—	—	—	—	—
Paul Glaske(22)	—	—	—	—	—
Peter Burgess(23)	—	—	—	—	—
All executive officers and directors as a group (18 persons)	1,317,673	5.7%	—	1,262,673	4.9%

\* Less than 0.5%.

- (1) "Beneficial ownership" is a term broadly defined by the SEC in Rule 13d-3 under the Exchange Act, and includes more than the typical forms of stock ownership, that is, stock held in the person's name. The term also includes what is referred to as "indirect ownership," meaning ownership of shares as to which a person has or shares investment or voting power. For purpose of this table, a person or group of persons is deemed to have "beneficial ownership" of any shares as of a given date that such person or group has the right to acquire within 60 days after such date.
- (2) These shares are owned by Five Mile River Capital Partners LLC, of which Hart Capital LLC is the managing member. Steven W. Hart, a member of our board of directors, is the owner and President of Hart Capital LLC. Both Five Mile River Capital Partners LLC and Hart Capital LLC have their business address at 131 Rowayton Avenue, Rowayton, Connecticut 06853.
- (3) Mr. Hart beneficially owns options to purchase 161,500 shares of our common stock, which includes options held by trusts for the benefit of Mr. Hart's children. Mr. Hart intends to exercise options he holds directly to sell 50,000 shares in this offering. Steven W. Hart 2003 Grantor Retained Annuity Trust, or the Trust, one of the trusts for the benefit of Mr. Hart's children, intends to exercise options it holds to sell 5,000 shares in this offering. Mr. Hart has also informed us that he and the Trust intend to exercise options for an additional 55,602 shares of our common stock prior to the consummation of this offering. The amount listed in the table includes shares of common stock held by Five Mile River Capital Partners LLC of which Mr. Hart may be deemed to be the beneficial owner by virtue of his ownership of membership interests in, and/or position as President of, Hart Capital LLC. Five Mile River Capital Partners LLC is selling 945,000 shares in this offering. Mr. Hart disclaims beneficial ownership of these shares of common stock. Mr. Hart's business address is 131 Rowayton Avenue, Rowayton, Connecticut 06853.
- (4) Stonington Partners, Inc. II controls Back to School Acquisition, L.L.C. Stonington is a private equity investment firm that manages a fund of institutional capital on behalf of public and corporate pension funds, private endowments and other financial institutions. Alexis P. Michas is the Managing Partner of Stonington and James J. Burke, Jr. is a Partner of

Stonington. Both are members of our board of directors. Both Back to School Acquisition, L.L.C. and Stonington have their business address at 767 Fifth Avenue, New York, New York 10153.

- (5) Unless otherwise noted, the business address for each of the executive officers is 200 Executive Drive, Suite 340, West Orange, New Jersey 07052.
- (6) Includes 115,288 shares of common stock currently held of record and options to purchase 334,567 shares of common stock.
- (7) Includes 65,626 shares of common stock currently held of record and options to purchase 206,311 shares of common stock.
- (8) Includes 65,626 shares of common stock currently held of record and options to purchase 200,237 shares of common stock.
- (9) Includes options to purchase 8,000 shares of common stock.
- (10) Includes options to purchase 16,125 shares of common stock.
- (11) Includes options to purchase 18,500 shares of common stock.
- (12) Includes options to purchase 25,939 shares of common stock.
- (13) Includes options to purchase 25,939 shares of common stock.
- (14) Includes options to purchase 25,939 shares of common stock.
- (15) Includes options to purchase 12,150 shares of common stock.
- (16) Includes options to purchase 1,400 shares of common stock.
- (17) Alexis P. Michas serves on our board of directors and is the Managing Partner of Stonington, our largest stockholder, which owns, through its controlled subsidiary Back to School Acquisition, L.L.C., 79.1% of our common stock. Mr. Michas disclaims beneficial ownership of these shares of common stock. Mr. Michas' business address is 767 Fifth Avenue, New York, New York 10153.
- (18) James J. Burke, Jr. serves on our board of directors and is a Partner of Stonington, our largest stockholder, which owns, through its controlled subsidiary Back to School Acquisition, L.L.C., 79.1% of our common stock. Mr. Burke disclaims beneficial ownership of these shares of common stock. Mr. Burke's business address is 767 Fifth Avenue, New York, New York 10153.
- (19) Mr. Hart serves on our board of directors and is the owner and President of Hart Capital LLC, the Managing Member of Five Mile River Capital Partners LLC, our second largest stockholder, which owns 13.6% of our common stock as described in (3) above. Mr. Hart beneficially owns options to purchase 161,500 shares of our common stock, which includes options held by trusts for the benefit of Mr. Hart's children. The amount listed in the table includes shares of common stock held by Five Mile River Capital Partners LLC of which Mr. Hart may be deemed to be the beneficial owner by virtue of his ownership of membership interests in, and/or position as President of, Hart Capital LLC. Mr. Hart disclaims beneficial ownership of these shares of common stock. Mr. Hart's business address is 131 Rowayton Avenue, Rowayton, Connecticut 06853.
- (20) Jerry Rubenstein serves on our board of directors and is the beneficial owner of 34,256 shares of our common stock. Includes options to purchase 26,456 shares of common stock. Mr. Rubenstein's business address is Omni Management Associates, Two Bala Plaza, Suite 300, Bala Cynwyd, Pennsylvania 19004.
- (21) John Petillo serves on our board of directors. Dr. Petillo's business address is 65 Bergen Street, Room 1535, University Heights, Newark, New Jersey 07101.
- (22) Paul Glaske serves on our board of directors. Mr. Glaske's business address is 18136 South Shore Drive, Flint, Texas 75762.
- (23) Peter Burgess serves on our board of directors. Mr. Burgess' business address is 88 Sherwood Drive, Glastonbury, Connecticut 06033.

## DESCRIPTION OF CAPITAL STOCK

### General

The following is a description of the material terms of our capital stock we expect to be included in our amended and restated certificate of incorporation and amended and restated bylaws and is only a summary. You should refer to our amended and restated certificate of incorporation and amended and restated bylaws as in effect upon the closing of this offering, which are included as exhibits to the registration statement of which this prospectus is a part.

We are currently authorized to issue 50,000,000 shares of common stock, with no par value per share. As of the consummation of this offering, our authorized capital stock is expected to consist of 100,000,000 shares of common stock, with no par value and 10,000,000 shares of preferred stock.

### Common Stock

As of May 31, 2005, there were 21,710,985 shares of common stock outstanding, which were held of record by 16 stockholders.

**Voting rights.** The holders of our common stock will be entitled to one vote per share for each share held of record on any matter to be voted upon by stockholders. Our amended and restated certificate of incorporation will not provide for cumulative voting in connection with the election of directors and, accordingly, holders of more than 50% of the shares voting will be able to elect all of the directors standing for election.

**Dividend rights.** All shares of our common stock will be entitled to share equally in any dividends our board of directors may declare from legally available sources. Our new credit agreement currently imposes restrictions on our ability to declare dividends with respect to our common stock.

**Liquidation rights.** Upon liquidation or dissolution of our company, whether voluntary or involuntary, all shares of our common stock will be entitled to share equally in the assets available for distribution to stockholders after payment of all of our prior obligations, including obligations on our preferred stock.

**Other matters.** The holders of our common stock have no preemptive or conversion rights and our common stock is not subject to further calls or assessments by us. There are no redemption or sinking fund provisions applicable to the common stock. The rights, preferences and privileges of holders of common stock are subject to the rights of holders of shares of any series or preferred stock that may be issued in the future. All outstanding shares of our common stock, including the common stock offered in this offering, are fully paid and non-assessable.

### Preferred Stock

We expect our amended and restated certificate of incorporation to provide for the authorization of 10,000,000 shares of preferred stock. The shares of preferred stock may be issued from time to time at the discretion of the board of directors without stockholder approval. The board of directors will be authorized to issue these shares in different classes and series and, with respect to each class or series, to determine the dividend rate, the redemption provisions, conversion provisions, liquidation preference and other rights and privileges not in conflict with our amended and restated certificate of incorporation. The issuance of preferred stock could adversely affect the voting power of holders of common stock and the likelihood that such holders will receive dividend payments and payments upon liquidation. In addition, the issuance of preferred stock could have the effect of delaying, deferring or preventing a change in control in Lincoln Educational Services Corporation. No shares of our preferred stock will be outstanding immediately following completion of this offering, and we have no immediate plans to issue any preferred stock. The issuance of any of our preferred stock could provide needed

flexibility in connection with possible acquisitions and other corporate purposes; however, the issuance could also make it more difficult for a third party to acquire a majority of our outstanding voting stock or discourage an attempt to gain control of us. In addition, the board of directors, without stockholder approval, will be able to issue shares of preferred stock with voting and conversion rights that could adversely affect the voting power and other rights of the holders of common stock. The rules of The Nasdaq National Market, which will apply so long as our common stock is listed on The Nasdaq National Market, require stockholder approval of certain issuances equal to or exceeding 20% of the then outstanding voting power of the then outstanding number of shares of common stock. These additional shares may be used for a variety of corporate purposes, including future public offerings, to raise additional capital or to facilitate acquisitions.

### **Directors' Exculpation and Indemnification**

We expect that our amended and restated certificate of incorporation will provide that none of our directors shall be liable to us or our stockholders for monetary damages for any breach of fiduciary duty as a director, except to the extent otherwise required by the New Jersey Business Corporation Act, or the NJBCA. The effect of this provision is to eliminate our rights, and our stockholders' rights, to recover monetary damages against a director for breach of a fiduciary duty of care as a director, except to the extent otherwise required by the NJBCA. This provision does not limit or eliminate our right, or the right of any stockholder, to seek non-monetary relief, such as an injunction or rescission in the event of a breach of a director's duty of care. In addition, our amended and restated certificate of incorporation provides that, if the NJBCA is amended to authorize the further elimination or limitation of the liability of a director, then the liability of the directors shall be eliminated or limited to the fullest extent permitted by the NJBCA, as so amended. These provisions will not alter the liability of directors under federal or state securities laws.

### **Anti-Takeover Effects of the New Jersey Shareholders Protection Act**

We are subject to the provisions of Section 14A-10A of the New Jersey Business Corporation Act, which is known as the "New Jersey Shareholders Protection Act." Under the New Jersey Shareholders Protection Act, we are prohibited from engaging in any "business combination" with any "interested shareholder" for a period of five years following the time at which that shareholder becomes an "interested shareholder" unless the business combination is approved by our board of directors before that shareholder became an "interested shareholder." After this five-year period has expired, any business combination with an "interested shareholder" must be approved by holders of  $66\frac{2}{3}\%$  of the voting shares not held by the "interested shareholder" or meet certain prescribed value requirements. Covered business combinations include certain mergers, dispositions of assets or shares and recapitalizations.

An "interested shareholder" is (i) any person that directly or indirectly beneficially owns 10% or more of the voting power of our outstanding voting stock; or (ii) any of our affiliates or associates (as those terms are defined in the New Jersey Shareholders Protection Act) that directly or indirectly beneficially owned 10% or more of the voting power of our then outstanding stock at any time within a five-year period immediately prior to the date in question.

### **Certain Provisions of Our Amended Certificate of Incorporation and Bylaws**

**Board of Directors.** Our board of directors will consist of eight directors, four of whom will be independent directors. Any vacancy on our board of directors, including a vacancy resulting from an enlargement of our board of directors, may be filled only by the affirmative vote of a majority of the directors then in office, though less than a quorum. Any such director so elected shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until his or her successor shall have been elected and qualified. The limitation on filling vacancies could

make it more difficult for a third party to acquire, or discourage a third party from attempting to acquire, control of our company.

**Board meetings.** Our amended and restated bylaws will provide that special meetings of the board of directors may be called by the chairman of our board of directors, our chief executive officer or by any two directors in office.

**Stockholder meetings.** Our amended and restated certificate of incorporation will provide that any action required or permitted to be taken by our stockholders at an annual meeting or special meeting of stockholders may only be taken if it is properly brought before such meeting and may not be taken by non-unanimous written action in lieu of a meeting. Our bylaws will further provide that special meetings of the stockholders may only be called by our president, by a committee that is duly designated by the board of directors, by resolution adopted by the affirmative vote of the majority of the board of directors or pursuant to an order of the New Jersey Superior Court in accordance with NJBCA.

**Requirements for advance notification of stockholder nominations and proposals.** Our amended and restated bylaws will establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of our board of directors or a committee of the board of directors. In order for any matter to be considered "properly brought" before a meeting, a stockholder must comply with requirements regarding advance notice and provide certain information to us. These provisions could have the effect of delaying until the next stockholders meeting stockholder actions that are favored by the holders of a majority of our outstanding voting securities. These provisions could also discourage a third party from making a tender offer for our common stock, because even if it acquired a majority of our outstanding voting securities, it would be able to take action as a stockholder (such as electing new directors or approving a merger) only at a duly called stockholders meeting and not by non-unanimous written consent.

**Stockholder action by written consent.** Our amended and restated certificate of incorporation and amended and restated bylaws will prohibit stockholder action by non-unanimous written consent and require all such actions to be taken at a meeting of stockholders of our common stock.

**Cumulative voting.** Our amended and restated certificate of incorporation will provide that our stockholders shall have no cumulative voting rights.

**Amendment of certificate of incorporation and bylaws.** The amendment of the provisions described above in our amended and restated certificate of incorporation generally will require the affirmative vote of a majority of our directors, as well as the affirmative vote of the holders of at least 66<sup>2</sup>/<sub>3</sub>% of our then-outstanding voting stock. Our amended and restated bylaws may be amended (i) by the affirmative vote of the majority of our board of directors or (ii) by the affirmative vote of holders of a majority of our then outstanding voting stock.

#### **Nasdaq National Market Trading**

We intend to apply to have our common stock approved for quotation on The Nasdaq National Market under the symbol "LINC."

#### **Transfer Agent and Registrar**

We have appointed Continental Stock Transfer & Trust Company as the transfer agent and registrar for our common stock.

## DESCRIPTION OF CREDIT AGREEMENT

We and our subsidiaries are parties to a new credit agreement with Harris Trust and Savings Bank, as administrative agent, and a syndicate of banks that currently allows for revolving credit borrowings of up to \$100 million. The new credit agreement permits the issuance of letters of credit up to an aggregate amount of \$20.0 million, the amount of which reduces the availability of permitted borrowings under the new credit agreement. The new credit agreement expires on February 15, 2010 and bears interest at the rate of adjusted LIBOR plus a margin which ranges from 1.0% to 1.75% or a base rate (as defined in the new credit agreement) plus a margin which ranges from 0.0% to 0.25%. In addition to paying interest on the outstanding principal under the new credit agreement, we are required to pay a commitment fee with respect to the unused amounts available under the new credit agreement at a rate that ranges from 0.25% to 0.40% per year. As of April 30, 2005 there were borrowings of approximately \$31.0 million outstanding and \$4.1 million of letters of credit outstanding under the new credit agreement.

Our and our subsidiaries' obligations under the new credit agreement are secured by a first priority lien upon substantially all of the assets that we and our subsidiaries own and any assets that we and our subsidiaries may acquire in the future, including a pledge of substantially all of our subsidiaries' common stock.

The new credit agreement contains a number of financial and other covenants that, among other things, restrict our and our subsidiaries' abilities to incur additional indebtedness, grant liens or other security interests, make certain investments, become liable for contingent liabilities, make specified restricted payments including dividends, dispose of assets or stock, including the stock of its subsidiaries, or make capital expenditures above specified limits. The capital expenditure covenant limits permitted capital expenditure payments to \$35 million for each fiscal quarter in 2005. Furthermore, none of our institutions can have a cohort default rate greater than 20% at any time. We must also maintain a minimum net worth (as defined in the new credit agreement), maximum fixed coverage charge ratios and maximum debt leverage ratios and cohort default. We also must maintain, as of the last day of each fiscal year, a financial responsibility composite score of at least 1.0. As of April 30, 2005, we and our subsidiaries were in compliance with these covenants. Some of these covenants remain constant and some vary over time as follows:

- The ratio of our and our subsidiaries' total funded debt (as defined in the new credit agreement) to adjusted EBITDA (as defined in the new credit agreement) may not exceed 2.5:1 until December 31, 2005, 2.25:1 from January 1, 2006 until December 31, 2006 and 2.00:1 thereafter.
- The ratio of our adjusted EBITDAR (as defined in the new credit agreement) for the last four fiscal quarters then ended, less our and our subsidiaries' capital expenditures (as defined in the new credit agreement), less taxes paid by us and our subsidiaries must be greater than a ranging ratio of between 1.00:1 and 1.35:1 until September 30, 2007 and 1.50:1 thereafter.
- We shall at all times maintain net worth of at least \$43.5 million plus 50% of our net income (as defined in the new credit agreement) (but without deducting for losses) for each fiscal quarter.

The new credit agreement contains customary events of default as well as an event of default in the event of the suspension or termination of Title IV Program funding for our and our subsidiaries' schools aggregating 10% or more of our EBITDA or our and our subsidiaries' consolidated total assets and such suspension or termination is not cured within a specified period.

## SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has not been a public market for our common stock. Future sales of substantial amounts of our common stock in the public market, or the possibility of these sales, could adversely affect the trading price of our common stock and could impair our future ability to raise capital through the sale of our equity at a time and price we deem appropriate.

Upon completion of this offering, assuming the underwriters' overallotment option is not exercised, we will have outstanding 24,821,587 shares of common stock. Of these shares, the 4,000,000 shares sold in this offering will be freely tradable without restriction or further registration under the Securities Act, except for any shares purchased by our "affiliates," as defined in Rule 144 under the Securities Act, which would be subject to the limitations and restrictions described below.

Assuming the underwriters' overallotment option is not exercised, the remaining 20,821,587 shares of common stock will be "restricted securities," as defined in Rule 144. Restricted securities may be sold in the public market only if registered or if they qualify for an exemption from registration under Rules 144 and 144(k) promulgated under the Securities Act, which rules are summarized below. Upon expiration of the lock-up agreements described in "Underwriting," 180 days after the date of this prospectus, all of these shares will be eligible for sale in the public market pursuant to Rule 144 or Rule 144(k).

Subject to the lock-up agreements described in "Underwriting" and the provisions of Rules 144 and 144(k), shares will be available for sale in the public market as follows:

Number of Shares	Date
4,158,775	After the date of this prospectus.
20,662,812	After 180 days from the date of this prospectus.

### Stock Options

The numbers of shares of common stock listed above do not include shares of common stock issuable upon exercise of stock options granted under our stock plans that were unexercised as of May 31, 2005. Upon completion of the offering, we intend to file a registration statement on Form S-8 with the SEC to register shares of our common stock reserved for issuance or sale under our incentive stock plan. As of May 31, 2005, there were outstanding options to purchase a total of 1,985,495 shares of common stock, 1,314,658 of which were vested. Shares of common stock issuable upon the exercise of options granted or to be granted under our stock option plan will be freely tradable without restriction under the Securities Act, unless such shares are held by an affiliate of ours.

### Rule 144

In general, under Rule 144 as currently in effect, a person (or persons whose shares are required to be aggregated), including an affiliate, who has beneficially owned shares of our common stock for at least one year is entitled to sell in any three-month period a number of shares that does not exceed the greater of

- 1% of outstanding shares of common stock after consummation of the offering, or 248,216 shares; and
- the average weekly trading volume in the common stock on The Nasdaq National Market during the four calendar weeks preceding the date on which a notice of sale is filed, subject to restrictions.

Sales under Rule 144 are also subject to manner of sale provisions and notice requirements and to the availability of current public information about us.

**Rule 144(k)**

In addition, a person who is not deemed to have been an affiliate of ours at any time during the 90 days preceding a sale and who has beneficially owned the shares proposed to be sold for at least two years would be entitled to sell those shares under Rule 144(k) without regard to the manner of sale, public information, volume limitation or notice requirements of Rule 144. To the extent that our affiliates sell their shares, other than pursuant to Rule 144 or a registration statement, the purchaser's holding period for the purpose of effecting a sale under Rule 144 commences on the date of transfer from the affiliate.

## **MATERIAL UNITED STATES FEDERAL TAX CONSIDERATIONS FOR NON-UNITED STATES HOLDERS**

The following discussion is a general summary of the material U.S. federal income and estate tax consequences of the ownership and disposition of our common stock applicable to "Non-U.S. Holders." As used herein, a Non-U.S. Holder means a beneficial owner of our common stock that is *not* a U.S. person or a partnership for U.S. federal income tax purposes, and that will hold shares of our common stock as capital assets (*i.e.*, generally, for investment). For U.S. federal income tax purposes, a U.S. person includes:

- an individual who is a citizen or resident of the United States;
- a corporation (or other business entity treated as a corporation) created or organized in the United States or under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is includible in gross income regardless of source; or
- a trust that (A) is subject to the primary supervision of a court within the United States and the control of one or more U.S. persons, or (B) otherwise has elected to be treated as a U.S. domestic trust.

If a partnership holds shares of our common stock, the U.S. federal income tax treatment of a partner in the partnership will generally depend on the status of the partner and the activities of the partnership.

This summary does not consider specific facts and circumstances that may be relevant to a particular Non-U.S. Holder's tax position and does not consider U.S. state and local or non-U.S. tax consequences. It also does not consider Non-U.S. Holders subject to special tax treatment under the U.S. federal income tax laws (including partnerships or other pass-through entities, banks and insurance companies, dealers in securities, holders of our common stock held as part of a "straddle," "hedge," "conversion transaction" or other risk-reduction transaction, controlled foreign corporations, passive foreign investment companies, companies that accumulate earnings to avoid U.S. federal income tax, foreign tax-exempt organizations, former U.S. citizens or residents and persons who hold or receive common stock as compensation). This summary is based on provisions of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), applicable Treasury regulations, administrative pronouncements of the U.S. Internal Revenue Service ("IRS") and judicial decisions, all as in effect on the date hereof, and all of which are subject to change, possibly on a retroactive basis, and different interpretations.

**This summary is included herein as general information only. Accordingly, each prospective Non-U.S. Holder is urged to consult its tax advisor with respect to the U.S. federal, state, local and non-U.S. income, estate and other tax consequences of holding and disposing of our common stock.**

### **U.S. Trade or Business Income**

For purposes of this discussion, dividend income, and gain on the sale or other taxable disposition of our common stock, will be considered to be "U.S. trade or business income" if such dividend income or gain is (i) effectively connected with the conduct by a Non-U.S. Holder of a trade or business within the United States and (ii) in the case of a Non-U.S. Holder that is eligible for the benefits of an income tax treaty with the United States, attributable to a permanent establishment (or, for an individual, a fixed base) maintained by the Non-U.S. Holder in the United States. Generally, U.S. trade or business income is not subject to U.S. federal withholding tax (provided the Non-U.S. Holder complies with applicable certification and disclosure requirements); instead, U.S. trade or business income is subject to U.S. federal income tax on a net income basis at regular U.S. federal income tax

rates in the same manner as a U.S. person. Any U.S. trade or business income received by a Non-U.S. Holder that is a corporation also may be subject to a "branch profits tax" at a 30% rate, or at a lower rate prescribed by an applicable income tax treaty, under specific circumstances.

## **Dividends**

Distributions of cash or property that we pay on our common stock will be taxable as dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits (as determined under U.S. federal income tax principles). A Non-U.S. Holder generally will be subject to U.S. federal withholding tax at a 30% rate, or at a reduced rate prescribed by an applicable income tax treaty, on any dividends received in respect of our common stock. If the amount of a distribution exceeds our current and accumulated earnings and profits, such excess first will be treated as a tax-free return of capital to the extent of the Non-U.S. Holder's tax basis in our common stock, and thereafter will be treated as capital gain. In order to obtain a reduced rate of U.S. federal withholding tax under an applicable income tax treaty, a Non-U.S. Holder will be required to provide a properly executed IRS Form W-8BEN (or appropriate substitute or successor form) certifying its entitlement to benefits under the treaty. A Non-U.S. Holder of our common stock that is eligible for a reduced rate of U.S. federal withholding tax under an income tax treaty may obtain a refund or credit of any excess amounts withheld by filing an appropriate claim for a refund with the IRS. A Non-U.S. Holder should consult its own tax advisor regarding its possible entitlement to benefits under an income tax treaty.

The U.S. federal withholding tax does not apply to dividends that are U.S. trade or business income, as described above, of a Non-U.S. Holder who provides a properly executed IRS Form W-8ECI (or appropriate substitute or successor form), certifying that the dividends are effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States.

## **Dispositions of Our Common Stock**

A Non-U.S. Holder generally will not be subject to U.S. federal income or withholding tax in respect of any gain on a sale or other disposition of our common stock unless:

- (1) the gain is U.S. trade or business income, as described above;
- (2) the Non-U.S. Holder is an individual who is present in the United States for 183 or more days in the taxable year of the disposition and meets other conditions; or
- (3) we are or have been a "U.S. real property holding corporation" (a "USRPHC") under section 897 of the Code at any time during the shorter of the five-year period ending on the date of disposition and the Non-U.S. Holder's holding period for our common stock.

In general, a corporation is a USRPHC if the fair market value of its "U.S. real property interests" equals or exceeds 50% of the sum of the fair market value of its worldwide (domestic and foreign) real property interests and its other assets used or held for use in a trade or business. For this purpose, real property interests include land, improvements, and associated personal property. We have not made a determination as to whether or not we are or have been a USRPHC. If we are found to be a USRPHC, a Non-U.S. Holder, nevertheless, will not be subject to U.S. federal income or withholding tax in respect of any gain on a sale or other disposition of our common stock so long as our common stock is "regularly traded on an established securities market" as defined under applicable Treasury regulations and a Non-U.S. Holder owns, actually and constructively, 5% or less of our common stock during the shorter of the five-year period ending on the date of disposition and such Non-U.S. Holder's holding period for our common stock. Prospective investors should be aware that no assurance can be given that our common stock will be so regularly traded when a Non-U.S. Holder sells its shares of our common stock.

## **U.S. Federal Estate Taxes**

Shares of our common stock owned or treated as owned by an individual who is a Non-U.S. Holder at the time of death will be included in the individual's gross estate for U.S. federal estate tax purposes, and may be subject to U.S. federal estate tax, unless an applicable estate tax treaty provides otherwise.

## **Information Reporting and Backup Withholding Requirements**

We must annually report to the IRS and to each Non-U.S. Holder any dividend income that is subject to U.S. federal withholding tax, or that is exempt from such withholding tax pursuant to an income tax treaty. Copies of these information returns also may be made available under the provisions of a specific treaty or agreement to the tax authorities of the country in which the Non-U.S. Holder resides. Under certain circumstances, the Code imposes a backup withholding obligation (currently at a rate of 28%) on certain reportable payments. Dividends paid to a Non-U.S. Holder of our common stock generally will be exempt from backup withholding if the Non-U.S. Holder provides a properly executed IRS Form W-8BEN (or appropriate substitute or successor form) or otherwise establishes an exemption.

The payment of the proceeds from the disposition of common stock to or through the U.S. office of any broker, U.S. or foreign, will be subject to information reporting and possible backup withholding unless the owner certifies as to its non-U.S. status under penalties of perjury or otherwise establishes an exemption, provided that the broker does not have actual knowledge or reason to know that the holder is a U.S. person or that the conditions of any other exemption are not, in fact, satisfied. The payment of the proceeds from the disposition of common stock to or through a non-U.S. office of a non-U.S. broker will not be subject to information reporting or backup withholding unless the non-U.S. broker has certain types of relationships with the United States (a "U.S. related person"). In the case of the payment of the proceeds from the disposition of our common stock to or through a non-U.S. office of a broker that is either a U.S. person or a U.S. related person, the Treasury regulations require information reporting (but not the backup withholding) on the payment unless the broker has documentary evidence in its files that the owner is a Non-U.S. Holder and the broker has no knowledge to the contrary. Non-U.S. Holders should consult their own tax advisors on the application of information reporting and backup withholding to them in their particular circumstances (including upon their disposition of our common stock).

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to a Non-U.S. Holder will be refunded or credited against the Non-U.S. Holder's U.S. federal income tax liability, if any, if the Non-U.S. Holder provides the required information to the IRS.

## UNDERWRITING

Merrill Lynch, Pierce, Fenner & Smith Incorporated, Banc of America Securities LLC, Lehman Brothers Inc., Harris Nesbitt Corp., Jefferies & Company, Inc. and Robert W. Baird & Co. Incorporated are acting as representatives of each of the underwriters named below. Subject to the terms and conditions set forth in a purchase agreement among us, the selling stockholders and the underwriters, we and the selling stockholders have agreed to sell to the underwriters, and each of the underwriters has agreed, severally and not jointly, to purchase from us and the selling stockholders, the number of shares of common stock set forth opposite its name below.

<u>Underwriter</u>	<u>Number of Shares</u>
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Banc of America Securities LLC	
Lehman Brothers Inc.	
Harris Nesbitt Corp.	
Jefferies & Company, Inc.	
Robert W. Baird & Co. Incorporated	
Total	4,000,000

Subject to the terms and conditions set forth in the purchase agreement, the underwriters have agreed, severally and not jointly, to purchase all of the shares sold under the purchase agreement if any of these shares are purchased. If an underwriter defaults, the purchase agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the purchase agreement may be terminated.

We and the selling stockholders have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the shares, and other conditions contained in the purchase agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

### Commissions and Discounts

The representatives have advised us and the selling stockholders that they propose initially to offer the shares to the public at the initial public offering price set forth on the cover page of this prospectus and to dealers at that price less a concession not in excess of \$ \_\_\_\_\_ per share. The underwriters may allow, and the dealers may reallow, a discount not in excess of \$ \_\_\_\_\_ per share to other dealers. After the initial public offering, the public offering price, concession and discount may be changed.

The following table shows the public offering price, underwriting discount and proceeds before expenses to us and the selling stockholders. The information assumes either no exercise or full exercise by the underwriters of their overallotment options.

	Per share		Total	
	Without Option	With Option	Without Option	With Option
Public offering price	\$	\$	\$	\$
Underwriting discounts and commissions paid by us	\$	\$	\$	\$
Proceeds, before expenses, to us	\$	\$	\$	\$
Underwriting discounts and commissions paid by the selling stockholders	\$	\$	\$	\$
Proceeds, before expenses, to the selling stockholders	\$	\$	\$	\$

The expenses of the offering, not including the underwriting discount, are estimated at approximately \$2,400,000 and are payable by us.

### Overallotment Option

We have granted an option to the underwriters to purchase up to 600,000 additional shares at the public offering price less the underwriting discount. The underwriters may exercise this option for 30 days from the date of this prospectus solely to cover any overallotments. If the underwriters exercise this option, each will be obligated, subject to conditions contained in the purchase agreement, to purchase a number of additional shares proportionate to that underwriter's initial amount reflected in the above table.

### Reserved Shares

At our request, the underwriters have reserved for sale, at the initial public offering price, up to 5% of the shares offered by this prospectus for sale to certain of our business associates, employees and other persons. If these persons purchase reserved shares, this will reduce the number of shares available for sale to the general public. Any reserved shares that are not orally confirmed for purchase within one day of the pricing of this offering will be offered by the underwriters to the general public on the same terms as the other shares offered by this prospectus.

### No Sales of Similar Securities

We, the selling stockholders, our executive officers and certain directors who hold shares of our common stock or options to acquire such shares and certain other existing stockholders and holders of our options have agreed, subject to limited exceptions, not to sell or transfer any common stock or securities convertible into or exchangeable or exercisable for or repayable with common stock, for 180 days after the date of this prospectus without first obtaining the written consent of Merrill Lynch. Specifically, we and these other persons have agreed not to directly or indirectly:

- offer, pledge, sell or contract to sell any common stock,
- sell any option or contract to purchase any common stock,
- purchase any option or contract to sell any common stock,
- grant any option, right or warrant to purchase any common stock,
- otherwise dispose of or transfer any common stock, or
- enter into any swap or other agreement that transfers, in whole or in part, the economic consequence of ownership of any common stock whether any such swap or transaction is to be settled by delivery of shares of common stock or other securities, in cash or otherwise.

The 180-day restricted period described above is subject to extension such that, in the event that either (a) during the last 17 days of the 180-day restricted period, we issue an earnings release or material news or a material event relating to us occurs or (b) prior to the expiration of the 180-day restricted period, we announce that we will release earnings results or we become aware that material news or a material event will occur during the 16-day period beginning on the last day of the 180-day period, the "lock-up" restrictions described above will continue to apply until the expiration of the 18-day period beginning on the date of the earnings release or the occurrence of the material news or material event, unless Merrill Lynch waives such extension in writing.

Merrill Lynch may, in its sole discretion and at any time without notice, release all or any portion of the securities subject to these lock-up agreements. Merrill Lynch has advised us that it has no present intent or arrangement to release any shares subject to a lock-up, and will consider the release of any lock-up on a case-by-case basis. Upon a request to release any shares subject to a lock-up, Merrill Lynch would consider the particular circumstances surrounding the request, including, but not limited to, the length of time before the lock-up expires, the number of shares requested to be released, reasons for the request, the possible impact on the market or our common stock and whether the holder of our shares requesting the release is an officer, director or other affiliate of ours. As a result of these lock-up agreements, notwithstanding earlier eligibility for sale under the provisions of Rule 144, none of these shares may be sold until 180 days after the date of this prospectus, subject to the extension described above. A total of 20,662,812 shares of common stock are subject to the lock-up agreements.

This lock-up provision applies to common stock and to securities convertible into or exchangeable or exercisable for or repayable with common stock.

### **Quotation on The Nasdaq National Market**

We expect the shares to be approved for quotation on The Nasdaq National Market, subject to notice of issuance, under the symbol "LINC."

Before this offering, there has been no public market for our common stock. The initial public offering price will be determined through negotiations among us, the selling stockholders and the representatives. In addition to prevailing market conditions, the factors to be considered in determining the initial public offering price are:

- the valuation multiples of publicly traded companies that the representatives believe to be comparable to us,
- our financial information,
- the history of, and the prospects for our company and the industry in which we compete,
- an assessment of our management, its past and present operations, and the prospects for and timing of, our future revenues,
- the present state of our development, and
- the above factors in relation to market values and various valuation measures of other companies engaged in activities similar to ours.

An active trading market for the shares may not develop. It is also possible that after the offering the shares will not trade in the public market at or above the initial public offering price. The underwriters do not expect to sell more than five percent in the aggregate of the shares being offered in this offering to accounts over which they exercise discretionary authority.

### **Price Stabilization, Short Positions and Penalty Bids**

Until the distribution of the shares is completed, SEC rules may limit underwriters and selling group members from bidding for and purchasing our common stock. However, the underwriters may

engage in transactions that stabilize the price of the common stock, such as bids or purchases to peg, fix or maintain that price.

If the underwriters create a short position in the common stock in connection with the offering, *i.e.*, if they sell more shares than are listed on the cover of this prospectus, the underwriters may reduce that short position by purchasing shares in the open market. The underwriters may also elect to reduce any short position by exercising all or part of the overallotment options described above. Purchases of the common stock to stabilize its price or to reduce a short position may cause the price of the common stock to be higher than it might be in the absence of such purchases.

The underwriters may also impose a penalty bid on underwriters and selling group members. This means that if the underwriters purchase shares in the open market to reduce the underwriter's short position or to stabilize the price of such shares, they may reclaim the amount of the selling concession from the underwriters and selling group members who sold those shares. The imposition of a penalty bid may also affect the price of the shares in that it discourages resales of those shares.

Neither we nor any of the underwriters makes any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of the common stock. In addition, neither we nor any of the underwriters makes any representation that the underwriters will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

### **Electronic Distribution**

Merrill Lynch and Harris Nesbitt will be facilitating Internet distribution for this offering to certain of their respective Internet subscription customers. Merrill Lynch and Harris Nesbitt intend to allocate a limited number of shares for sale to online brokerage customers. An electronic prospectus will be made available on the Internet Web site maintained by each of Merrill Lynch and Harris Nesbitt. Banc of America Securities LLC will make an electronic prospectus available on a third-party Internet Web site. Other than the prospectus in electronic format, the information on the Web sites is not part of this prospectus.

### **Other Relationships**

An affiliate of Harris Nesbitt Corp. is the administrative agent and a lender under our new credit agreement and Fleet National Bank, an affiliate of Banc of America Securities LLC, is also a lender under our new credit agreement, and will receive more than ten percent of the net proceeds of this offering when we repay the amounts outstanding under the new credit agreement. Because more than ten percent of the net proceeds of the offering may be paid to members or affiliates of members of the National Association of Securities Dealers, Inc. participating in the offering, the offering will be conducted in accordance with NASD Conduct Rule 2710(h), as amended. This rule requires that the public offering price of an equity security be no higher than the price recommended by a qualified independent underwriter which has participated in the preparation of the registration statement and performed its usual standard of due diligence with respect to that registration statement. Merrill Lynch, Pierce, Fenner & Smith Incorporated has agreed to act as qualified independent underwriter for the offering. The price of the shares will be no higher than that recommended by Merrill Lynch, Pierce, Fenner & Smith Incorporated. We have agreed to indemnify Merrill Lynch, Pierce, Fenner & Smith Incorporated against liabilities incurred in connection with acting as a qualified independent underwriter, including liabilities under the Securities Act.

Merrill Lynch owns 3.9% of Stonington Capital Appreciation Fund 1994, which is the sole shareholder of Back to School Acquisition, L.L.C., our controlling stockholder.

## LEGAL MATTERS

Shearman & Sterling LLP, New York, New York, will pass upon certain legal matters for us. The validity of the shares of common stock offered by this prospectus will be passed upon for us by Lindabury, McCormick & Estabrook, P.A., Westfield, New Jersey. The underwriters are represented by O'Melveny & Myers LLP, New York, New York.

## EXPERTS

The consolidated financial statements relating to Lincoln Educational Services Corporation as of December 31, 2003 and 2004 and for each of the three years in the period ended December 31, 2004 included in this prospectus and the related financial statement schedule included elsewhere in the registration statement have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein and elsewhere in the registration statement (which report expresses an unqualified opinion and includes an explanatory paragraph referring to the adoption of Statement of Financial Accounting Standards No. 123, "*Accounting for Stock-Based Compensation*"), and has been so included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

## WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act relating to the common stock we are offering. This prospectus, which constitutes a part of the registration statement, does not contain all the information that is in the registration statement and its exhibits and schedules. Certain portions of the registration statement have been omitted as allowed by the rules and regulations of the SEC. Statements in this prospectus which summarize documents are not necessarily complete, and in each case you should refer to the copy of the document filed as an exhibit to the registration statement. You may read and copy the registration statement, including exhibits and schedules filed with it, and reports or other information we may file with the SEC at the public reference facilities of the SEC at 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549. You may call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference rooms. In addition, the registration statement and other public filings can be obtained from the SEC's internet site at <http://www.sec.gov>.

Upon completion of this offering, we will become subject to information and periodic reporting requirements of the Exchange Act, and we will file annual, quarterly and current reports, proxy statements and other information with the SEC. We intend to furnish our stockholders written annual reports containing financial statements audited by our independent auditors, and make available to our stockholders quarterly reports for the first three quarters of each year containing unaudited interim financial statements.

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**LINCOLN EDUCATIONAL SERVICES CORPORATION AND SUBSIDIARIES**

**CONDENSED CONSOLIDATED BALANCE SHEETS**

**DECEMBER 31, 2004 AND MARCH 31, 2005**

(In thousands, except share amounts)

(Unaudited)

	December 31, 2004	March 31, 2005
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 41,445	\$ 10,049
Accounts receivable, less allowance of \$7,023 and \$7,490 for 2004 and 2005, respectively	12,820	12,838
Inventories	1,664	1,574
Prepaid expenses and other current assets	2,893	2,512
Prepaid income taxes	—	2,317
Other accounts receivable	—	1,375
Assets held for sale	893	893
Deferred income taxes	4,509	4,588
	64,224	36,146
<b>PROPERTY, EQUIPMENT AND FACILITIES—At cost, net of accumulated depreciation and amortization</b>	<b>55,149</b>	<b>56,515</b>
<b>OTHER ASSETS</b>		
Deferred finance charges	943	1,355
Prepaid pension cost	4,820	4,820
Other assets	2,625	4,355
Deferred income taxes	2,166	2,198
Goodwill	32,802	50,709
	43,356	63,437
<b>TOTAL</b>	<b>\$ 162,729</b>	<b>\$ 156,098</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Current portion of long-term debt and lease obligations	5,311	311
Unearned tuition	31,185	28,434
Accounts payable	10,664	11,994
Accrued expenses	12,147	9,654
Advance payments of federal funds	330	535
Income taxes payable	17	—
	59,654	50,928
<b>COMMITMENTS AND CONTINGENCIES</b>		
<b>NONCURRENT LIABILITIES</b>		
Other long-term liabilities	3,471	3,974
Long-term debt and lease obligations, net of current portion	41,518	41,695
	104,643	96,597
<b>STOCKHOLDERS' EQUITY</b>		
Common stock, no par value—authorized 50,000,000 shares at December 31, 2004 and March 31, 2005 issued and outstanding 21,698,785 shares at December 31, 2004 and 21,704,785 shares at March 31, 2005	62,385	62,385
Additional paid-in capital	3,359	3,821
Accumulated deficit	(7,477)	(6,705)

Less loan receivable from stockholders	(181)	—
Total stockholders' equity	58,086	59,501
<b>TOTAL</b>	<b>\$ 162,729</b>	<b>\$ 156,098</b>

See notes to unaudited condensed consolidated financial statements.

LINCOLN EDUCATIONAL SERVICES CORPORATION AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF INCOME

THREE MONTHS ENDED MARCH 31, 2004 AND 2005

(In thousands, except per share amounts)

(Unaudited)

	Three Months Ended March 31,	
	2004	2005
REVENUES	\$ 59,574	\$ 70,869
COSTS AND EXPENSES		
Educational services and facilities	24,163	29,084
Selling, general and administrative	31,778	39,284
Total costs and expenses	55,941	68,368
OPERATING INCOME	3,633	2,501
INTEREST INCOME	13	8
INTEREST EXPENSE	(842)	(1,194)
INCOME BEFORE INCOME TAXES	2,804	1,315
PROVISION FOR INCOME TAXES	1,186	543
NET INCOME	\$ 1,618	\$ 772
Earnings per share—basic: Net income available to common shareholders	\$ 0.07	\$ 0.04
Earnings per share—diluted: Net income available to common shareholders	\$ 0.07	\$ 0.03
Weighted average number of common shares outstanding:		
Basic	21,668	21,699
Diluted	23,038	22,965

See notes to unaudited condensed consolidated financial statements.

**LINCOLN EDUCATIONAL SERVICES CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY**

**THREE MONTHS ENDED MARCH 31, 2005**  
(In thousands)  
(Unaudited)

	Common Stock	Additional Paid-in Capital	Loan Receivable from Stockholders	Accumulated Deficit	Total
BALANCE—December 31, 2004	\$ 62,385	\$ 3,359	\$ (181)	\$ (7,477)	\$ 58,086
Net income	—	—	—	772	772
Stock-based compensation	—	399	—	—	399
Stockholder loan repayment	—	—	181	—	181
Tax benefit of options exercised	—	39	—	—	39
Exercise of stock options	—	24	—	—	24
BALANCE—March 31, 2005	\$ 62,385	\$ 3,821	\$ —	\$ (6,705)	\$ 59,501

See notes to unaudited condensed consolidated financial statements.

**LINCOLN EDUCATIONAL SERVICES CORPORATION AND SUBSIDIARIES**

**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**

**THREE MONTHS ENDED MARCH 31, 2004 AND 2005**

**(In thousands)**

**(Unaudited)**

	March 31, 2004	March 31, 2005
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net income	\$ 1,618	\$ 772
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation and amortization	2,598	3,082
Amortization of deferred finance charges	96	56
Write-off of deferred finance costs	—	365
Deferred income taxes	53	(111)
Provision for doubtful accounts	1,842	2,285
Stock-based compensation expense	716	399
Tax benefit associated with option exercises	—	39
(Increase) decrease in assets, net of acquisitions:		
Accounts receivable	(1,574)	(1,561)
Inventories	22	90
Prepaid expenses and current assets	650	335
Other assets and charges	177	277
Increase (decrease) in liabilities, net of acquisitions:		
Accounts payable	4,744	1,159
Other liabilities	(434)	708
Income taxes—payable/prepaid	(4,529)	(2,334)
Accrued expenses	(2,739)	(3,021)
Unearned tuition	(2,283)	(5,599)
Total adjustments	(661)	(3,831)
Net cash provided by (used in) operating activities	957	(3,059)
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Capital expenditures	(6,276)	(3,195)
Acquisition of a business, net of cash acquired	(14,341)	(19,691)
Net cash used in investing activities	(20,617)	(22,886)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Proceeds from borrowings	312	31,000
Payments on borrowings	(3,000)	(35,750)
Payment of deferred finance fees	—	(833)
Proceeds from shareholders loan	—	181
Proceeds from exercise of stock options	8	24
Principal payments under capital lease obligations	(328)	(73)
Net cash used in financing activities	(3,008)	(5,451)
NET DECREASE IN CASH AND CASH EQUIVALENTS	(22,668)	(31,396)
CASH AND CASH EQUIVALENTS—Beginning of period	48,965	41,445
CASH AND CASH EQUIVALENTS—End of period	\$ 26,297	\$ 10,049
<b>SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:</b>		
Cash paid during the period for:		
Interest	\$ 787	\$ 687

Income taxes	\$	5,662	\$	2,946
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SUPPLEMENTAL SCHEDULE OF NONCASH INVESTING AND FINANCING  
ACTIVITIES:

Cash paid during the period for:

Fair value of assets acquired	\$	14,436	\$	23,238
Net cash paid for the acquisitions		(14,341)		(19,691)

Liabilities assumed	\$	95	\$	3,547
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See notes to unaudited condensed consolidated financial statements.

## LINCOLN EDUCATIONAL SERVICES CORPORATION AND SUBSIDIARIES

### NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

THREE MONTHS ENDED MARCH 31, 2004 AND 2005

(In thousands, except share amounts)

#### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**Business Activities**—Lincoln Educational Services Corporation and Subsidiaries (the "Company") operate career schools in various locations, which offer technical programs of study in several different specialties.

In February 2003, Lincoln Educational Services Corporation ("LESC") was formed as a holding company that owns 100% of Lincoln Technical Institute, Inc. ("LTI"). The Company effected the creation of LESC by first creating LESC as a wholly-owned subsidiary of LTI and then creating Lincoln Acquisition Corporation ("LAC") as a wholly-owned subsidiary of LESC. The Company then merged LTI into LAC with LTI becoming the surviving entity and a wholly-owned subsidiary of LESC. All of the stockholders of LTI then exchanged their shares for shares in LESC. The effect of this transaction did not result in any change in ownership or control, as a result the assets and liabilities of LESC are reflected at the carryover basis of LTI. The formation of LESC, which was not material, has been retroactively reflected.

**Basis of Presentation**—The accompanying unaudited condensed consolidated financial statements have been prepared by the Company pursuant to the rules and regulations of the Securities and Exchange Commission and in accordance with accounting principles generally accepted in the United States of America ("GAAP"). Certain information and footnote disclosures normally included in annual financial statements have been omitted or condensed pursuant to such regulations. The Company believes the disclosures included in the unaudited condensed consolidated financial statements, when read in conjunction with the December 31, 2004 consolidated financial statements of the Company, included in this registration statement and the notes thereto, reflect all adjustments, consisting solely of normal recurring adjustments, necessary to summarize fairly the consolidated financial position, results of operations, and cash flows for such periods. The results of operations for the three months ended March 31, 2005 are not necessarily indicative of the results that may be expected for the fiscal year ending December 31, 2005.

The consolidated financial statements as of December 31, 2004 and the unaudited consolidated financial statements as of March 31, 2005 and for three months ended March 31, 2004 and 2005 include the accounts of the Company and its wholly-owned subsidiaries. All significant intercompany accounts and transactions have been eliminated.

**Use of Estimates in the Preparation of Financial Statements**—The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. On an ongoing basis, the Company evaluates the estimates and assumptions, including those related to revenue recognition, bad debts, fixed assets, income taxes, benefit plans and certain accruals. Actual results could differ from those estimates.

#### 2. RECENT ACCOUNTING PRONOUNCEMENTS

In December 2004, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 123R, *Share Based Payment*, which eliminates the alternative to measure stock-based compensation awards using the intrinsic value approach permitted

by Accounting Principles Board ("APB") Opinion No. 25, *Accounting for Stock-Based Compensation* and by SFAS No. 123, *Accounting for Stock-Based Compensation*. The Company has not yet determined what impact, if any, the adoption of SFAS No. 123R will have on the consolidated financial statements; however, as discussed in Note 3 in the December 31, 2004 consolidated financial statements, the Company adopted the fair value method of accounting for stock-based compensation provisions of SFAS No. 123 and the retroactive transitional provisions of SFAS No. 148, *Accounting for Stock-Based Compensation—Transition and Disclosure*. As a result, the Company has been recording stock-based compensation expense for all employee stock awards that were granted or modified.

In December 2004, the FASB issued SFAS No. 153, *Exchanges of Nonmonetary Assets, an Amendment of APB Opinion No. 29, Accounting for Nonmonetary Transactions*. SFAS No. 153 addresses the measurement of exchanges of nonmonetary assets and requires that such exchanges be measured at fair value, with limited exceptions. SFAS No. 153 amends APB Opinion No. 29, *Accounting for Nonmonetary Transactions* by eliminating the exception that required nonmonetary exchanges of similar productive assets be recorded on a carryover basis. The provisions of SFAS No. 153 are effective for nonmonetary asset exchanges occurring in fiscal periods beginning after June 15, 2005. The adoption of the provisions of SFAS No. 153 is not expected to have a material effect on the consolidated financial statements.

### 3. STOCK-BASED COMPENSATION

The Company accounts for the fair value of its grants under its stock-based compensation plan in accordance with the provisions of SFAS No. 123, *Accounting for Stock-Based Compensation*. The compensation cost that has been charged against income under this plan was approximately \$0.7 million and \$0.4 million for the three months ended March 31, 2004 and 2005, respectively.

### 4. WEIGHTED AVERAGE COMMON SHARES

The weighted average number of common shares used to compute basic and diluted income per share for the three months ended March 31, 2004 and 2005 are as follows:

	March 31,	
	2004	2005
Basic shares outstanding	21,668	21,699
Dilutive effect of stock options	1,370	1,266
Diluted shares outstanding	23,038	22,965

### 5. BUSINESS ACQUISITIONS

On January 23, 2004, a newly formed wholly-owned subsidiary of LESC, Southwestern Acquisition, LLC, a Delaware limited liability company, acquired the Southwestern College of Business, Inc. ("Southwestern") in Dayton, Ohio, Cincinnati—Vine Street, Ohio, Cincinnati—Northland Blvd., Ohio, Franklin, Ohio and Florence, Kentucky for approximately \$14.5 million, net of cash acquired. Included in this purchase price is certain real estate which was subsequently acquired from Southwestern for

\$0.7 million. The post acquisition consolidated financial statements include the results of operations of Southwestern from the acquisition date. The purchase price was allocated to Southwestern's identifiable net assets with the excess of the purchase price over the fair value of the net assets acquired recorded as goodwill. Intangible assets acquired, included in other assets in the accompanying consolidated balance sheet, include student contracts of \$0.3 million which are being amortized over a one year period from the date of acquisition and trade name of \$0.3 million which is not subject to amortization. Intangible asset amortization expense for the three months ended March 31, 2004 was \$0.04 million. Goodwill of approximately \$12.8 million, which is deductible for tax purposes, is also not subject to amortization. The following table summarizes the estimated fair value of assets acquired and liabilities assumed at January 23, 2004, the date of acquisition.

Property, equipment and facilities	\$ 890
Goodwill and intangible assets	13,436
Current assets, excluding cash acquired	267
Current liabilities	(95)
	<hr/>
Cost of acquisition, net of cash acquired	\$ 14,498
	<hr/>

The following unaudited pro forma results of operations for the three months ended March 31, 2004 assumes that the acquisition of Southwestern occurred at the beginning of the year of acquisition. The unaudited pro forma results of operations are based on historical results of operations, include adjustments for depreciation, amortization, interest, and taxes, and do not necessarily reflect the actual results that would have occurred.

	<u>March 31,</u>
	<u>2004</u>
Pro forma revenues	\$ 59,578
Pro forma net income	\$ 1,473

On January 11, 2005, a newly formed wholly-owned subsidiary of LESC, New England Acquisition, LLC, a Delaware limited liability company, acquired New England Technical Institute, Inc. ("NETI") in New Britain, Connecticut; Hamden, Connecticut; Cromwell, Connecticut and Shelton, Connecticut for approximately \$19.7 million, net of cash acquired. The post acquisition consolidated financial statements include the results of operations of NETI from the acquisition date. The purchase price has been preliminarily allocated to NETI's identifiable net assets with the excess of the purchase price over the estimated fair value of the net assets acquired recorded as goodwill, pending managements' valuation of the fair value of the net assets acquired as of the date of acquisition. Therefore, the purchase price allocation may be revised. Estimated intangible assets acquired, included in other assets in the accompanying consolidated balance sheet, include non-compete agreements of \$1.3 million which are being amortized over a three year period from the date of acquisition, student contracts of \$0.4 million which are being amortized over a one year period from the date of acquisition and trade name of \$0.5 million which is not subject to amortization. Intangible asset amortization expense for the three months ended March 31, 2005 was \$0.2 million. Goodwill of approximately \$17.9 million, which is deductible for tax purposes, is also not subject to amortization. The following table summarizes the

estimated fair value of assets acquired and liabilities assumed at January 11, 2005, the date of acquisition.

Property, equipment and facilities	\$	1,000
Goodwill and intangible assets		20,082
Current assets, excluding cash acquired		2,157
Current liabilities		(3,548)
		<hr/>
Cost of acquisition, net of cash acquired	\$	19,691
		<hr/>

The following unaudited pro forma results of operations for the three months ended March 31, 2004 and 2005 assumes that the acquisition of NETI occurred at the beginning of the year preceding the year of acquisition. The unaudited pro forma results of operations are based on historical results of operations, include adjustments for depreciation, amortization, interest, and taxes, and do not necessarily reflect the actual results that would have occurred.

	March 31,	
	2004	2005
	(unaudited)	
Pro forma revenues	\$ 63,015	\$ 71,147
Pro forma net income	\$ 1,931	\$ 771

## 6. INTANGIBLES

The Company accounts for its intangible assets in accordance with SFAS No. 142, *Goodwill and Other Intangible Assets*. The Company reviews intangible assets with an indefinite useful life for impairment when indicators of impairment exist, as defined by SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*. Annually, or more frequently if necessary, the Company evaluates goodwill for impairment, with any resulting impairment reflected as an operating expense.

Amortization of intangible assets for the three months ended March 31, 2004 and 2005 was approximately \$0.2 million and \$0.2 million, respectively.

Intangible assets consisted of the following (in thousands):

	At December 31, 2004		At March 31, 2005		Weighted Average Amortization Period (years)
	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization	
Student Contracts	\$ 950	\$ 928	\$ 1,350	\$ 1,038	1
Trade name	810	—	1,285	—	Indefinite
Non-compete	1	1	1,301	97	3
	<hr/>	<hr/>	<hr/>	<hr/>	
Total	\$ 1,761	\$ 929	\$ 3,936	\$ 1,135	N/A
	<hr/>	<hr/>	<hr/>	<hr/>	

## **7. OTHER ACCOUNTS RECEIVABLE**

Represents a receivable due from the previous owners of New England Technical Institute, Inc. resulting from purchase price adjustments in the closing balance sheet as stipulated in the asset purchase agreement. These amounts are expected to be paid prior to year-end.

## **8. LONG-TERM DEBT**

On February 15, 2005, the Company entered into a new credit agreement with a syndicate of banks led by its existing lender. Under the terms of the agreement, the syndicate provided the Company with a \$100 million credit facility with a term of five years. The credit agreement permits the issuance of letters of credit, up to \$20 million, the amount of which reduces the availability of permitted borrowings under the agreement. As a result of this new credit agreement, the Company wrote off as a component of interest expense approximately \$0.4 million of unamortized deferred finance costs under the old credit agreement in the three months ended March 31, 2005. The Company incurred approximately \$0.8 million of deferred finance costs under the new agreement.

The obligations of the Company and its subsidiaries under the credit agreement are secured by a lien on substantially all of the assets of the Company and its subsidiaries and any assets that it or its subsidiaries may acquire in the future, including a pledge of substantially all of the subsidiaries' common stock. Outstanding borrowings bear interest at the rate of adjusted LIBOR plus 1.0% to 1.75%, as defined, or a base rate (as defined in the credit agreement). In addition to paying interest on outstanding principal under the credit agreement, the Company and its subsidiaries are required to pay a commitment fee to the lender with respect to the unused amounts available under the credit agreement at a rate equal to 0.25% to 0.40% per year, as defined.

## **9. RELATED PARTY TRANSACTIONS**

The Company had a consulting agreement with Hart Capital LLC, which terminated by its terms in June, 2004, to advise the Company in identifying acquisition and merger targets and assisting with the due diligence reviews of and negotiations with these targets. Hart Capital LLC is the managing member of Five Mile River Capital Partners LLC, which is the second largest stockholder of the Company. Steven Hart, the owner and President of Hart Capital LLC, sits on the Company's board of directors. The Company paid Hart Capital LLC a monthly retainer, reimbursement of expenses and an advisory fee for its work on successful acquisitions or mergers. In accordance with the agreement, the Company paid Hart Capital LLC approximately \$0.3 million and \$0.3 million for the three months ended March 31, 2004 and 2005, respectively. Pursuant to the agreement, however, the Company may have future obligations to make certain payments to Hart Capital with respect to acquisition opportunities identified for the Company by Hart Capital prior to the termination of the agreement, if the Company consummates any acquisition opportunities previously identified for the Company within the twelve months following the termination of the agreement. Accordingly, in connection with the consummation of the NETI acquisition, which closed on January 11, 2005, the Company paid Hart Capital \$0.3 million for its services.

In 2003, the Company entered into a management service agreement with its majority stockholder, Stonington Partners. In accordance with this agreement the Company pays Stonington Partners a management fee of \$0.75 million per year for management consulting and financial and business

advisory services. Such services include valuing acquisitions and structuring their financing and assisting with new loan agreements. This agreement will terminate by its terms upon the Company's completion of an initial public offering. Accordingly the Company paid Stonington Partners \$0.75 million in January 2004 and 2005. Fees paid to Stonington Partners are amortized over a twelve month period.

As discussed in Note 10, during 2002, the Company advanced certain members of senior management approximately \$0.4 million in connection with their purchase of Company Stock. These notes have been reflected as a reduction in stockholders' equity. During 2004, approximately \$0.2 million of these loans were repaid. In the first quarter of 2005 the remainders of these loans were repaid.

## 10. COMMITMENTS AND CONTINGENCIES

***Litigation and Regulatory Matters***—The Company has been named as a defendant in actions resulting from the normal course of operations. Based, in part, on the opinion of counsel, management believes that the resolution of these matters will not have a material effect on its financial position, results of operations and cash flows.

\* \* \* \* \*

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors of  
Lincoln Educational Services Corporation  
West Orange, New Jersey

We have audited the accompanying consolidated balance sheets of Lincoln Educational Services Corporation and Subsidiaries (the "Company") as of December 31, 2003 and 2004, and the related consolidated statements of operations, changes in stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2004. Our audits also included the financial statement schedule listed in the Index at Part II, Item 16(b). These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with standards of the Public Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over the financial reporting. Our audits included consideration of internal controls over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Lincoln Education Services Corporation and Subsidiaries as of December 31, 2003 and 2004 and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2004 in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

As discussed in Note 2 to the consolidated financial statements, the Company adopted Statement of Financial Accounting Standards No. 123 for stock-based compensation in January 2004. The Company retroactively restated the 2002 and 2003 consolidated financial statements for this change.

DELOITTE & TOUCHE LLP  
Parsippany, New Jersey

March 28, 2005

**LINCOLN EDUCATIONAL SERVICES CORPORATION AND SUBSIDIARIES**

**CONSOLIDATED BALANCE SHEETS**

**DECEMBER 31, 2003 AND 2004**  
(In thousands, except share amounts)

	December 31,	
	2003	2004
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 48,965	\$ 41,445
Accounts receivable, less allowance of \$5,469 and \$7,023 for 2003 and 2004, respectively	10,803	12,820
Inventories	1,087	1,664
Prepaid expenses and other current assets	2,452	2,893
Assets held for sale	—	893
Deferred income taxes	5,354	4,509
	68,661	64,224
<b>PROPERTY, EQUIPMENT AND FACILITIES—At cost, net of accumulated depreciation and amortization</b>	<b>42,035</b>	<b>55,149</b>
<b>OTHER ASSETS:</b>		
Deferred finance charges	1,318	943
Prepaid pension cost	4,765	4,820
Other assets	1,633	2,625
Deferred income taxes	992	2,166
Goodwill	19,951	32,802
	28,659	43,356
<b>TOTAL</b>	<b>\$ 139,355</b>	<b>\$ 162,729</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Current portion of long-term debt and lease obligations	\$ 3,624	\$ 5,311
Unearned tuition	26,249	31,185
Accounts payable	9,022	10,664
Accrued expenses	11,770	12,147
Advance payments of federal funds	738	330
Income taxes payable	3,856	17
	55,259	59,654
<b>COMMITMENTS AND CONTINGENCIES</b>		
<b>NONCURRENT LIABILITIES:</b>		
Other long-term liabilities	1,736	3,471
Long-term debt and lease obligations, net of current portion	39,436	41,518
	96,431	104,643
<b>STOCKHOLDERS' EQUITY:</b>		
Common stock, no par value—authorized 50,000,000 shares at December 31, 2003 and 2004 issued and outstanding, 21,667,610 in 2003 and 21,698,785 shares at 2004	62,385	62,385
Additional paid-in capital	1,426	3,359
Accumulated deficit	(20,455)	(7,477)

Less loan receivable from stockholders	(432)	(181)
	<u>42,924</u>	<u>58,086</u>
Total stockholders' equity		
	<u>42,924</u>	<u>58,086</u>
TOTAL	\$ 139,355	\$ 162,729
	<u>\$ 139,355</u>	<u>\$ 162,729</u>

See notes to consolidated financial statements.

LINCOLN EDUCATIONAL SERVICES CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS

YEARS ENDED DECEMBER 31, 2002, 2003 AND 2004

(In thousands, except per share amounts)

	Year Ended December 31,		
	2002	2003	2004
REVENUES	\$ 139,201	\$ 198,881	\$ 261,275
COSTS AND EXPENSES:			
Educational services and facilities	66,580	85,201	104,843
Selling, general and administrative	71,753	97,714	130,941
(Gain) loss on sale of assets	(1,082)	(22)	368
Total costs and expenses	137,251	182,893	236,152
OPERATING INCOME	1,950	15,988	25,123
GAIN ON SALE OF SECURITIES	—	211	—
INTEREST INCOME	212	133	104
INTEREST EXPENSE	(2,937)	(2,758)	(3,007)
INCOME (LOSS) BEFORE INCOME TAXES	(775)	13,574	22,220
PROVISION (BENEFIT) FOR INCOME TAXES	(101)	5,355	9,242
NET INCOME (LOSS)	\$ (674)	\$ 8,219	\$ 12,978
Earnings (loss) per share—basic: Net income (loss) available to common shareholders	\$ (0.03)	\$ 0.38	\$ 0.60
Earnings (loss) per share—diluted: Net income (loss) available to common shareholders	\$ (0.03)	\$ 0.37	\$ 0.56
Weighted average number of common shares outstanding:			
Basic	21,662	21,667	21,676
Diluted	21,662	22,364	23,095

See notes to consolidated financial statements.

**LINCOLN EDUCATIONAL SERVICES CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY**  
**YEARS ENDED DECEMBER 31, 2002, 2003 AND 2004**  
(In thousands)

	Common Stock	Additional Paid-in Capital	Loan Receivable From Stockholders	Accumulated Deficit	Total
BALANCE—December 31, 2001	\$ 61,928	\$ 168	\$ —	\$ (28,000)	\$ 34,096
Net loss	—	—	—	(674)	(674)
Stock-based compensation expense	—	458	—	—	458
Sale of common stock, net of expenses	457	—	(432)	—	25
BALANCE—December 31, 2002	62,385	626	(432)	(28,674)	33,905
Net income	—	—	—	8,219	8,219
Stock-based compensation expense	—	800	—	—	800
BALANCE—December 31, 2003	62,385	1,426	(432)	(20,455)	42,924
Net income	—	—	—	12,978	12,978
Stock-based compensation expense	—	1,793	—	—	1,793
Stockholder loan repayment	—	—	251	—	251
Tax benefit of options exercised	—	43	—	—	43
Exercise of stock options	—	97	—	—	97
BALANCE—December 31, 2004	\$ 62,385	\$ 3,359	\$ (181)	\$ (7,477)	\$ 58,086

See notes to consolidated financial statements.

**LINCOLN EDUCATIONAL SERVICES CORPORATION AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**

**YEARS ENDED DECEMBER 31, 2002, 2003 AND 2004**  
(In thousands)

	Years Ended December 31,		
	2002	2003	2004
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>			
Net income (loss)	\$ (674)	\$ 8,219	\$ 12,978
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation and amortization	7,201	9,879	10,749
Amortization of deferred finance charges	626	689	375
Deferred income taxes	(531)	1,285	(329)
(Gain) loss on sale of assets	(1,082)	(22)	368
Gain on sale of marketable securities	—	(211)	—
Provision for doubtful accounts	5,696	7,415	9,247
Stock-based compensation expense	458	800	1,793
Tax benefit associated with exercise of stock options	—	—	43
(Increase) decrease in assets, net of acquisitions:			
Accounts receivable	(5,792)	(10,131)	(10,998)
Inventories	(132)	124	(577)
Prepaid expenses and current assets	84	(547)	(493)
Other assets and charges	(3,545)	(259)	(830)
Increase (decrease) in liabilities, net of acquisitions:			
Accounts payable	1,716	(447)	1,547
Other liabilities	(657)	326	1,327
Income taxes payable	391	3,465	(3,839)
Accrued expenses	1,580	4,473	377
Unearned tuition	4,384	2,108	4,936
Total adjustments	10,397	18,947	13,696
Net cash provided by operating activities	9,723	27,166	26,674
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>			
Capital expenditures	(3,598)	(13,154)	(23,813)
Proceeds from sale of facilities	1,443	29	—
Restricted cash	—	9,000	—
Sale of marketable securities	—	3,028	—
Acquisition of a business, net of cash acquired	—	(7,583)	(14,498)
Net cash used in investing activities	(2,155)	(8,680)	(38,311)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>			
Proceeds from borrowings	—	51,256	25,290
Payments on borrowings	(2,000)	(29,716)	(21,000)
Net proceeds from finance obligation	—	—	169
Proceeds from sale of common stock	25	—	—
Proceeds from exercise of stock options	—	—	97
Principal payments under capital lease obligations	(1,914)	(2,140)	(690)
Proceeds from shareholder loans	—	—	251
Net cash provided by (used in) financing activities	(3,889)	19,400	4,117
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	<b>3,679</b>	<b>37,886</b>	<b>(7,520)</b>
CASH AND CASH EQUIVALENTS—Beginning of year	7,400	11,079	48,965
<b>CASH AND CASH EQUIVALENTS—End of year</b>	<b>\$ 11,079</b>	<b>\$ 48,965</b>	<b>\$ 41,445</b>

SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:

Cash paid during the year for:			
Interest	\$ 2,692	\$ 2,732	\$ 2,780
Income taxes	\$ 115	\$ 619	\$ 13,382

SUPPLEMENTAL SCHEDULE OF NONCASH INVESTING AND FINANCING ACTIVITIES:

Cash paid during the period for:			
Fair value of assets acquired	\$ —	\$ 16,044	\$ 14,593
Net cash paid for the acquisitions	—	(7,583)	(14,498)
Liabilities assumed	\$ —	\$ 8,461	\$ 95

SUPPLEMENTAL SCHEDULE OF NONCASH FINANCING ACTIVITIES:

In 2002, the Company issued common stock in exchange for loans receivable of approximately \$0.4 million.

See notes to consolidated financial statements.

LINCOLN EDUCATIONAL SERVICES CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

YEARS ENDED DECEMBER 31, 2002, 2003 AND 2004

(In thousands, except share amounts)

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**Business Activities**—Lincoln Educational Services Corporation and Subsidiaries (the "Company") operate trade schools in various locations, which offer technical programs of study in several different specialties.

In February 2003, Lincoln Educational Services Corporation ("LESC"), which is a holding company that owns 100% of Lincoln Technical Institute, Inc. ("LTI"), was formed. The Company effected the creation of LESC by first creating LESC as a wholly-owned subsidiary of LTI and then creating Lincoln Acquisition Corporation ("LAC") as a wholly-owned subsidiary of LESC. The Company then merged LTI into LAC with LTI becoming the surviving entity and a wholly-owned subsidiary of LESC. All of the stockholders of LTI then exchanged their shares for shares in LESC. The effect of this transaction did not result in any change in ownership or control, as such the assets and liabilities of LESC are reflected at the carryover basis of LTI. The formation of LESC, which was not material, has been retroactively reflected.

**Principles of Consolidation**—The accompanying consolidated financial statements include the accounts of Lincoln Educational Services Corporation and its wholly-owned subsidiaries. All significant intercompany accounts and transactions have been eliminated.

**Revenue Recognition**—Revenue is derived primarily from programs taught at the schools. Tuition revenue and one-time fees, such as nonrefundable application fees, and course material fees are recognized on a straight-line basis over the length of the applicable program. If a student withdraws from a program prior to a specified date, any paid but unearned tuition is refunded. Other revenues, such as textbook sales, tool sales and contract training revenues, are recognized as services are performed or goods are delivered. On an individual student basis, tuition earned in excess of cash received is recorded as accounts receivable, and cash received in excess of tuition earned is recorded as unearned tuition. Refunds are calculated and paid in accordance with federal, state and accrediting agency standards.

**Cash and Cash Equivalents**—Cash and cash equivalents include all cash balances and highly liquid short-term investments, which mature within three months of purchase.

**Accounts Receivable**—The Company reports accounts receivable at net realizable value, which is equal to the gross receivable less an estimated allowance for uncollectible accounts.

**Inventories**—Inventories consist mainly of textbooks, tools and supplies. Inventories are valued at the lower of cost or market on a first-in, first-out basis.

**Property, Equipment and Facilities—Depreciation and Amortization**—Property, equipment and facilities are stated at cost. Major renewals and improvements are capitalized, while repairs and maintenance are expensed when incurred. Upon the retirement, sale or other disposition of assets, costs and related accumulated depreciation are eliminated from the accounts and any gain or loss is reflected in operating income. For financial statement purposes, depreciation of property and equipment is computed using the straight-line method over the estimated useful lives of the assets, and amortization of leasehold improvements is computed over the lesser of the term of the lease or its estimated useful life.

**Deferred Rent Expense**—Rent expense related to operating leases where scheduled rent increases exist is determined by expensing the total amount of rent due over the life of the operating lease on a straight-line basis. The difference between the rent paid under the terms of the lease and the rent expensed on a straight-line basis is included in accrued expenses and other long-term liabilities on the accompanying consolidated balance sheets.

**Deferred Finance Charges**—These charges in the accompanying consolidated balance sheet consist of \$0.8 million and \$0.5 million as of December 31, 2003 and 2004, respectively, related to the long-term debt and \$0.6 million and \$0.4 million as of December 31, 2003 and 2004, respectively, related to the finance obligation. These amounts are being amortized as an increase in interest expense over the respective life of the debt or finance obligation.

**Advertising Costs**—Costs related to advertising are expensed as incurred and totaled approximately \$14.3 million, \$17.5 million and \$22.3 million for the years ended December 31, 2002, 2003 and 2004, respectively.

**Goodwill and Other Intangible Assets**—In connection with the Financial Accounting Standards Board ("FASB") Statement of Financial Accounting Standards ("SFAS") No. 142, *Goodwill and Other Intangible Assets*, the Company is required to assess for impairment annually, or more frequently, if circumstances indicate impairment may have occurred.

In accordance with SFAS No. 142, the Company tests goodwill for impairment annually using a two-step process that begins with an estimation of the fair value of a reporting unit. As prescribed by SFAS No. 142, the Company has defined a reporting unit as an operating segment for which discreet financial information is available and which is used by management to run the operations of the Company. Accordingly, the Company has determined that its reporting units are its schools. Goodwill has been allocated to each reporting unit based upon the excess of each reporting unit's purchase price over the fair value of the net assets acquired, as determined based upon an independent valuation. An impairment analysis was performed as of December 31, 2002, 2003 and 2004. As the carrying amount of each reporting unit did not exceed its fair value, there was no need to record an impairment loss.

**Impairment of Long-Lives Assets**—Long-lived assets held and used by the Company, including property, plant and equipment and amortizable intangible assets, are reviewed by us in accordance with the provisions of SFAS No. 144, "*Accounting for the Impairment or Disposal of Long-Lived Assets*." In accordance with SFAS No. 144, the Company assesses the potential impairment of property equipment and amortizable intangibles whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. For purposes of evaluating the recoverability of long-lived assets to be held and used, a recoverability test is performed using projected undiscounted net cash flows applicable to the long-lived assets. If impairment exists, the amount of such impairment is calculated based on the estimated fair value of the asset. Impairments of long-lived assets to be disposed of are recorded based upon the fair value of the applicable assets.

**Concentration of Credit Risk**—Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of temporary cash investments and trade receivables.

The Company places its cash and cash equivalents with high credit quality financial institutions and limits the amount of credit exposure to any one financial institution. Cash balances are insured by the FDIC up to \$100,000 per depositor. The Company's cash balances with financial institutions typically exceed FDIC insured limits. The Company's cash balances on deposit at December 31, 2004, exceeded the balance insured by the FDIC by approximately \$39.8 million.

The Company extends credit for tuition and fees to the majority of the students. The credit risk with respect to these accounts receivable is mitigated through the students' participation in federally funded financial aid programs unless students withdraw prior to the receipt of federal funds for those students. In addition, the remaining tuition receivables are primarily comprised of smaller individual amounts due from students.

As of December 31, 2003 and 2004, the Company had no significant concentrations of credit risk.

**Allowance for uncollectible accounts.** Based upon experience and judgment, the Company establishes an allowance for uncollectible accounts with respect to tuition receivables. The Company uses an internal group of collectors, augmented by third-party collectors as deemed appropriate, in its collection efforts. In establishing the allowance for uncollectible accounts, the Company considers, among other things, a student's status (in-school or out-of-school), whether or not additional financial aid funding will be collected from Title IV Programs or other sources, whether or not a student is currently making payments, and overall collection history. Changes in trends in any of these areas may impact the allowance for uncollectible accounts. The receivables balances of withdrawn students with delinquent obligations are reserved for based on collection history. Although the Company believes that reserves are adequate, if the financial condition of the students deteriorates, resulting in an impairment of their ability to make payments, or if the Company underestimates the allowances required, additional allowances may be necessary, which will result in increased selling, general and administrative expenses in the period such determination is made.

**Use of Estimates in the Preparation of Financial Statements**—The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America ("GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. On an ongoing basis, the Company evaluates the estimates and assumptions, including those related to revenue recognition, bad debts, fixed assets, income taxes, benefit plans and certain accruals. Actual results could differ from those estimates.

**Recent Accounting Pronouncements**—In November 2002, the FASB issued Interpretation No. ("FIN") 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others*. FIN 45 elaborates on the existing disclosure requirements for most guarantees, including loan guarantees such as standby letters of credit. It also clarifies that at the time a Company issues a guarantee, the Company must recognize an initial liability for the fair value of the obligations the Company assumes under the guarantee and must disclose that information in the financial statements. The provisions related to recognizing a liability at inception of the guarantee for the fair value of the guarantor's obligations do not apply to product warranties or to guarantees

accounted for as derivatives. The initial recognition and initial measurement provisions apply on a prospective basis to guarantees issued or modified after December 31, 2002. The Company has no guarantees which require disclosure or accounting treatment under FIN 45 as of December 31, 2004.

In January 2003, the FASB issued FIN No. 46, *Consolidation of Variable Interest Entities*, as amended in December 2003 by FIN 46 (Revised) ("FIN 46-R"), which deferred the effective date until the first interim or annual reporting period ending after March 15, 2004. FIN 46-R requires the consolidation of an entity by an enterprise known as a "primary beneficiary," (i) if that enterprise has a variable interest that will absorb a majority of the entity's expected losses, if they occur, receive a majority of the entity's expected residual returns, if they occur, or both and (ii) if the entity is a variable interest entity ("VIE"), as defined. An entity qualifies as a variable interest entity if (i) the total equity investment at risk in the entity is not sufficient to permit the entity to finance its activities without additional subordinated financial support from other parties or (ii) the equity investors do not have the characteristics of a controlling financial interest in the entity. The initial determination of whether an entity is a variable interest entity shall be made as of the date at which an enterprise becomes involved with the entity and re-evaluated as of the date of triggering events, as defined. The adoption of FIN 46-R did not have a material effect on the consolidated financial statements.

In November 2002, the Emerging Issues Task Force ("EITF") reached a consensus on Issue No. 00-21, *Accounting for Revenue Arrangements with Multiple Deliverables* ("EITF 00-21"). Under EITF 00-21, in order to separate the accounting for multiple deliverables (products or services) provided to a customer by a vendor, the deliverables must have separable value to the customer. EITF 00-21 is effective for the Company for revenue arrangements entered into after January 1, 2004. The adoption of EITF 00-21 did not have a material effect on the consolidated financial statements.

In May 2003, the FASB issued SFAS No. 150, *Accounting for Certain Financial Instruments with Characteristics of Liabilities, Equity, or Both*, which establishes standards for classifying and measuring as liabilities certain financial instruments that embody obligations of the issuer and have characteristics of both liabilities and equity. On November 7, 2003, the FASB deferred, indefinitely, the application of paragraphs 9 and 10 of SFAS No. 150 as it relates to mandatory redeemable non-controlling interests in consolidated subsidiaries in order to address a number of interpretation and implementation issues. The adoption of SFAS No. 150 did not have a material effect on the consolidated financial statements.

In December 2004, the FASB issued SFAS No. 123R, "*Share Based Payment*," which eliminates the alternative to measure stock-based compensation awards using the intrinsic value approach permitted by Accounting Principles Board ("APB") Opinion No. 25, "*Accounting for Stock-Based Compensation*" and by SFAS No. 123 *Accounting for Stock-Based Compensation*. The Company has not yet determined what impact, if any, the adoption of SFAS No. 123R will have on the consolidated financial statements; however, as discussed in Note 2, the Company adopted the fair value method of accounting for stock-based compensation provisions of SFAS No. 123 and the retroactive transitional provisions of SFAS No. 148, "*Accounting for Stock-Based Compensation—Transition and Disclosure*." As a result, the Company has been recording stock-based compensation expense for all employee stock awards that were granted or modified.

In December 2004, the FASB issued SFAS No. 153, *Exchanges of Nonmonetary Assets, an Amendment of APB Opinion No. 29, Accounting for Nonmonetary Transactions*. SFAS No. 153 addresses the measurement of exchanges of nonmonetary assets and requires that such exchanges be measured at fair value, with limited exceptions. SFAS No. 153 amends APB Opinion No. 29 *Accounting for Nonmonetary Transactions* by eliminating the exception that required nonmonetary exchanges of similar productive assets be recorded on a carryover basis. The provisions of SFAS No. 153 are effective for nonmonetary asset exchanges occurring in fiscal periods beginning after June 15, 2005. The Company will adopt the provisions of SFAS No. 153, as required.

**Stock Option Plan**—The Company has a stock-based compensation plan as discussed further in Note 10. The Company has adopted the method of accounting for the fair value of its grants under this plan in accordance with the provisions of SFAS No. 123, *Accounting for Stock-Based Compensation*, as discussed in Note 2. The compensation cost that has been charged against income under this plan was approximately \$0.5 million, \$0.8 million and \$1.8 million for the years ended December 31, 2002, 2003 and 2004, respectively.

**Income Taxes**—The Company accounts for income taxes under the asset and liability method. Deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between financial statement carrying amounts of assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of changes in tax rates is recognized in income in the period that includes the enactment date.

## 2. ACCOUNTING CHANGE

In light of evolving accounting guidance and business considerations, the Company determined that it was appropriate to adopt a more preferable accounting policy with respect to stock-based compensation. The Company had historically accounted for stock-based compensation in accordance with APB No. 25. The Company believes that the fair value recognition provisions of SFAS No. 123 are preferable to the method of recognizing compensation expense under APB Opinion No. 25, which is based on the difference, if any, on the date of grant, between the fair value of the common stock and the exercise price. The Company adopted SFAS No. 123 on January 1, 2004 under the provisions of SFAS No. 148 permitting retroactive restatement. The Company has retroactively restated stock-based compensation expense and related accounts for all years presented.

## 3. FINANCIAL AID AND REGULATORY COMPLIANCE

### Financial Aid

The schools and students participate in a variety of government-sponsored financial aid programs that assist students in paying the cost of their education. The largest source of such support is the federal programs of student financial assistance under Title IV of the Higher Education Act of 1965, as amended, commonly referred to as the Title IV Programs, which are administered by the U.S. Department of Education (or "DOE"). During the years ended December 31, 2002, 2003 and 2004

approximately 74%, 79% and 81%, respectively, of the net revenues were indirectly derived from funds distributed under Title IV Programs.

To participate in Title IV Programs, a school must be authorized to offer its programs of instruction by relevant state education agencies, be accredited by an accrediting commission recognized by the DOE and be certified as an eligible institution by the DOE. For this reason, the schools are subject to extensive regulatory requirements imposed by all of these entities. After the schools receive the required certifications by the appropriate entities, the schools must demonstrate their compliance with the DOE regulations of the Title IV Programs on an ongoing basis. Included in these regulations is the requirement that the Company must satisfy specific standards of financial responsibility. The DOE evaluates institutions for compliance with these standards each year, based upon the institutions' annual audited financial statements, as well as following a change in ownership of the institution. Under regulations which took effect July 1, 1998, the DOE calculates the institution's composite score for financial responsibility based on its (i) equity ratio, which measures the institution's capital resources, ability to borrow and financial viability; (ii) primary reserve ratio, which measures the institution's ability to support current operations from expendable resources; and (iii) net income ratio, which measures the institution's ability to operate at a profit.

### **Regulatory Compliance**

An institution that does not meet the DOE's minimum composite score requirements of 1.5 may establish its financial responsibility by posting a letter of credit or complying with additional monitoring procedures as defined by the DOE. We have submitted to the DOE our audited financial statements for the 2003 fiscal year reflecting a composite score of 2.1 based upon our calculations, and that our schools meet the DOE standards of financial responsibility. For 2004 fiscal year we have calculated our composite score to be 1.8.

Based on the Company's calculations, the 2003 and 2004 financial statements reflect a composite score of 2.1 and 1.8, respectively. However, as a result of corrections of certain errors, including accounting for advertising costs, a sale leaseback transaction, rent and certain other individually insignificant adjustments, in our prior financial statements, the DOE recomputed the Company's consolidated composite scores for the years ended December 31, 2001 and 2002 and concluded that the recomputed consolidated composite scores for those two years were below 1.0. In addition, we identified certain additional errors in our financial statements for the year ended December 31, 2003 relating to our accounting for stock-based compensation and accrued bonuses that did not result in a recomputation of our 2003 composite score. The DOE has informed the Company that as a result, for a period of three years effective December 30, 2004, all of the Company's current and future institutions have been placed on "Heightened Cash Monitoring, Type 1 status," and are required to timely notify the DOE with respect to certain enumerated oversight and financial events. The DOE also informed the Company that its circumstances will be taken into consideration when each of our institutions applies for recertification of the Company's eligibility to participate in Title IV Programs. When each of our institutions is next required to apply for recertification to participate in Title IV Programs, we expect that the DOE will also consider our audited financial statements and composite scores for our most recent fiscal year as well as for other fiscal years after 2001 and 2002. Additionally,

since the DOE concluded that the previously computed composite scores for 2001 and 2002 were overstated, the Company has agreed to pay \$165,000 to the DOE, pursuant to a settlement agreement, to resolve compliance issues related to this matter. The Company paid this amount on March 3, 2005. Although no assurance can be given, the Company's management does not believe that the actions of the DOE specified above will have a material effect on its financial position or results of operations.

The Company was in compliance with the standards established by the DOE requiring that no individual DOE reporting entity can receive more than 90% of its revenue, determined on a cash basis, from Title IV, HEA Program Funds and at least 10% of such revenues need to be derived from sources other than Title IV, HEA Program Funds.

#### 4. WEIGHTED AVERAGE COMMON SHARES

The weighted average numbers of common shares used to compute basic and diluted income per share for the three years ended December 31, 2002, 2003 and 2004, are as follows:

	December 31,		
	2002	2003	2004
Basic shares outstanding	21,662	21,667	21,676
Dilutive effect of stock options	—	697	1,419
<b>Diluted shares outstanding</b>	<b>21,662</b>	<b>22,364</b>	<b>23,095</b>

#### 5. BUSINESS ACQUISITIONS

On March 16, 2001, the Company purchased the rights, title, and interest in the assets utilized in the conduct and operation of Computer-Ed, Inc. for \$2.5 million including costs related to the acquisition. Goodwill of \$2.1 million was recorded in connection with this acquisition.

On April 6, 2001, the Company purchased from the Trustee in Bankruptcy of Computer Learning Centers, Inc., the assets of Computer Learning Centers, Inc. in Marietta, Georgia, Northeast Philadelphia, Pennsylvania, Philadelphia, Pennsylvania, Plymouth Meeting, Pennsylvania, Paramus, New Jersey, Somerville, Massachusetts, and Lowell, Massachusetts for \$17.1 million including costs related to the acquisition. On March 9, 2001, the Company purchased from the Trustee in Bankruptcy of Computer Learning Centers, Inc., the assets of Computer Learning Centers, Inc. in Norcross, Georgia and Las Vegas, Nevada for \$3.6 million including costs related to acquisition. These acquisitions were accounted for using the purchase method of accounting. Goodwill of \$10.7 million was recorded in connection with these acquisitions.

On February 14, 2003, a newly formed wholly-owned subsidiary of LTI, Nashville Acquisition, LLC, a Delaware limited liability company, acquired Nashville Auto-Diesel College for approximately \$7.6 million including costs related to the acquisition, net of \$4.1 million of cash acquired. The post acquisition consolidated financial statements include the results of operations of Nashville Auto-Diesel College from the acquisition date. The purchase price was allocated to the fair value of the acquired tangible and intangible assets and assumed liabilities. Intangible assets acquired, included in other

assets in the accompanying consolidated balance sheet, include student contracts of \$0.7 million which are being amortized over a one year period from the date of acquisition and trade name of \$0.5 million which is not subject to amortization. Intangible asset amortization expense was \$0.6 million and \$0.1 million for 2003 and 2004, respectively. Goodwill of approximately \$3.8 million, which is deductible for tax purposes, is also not subject to amortization. Included in tangible assets acquired were marketable securities of \$2.8 million which were sold during the year, resulting in a gain of \$0.2 million. The following table summarizes the estimated fair value of assets acquired and liabilities assumed at February 14, 2003, the date of acquisition.

Property, equipment and facilities	\$	7,512
Goodwill, intangible and other assets		5,197
Current assets, excluding cash acquired		3,335
Current liabilities		(7,483)
Other liabilities		(978)
		<hr/>
Cost of acquisition, net of cash acquired	\$	7,583
		<hr/>

The following unaudited pro forma results of operations for the years ended December 31, 2002 and 2003, assumes that the Nashville Auto-Diesel College occurred at the beginning of the year preceding the year of acquisition. The unaudited pro forma results of operations are based on historical results of operations, include adjustments for depreciation, amortization, interest, and taxes, and do not necessarily reflect the actual results that would have occurred.

	For the Year Ended December 31,	
	2002	2003
	(unaudited)	
Pro forma revenues	\$ 159,969	\$ 201,882
Pro forma net income	\$ 852	\$ 8,481

On January 23, 2004, a newly formed wholly-owned subsidiary of LESC, Southwestern Acquisition, LLC, a Delaware limited liability company, acquired the Southwestern College of Business, Inc. ("Southwestern") in Dayton, Ohio, Cincinnati-Vine Street, Ohio, Cincinnati-Northland Blvd, Ohio, Franklin, Ohio and Florence, Kentucky for approximately \$14.5 million, net of cash acquired. Included in this purchase price is certain real estate which was subsequently acquired from Southwestern for \$0.7 million. The post acquisition consolidated financial statements include the results of operations of the Southwestern College of Business, Inc. from the acquisition date. The purchase price was allocated to Southwestern's identifiable net assets with the excess, if any, of the purchase price over the fair value of the net assets acquired recorded as goodwill. Intangible assets acquired, included in other assets in the accompanying consolidated balance sheet, include student contracts of \$0.3 million which are being amortized over a one year period from the date of acquisition and trade name of \$0.3 million which is not subject to amortization. Intangible asset amortization expense for the year ended December 31, 2004 was \$0.3 million. Goodwill of approximately \$12.8 million, which is deductible for tax purposes, is

also not subject to amortization. The following table summarizes the estimated fair value of assets acquired and liabilities assumed at January 23, 2004, the date of acquisition.

Property, equipment and facilities	\$ 890
Goodwill and intangible assets	13,436
Current assets, excluding cash acquired	267
Current liabilities	(95)
	<hr/>
Cost of acquisition, net of cash acquired	\$ 14,498
	<hr/>

The following unaudited pro forma results of operations for the years ended December 31, 2003 and 2004 assume that the acquisition of Southwestern occurred at the beginning of the year preceding the year of acquisition. The unaudited pro forma results of operations are based on historical results of operations, include adjustments for depreciation, amortization, interest, and taxes, and do not necessarily reflect the actual results that would have occurred.

	December 31,	December 31,
	2003	2004
	(unaudited)	
Pro forma revenues	\$ 204,712	\$ 261,279
Pro forma net income	\$ 8,349	\$ 12,833

On October 20, 2004, New England Acquisition, LLC, a newly formed wholly-owned subsidiary of LESC, executed an asset purchase agreement to acquire the rights, title and interests in the assets used in the conduct and operation of New England Technical Institute ("NETI") for a purchase price of approximately \$20.0 million. NETI operates four schools in New Britain, Hamden, Shelton and Cromwell, Connecticut. This transaction closed on January 11, 2005. See also Note 20.

## 6. GOODWILL AND OTHER INTANGIBLE ASSETS

The Company accounts for its intangible assets in accordance with SFAS No. 142, "Goodwill and Other Intangible Assets." The Company reviews intangible assets with an identifiable useful life for impairment, when indicators of impairment exist, as defined by SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." Annually, or more frequently if necessary, the Company evaluates goodwill for impairment, with any resulting impairment reflected as an operating expense.

Changes in the carrying amount of goodwill during the years ended December 31, 2003 and 2004, are as follows (in thousands):

Goodwill balance as of December 31, 2002	\$ 16,182
Goodwill acquired pursuant to business acquisitions	3,769
	<hr/>
Goodwill balance as of December 31, 2003	\$ 19,951
	<hr/>
Goodwill acquired pursuant to business acquisitions	12,826
Purchase accounting adjustments	25
	<hr/>
Goodwill balance as of December 31, 2004	\$ 32,802
	<hr/>

Amortization of intangible assets for the years ended December 31, 2003 and 2004 was approximately \$0.6 million and \$0.4 million, respectively.

Intangible assets consisted of the following (in thousands):

	At December 31, 2003		At December 31, 2004		
	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization	Weighted Average Amortization Period (Years)
Student Contracts	\$ 670	\$ 558	\$ 950	\$ 928	1
Trade name	480	—	810	—	Indefinite
Non-compete	—	—	1	1	1
Total	\$ 1,150	\$ 558	\$ 1,761	\$ 929	N/A

## 7. PROPERTY, EQUIPMENT AND FACILITIES

A summary of property, equipment and facilities is as follows:

	As of December 31,		Useful Life (Years)
	2003	2004	
Land	\$ 4,395	\$ 4,213	—
Buildings and improvements	40,127	57,407	3–25
Equipment, furniture and fixtures	32,410	37,260	3–7
Vehicles	1,569	1,738	3–7
Construction in progress	3,285	1,976	
	81,786	102,594	
Less accumulated depreciation and amortization	(39,751)	(47,445)	
	\$ 42,035	\$ 55,149	

Included above in equipment, furniture and fixtures are assets acquired under capital leases as of December 31, 2003 and, 2004 of \$7.2 million and \$7.0 million, respectively, net of accumulated depreciation of \$4.7 million and \$5.3 million, respectively.

Depreciation and amortization expense of property, equipment and facilities was \$7.2 million, \$9.3 million and \$10.3 million for the years ended December 31, 2002, 2003 and 2004, respectively.

## 8. ACCRUED EXPENSES

Accrued expenses consist of the following:

	As of December 31,	
	2003	2004
Accrued compensation and benefits	\$ 8,956	\$ 9,750
Other accrued expenses	2,814	2,397
	<u>\$ 11,770</u>	<u>\$ 12,147</u>

## 9. LONG-TERM DEBT AND LEASE OBLIGATIONS

Long-term debt and lease obligations consist of the following:

	As of December 31,	
	2003	2004
Credit Facility	\$ 32,000	\$ 35,750
Finance obligation	9,503	9,672
Automobile loans	132	113
Capital leases—computers (with rates ranging from 6.9% to 19.9%)	1,425	1,294
	<u>43,060</u>	<u>46,829</u>
Less current maturities	(3,624)	(5,311)
	<u>\$ 39,436</u>	<u>\$ 41,518</u>

Scheduled maturities of long-term debt outstanding at December 31, 2004, are as follows:

Year Ending December 31,	Credit Facility	Lease Obligations and Auto Loans	Total
2005	\$ 5,000	\$ 311	\$ 5,311
2006	—	283	283
2007	—	210	210
2008	—	207	207
2009	—	133	133
Thereafter	30,750	9,935	40,685
	<u>\$ 35,750</u>	<u>\$ 11,079</u>	<u>\$ 46,829</u>

Effective February 11, 2003, the Company entered into a new Credit Agreement (the "Credit Agreement"), which completely refinanced the previous debt agreement. The Credit Agreement is a \$25.0 million revolving facility. The term of the credit agreement is three years and outstanding borrowings bear interest at the rate of adjusted LIBOR plus 3.25% or a base rate (as defined in the credit agreement) plus 1.5%. At December 31, 2004, the interest rate on the amounts outstanding ranged from 5.7% to 6.75%. In addition to paying interest on outstanding principal under the credit agreement, Lincoln Technical Institute, Inc., its subsidiaries and Southwestern are required to pay a commitment fee to the lender with respect to the unused amounts available under the credit agreement.

at a rate equal to 0.5% per year. Lincoln Technical Institute, Inc., its subsidiaries and Southwestern are charged quarterly interest at an annual rate of 3.25% on the outstanding balance of letters of credit issued under the agreement. At December 31, 2004, the Company had outstanding letters of credit aggregating \$4.0 million.

The credit agreement requires that the Company maintain certain financial covenants, as defined in the credit agreement, including a minimum quarterly EBITDA (as defined in the credit agreement), maximum capital expenditures and maximum debt leverage ratios. The obligations of Lincoln Technical Institute, Inc., its subsidiaries and Southwestern under the credit agreement are secured by a first priority lien upon substantially all of the assets that Lincoln Technical Institute, Inc., its subsidiaries and Southwestern own and any assets that Lincoln Technical Institute, Inc., its subsidiaries and Southwestern may acquire in the future, including a pledge of substantially all of its, its subsidiaries' and Southwestern's common stock.

As of December 31, 2004, the Company was in compliance with the financial covenants contained in the credit agreement.

In December 2003, the revolving credit facility was increased to \$40.0 million. In January 2004 it was decreased to \$35.0 million until it expires in February 2006. On December 28, 2004, the credit agreement was amended to permit the acquisition of NETI and to increase the aggregate permitted borrowings under the agreement to \$40.0 million through January 15, 2005, at which time it reverted back to \$35.0 million. On February 15, 2005, the Company replaced its Credit Agreement. See Note 20.

The Company completed a sale and leaseback of several facilities on December 28, 2001, as discussed further in Note 12. The Company retained a continuing involvement in the lease, as defined in SFAS No. 98, *Accounting for Leases, Sales-Leaseback Transactions Involving Real Estate, Definition of the Lease Term, and Initial Direct Costs of Direct Financing Leases*, and as a result it is prohibited from utilizing sale-leaseback accounting. Accordingly, the Company has treated this transaction as a finance lease. Rent payments under this obligation were \$1.2 million for the years ended December 31, 2003 and 2004, respectively. These payments have been reflected in the accompanying consolidated income statement as interest expense for all periods presented since the effective interest rate on the obligation is higher than the scheduled payments.

## **10. STOCKHOLDERS' EQUITY**

In April 2001, the Company instituted a 100:1 stock split resulting in 50,000,000 shares authorized. All share and per share amounts have been adjusted to give retroactive effect to this stock split.

On July 30, 2001, three senior members of management and a member of the Board of Directors purchased an aggregate of 222,448 shares for cash proceeds of \$0.7 million. Also in 2001, an existing shareholder purchased an additional 403,600 shares for cash proceeds of approximately \$1.2 million.

During 2002, an aggregate of 147,563 shares were purchased by certain officers and directors. In connection with the purchase of these shares, the Company received promissory notes for approximately \$0.4 million, payable in 10 years. Interest is payable annually at an annual interest rate

of 5.6%. These notes have been reflected as a reduction in stockholders' equity. During 2004, approximately \$0.3 million of these notes were repaid.

Effective January 1, 2002, the Company adopted the Lincoln Technical Institute Management Stock Option Plan (the "Plan") for key employees, consultants and nonemployee directors. The name of the Plan was changed to the LESC Management Stock Option Plan in 2003. There are reserved for issue, upon exercise of options granted under the Plan, no more than 2,087,835 shares of the authorized common shares. The term of each option granted is ten years. The options awarded to each key employee are evenly divided between service options, which vest annually from the date of grant, and performance options, which vest according to annual targets. The vesting of the options varies depending on date of hire. For all key employees, or non-employee directors who were with the Company prior to February 1, 2001, 20% of their service options were granted as of the effective date with 20% vesting annually thereafter. For their performance options, 25% vest each year beginning April 15, 2003, subject to the Company achieving certain financial goals. For all key employees, or non-employee directors who were hired after February 1, 2001, 20% of their service options vest on the anniversary of their hire date. Similarly, 20% of their performance options vest on each April 15 after the date of hire subject to achieving certain financial goals and vest in full after five years. The exercise price of the options is equal to the estimated fair value of the shares at the date of grant, which is determined by the board of directors as long as the Company is a privately-held entity.

As discussed in Note 2, the Company changed its method of calculating the fair value of its stock options. The Company utilized the minimum value method in 2002 and volatility assumptions commencing in 2003. The Company utilizes a market-based approach to determine the fair market value of stock options granted. The fair value of stock options granted during 2004 was determined using the Company's expected valuation in the public market based upon peer company comparisons of market multiples and based upon consultation with the Company's advisors. All options granted during 2004 were granted and valued contemporaneously based upon the Company's anticipated initial public offering price. The fair value of the stock options used to compute stock-based compensation is the estimated present value at the date of grant using the Black-Scholes option-pricing model with the following weighted-average assumptions.

	December 31,		
	2002	2003	2004
Expected volatility	0%	66.9–82.0%	59.79–80.35%
Expected dividend yield	0%	0%	0%
Expected life (term)	3–7 Years	3–8.5 Years	4–8.5 Years
Risk-free interest rate	2.02–5.68%	1.89–5.85%	2.45–4.27%
Weighted-average fair value of options granted during the year	\$ 3.10	\$ 11.94	\$ 23.88

The following is a summary of transactions pertaining to the option plans. Outstanding options at December 31, 2000 below are options provided to a board director in connection with the Company's acquisition:

	Weighted-Average	
	Shares	Exercise Price
Outstanding December 31, 2000	161,500	\$ 1.55
Granted	—	—
Outstanding December 31, 2001	161,500	1.55
Granted	1,922,420	3.10
Cancelled	(388,200)	3.10
Outstanding December 31, 2002	1,695,720	2.95
Granted	547,375	11.98
Cancelled	(87,500)	3.10
Outstanding December 31, 2003	2,155,595	5.22
Granted	128,500	23.88
Cancelled	(230,425)	9.49
Exercised	(31,175)	3.10
Outstanding December 31, 2004	2,022,495	\$ 5.92

As of December 31, 2004

Range of Exercise Prices	Stock Options Outstanding			Stock Options Exercisable	
	Shares	Contractual Weighted Average life (years)	Weighted Average Price	Shares	Weighted Exercise Price
\$1.55	161,500	4.47	\$ 1.55	161,500	\$ 1.55
\$3.10	1,364,120	7.04	3.10	726,082	3.10
\$4.00–\$10.00	93,000	8.36	6.07	18,600	6.07
\$14.00	275,375	8.85	14.00	68,680	14.00
\$20.00–\$25.00	128,500	9.28	23.88	0	0.0
Total	2,022,495	7.28	\$ 5.92	974,862	\$ 3.67

## 11. PENSION PLAN

The Company sponsors a noncontributory defined benefit pension plan covering substantially all of the Company's union employees. Benefits are provided based on employees' years of service and earnings. This plan was frozen on December 31, 1994 for non-union employees.

The following table sets forth the plan's funded status and amounts recognized in the consolidated financial statements as of December 31:

	Year Ended December 31,		
	2002	2003	2004
<b>CHANGES IN BENEFIT OBLIGATIONS:</b>			
Benefit obligation—beginning of year	\$ 9,625	\$ 10,912	\$ 11,966
Service cost	108	115	108
Interest cost	700	721	716
Assumption changes	1,246	—	—
Actuarial loss (gain)	(450)	686	683
Benefits paid	(317)	(468)	(418)
	<u>10,912</u>	<u>11,966</u>	<u>13,055</u>
<b>CHANGE IN PLAN ASSETS:</b>			
Fair value of plan assets—beginning of year	\$ 9,225	\$ 11,065	\$ 13,231
Actual return on plan assets	(624)	2,220	1,258
Employer contribution	2,802	414	—
Benefits paid, including expenses	(338)	(468)	(418)
	<u>11,065</u>	<u>13,231</u>	<u>14,071</u>
Fair value in excess of benefit obligation	153	1,265	1,016
<b>FUNDED STATUS:</b>			
Unrecognized net actuarial loss	4,511	3,503	3,805
Unrecognized prior service cost	4	3	2
Unrecognized transition asset	(9)	(6)	(3)
	<u>4,659</u>	<u>4,765</u>	<u>4,820</u>
Prepaid pension cost	\$ 4,659	\$ 4,765	\$ 4,820
<b>COMPONENTS OF NET PERIODIC BENEFIT COST (INCOME):</b>			
Service cost	\$ 108	\$ 115	\$ 108
Interest cost	700	721	716
Expected return on plan assets	(827)	(938)	(1,105)
Amortization of transition asset	(3)	(3)	(3)
Amortization of prior service cost	1	1	1
Recognized net actuarial loss	97	413	228
	<u>97</u>	<u>413</u>	<u>228</u>
Net periodic benefit cost (income)	\$ 76	\$ 309	\$ (55)

Fair value of total plan assets by major asset category:

	As of December 31,		
	2002	2003	2004
Cash and cash equivalents	7.8%	1.0%	—
Domestic equities	41.8%	45.0%	48.0%
International equities	9.3%	10.0%	11.0%
Domestic fixed income	41.1%	38.0%	35.0%
International fixed income	0.0%	6.0%	6.0%
Total	100.0%	100.0%	100.0%

Weighted-average assumptions used to determine benefit obligations as of December 31:

	2002	2003	2004
Discount Rate	6.75%	6.10%	5.75%
Rate of compensation increase	4.00%	4.00%	4.00%

Weighted-average assumptions used to determine net periodic pension cost for years ended December 31:

	2002	2003	2004
Discount Rate	7.75%	6.75%	6.10%
Expected return on plan assets	8.50%	8.50%	8.50%
Rate of compensation increase	4.00%	4.00%	4.00%

As this plan was frozen to non-union employees on December 31, 1994, the difference between the benefit obligation and accumulated benefit obligation is not significant in any year.

The Company invests plan assets based on a total return on investment approach, pursuant to which the plan assets include a diversified blend of equity and fixed income investments toward a goal of maximizing the long-term rate of return without assuming an unreasonable level of investment risk. The Company determines the level of risk based on an analysis of plan liabilities, the extent to which the value of the plan assets satisfies the plan liabilities and the plan's financial condition. The investment policy includes target allocations ranging from 30% to 70% for equity investments, 20% to 60% for fixed income investments and 0% to 10% for cash equivalents. The equity portion of the plan assets represents growth and value stocks of small, medium and large companies. The Company measures and monitors the investment risk of the plan assets both on a quarterly basis and annually when the Company assesses plan liabilities.

The Company uses a building block approach to estimate the long-term rate of return on plan assets. This approach is based on the capital market principle that the greater the volatility, the greater the return over the long term. An analysis of the historical performance of equity and fixed income investments, together with current market factors such as the inflation and interest rates, are used to help make the assumptions necessary to estimate a long-term rate of return on plan assets. Once this

estimate is made, the Company reviews the portfolio of plan assets and makes adjustments thereto that the Company believes are necessary to reflect a diversified blend of equity and fixed income investments that is capable of achieving the estimated long-term rate of return without assuming an unreasonable level of investment risk. The Company also compares the portfolio of plan assets to those of other pension plans to help assess the suitability and appropriateness of the plan's investments.

While the Company does not expect to make any contributions to the plan in the next fiscal year, after considering the funded status of the plan, movements in the discount rate, investment performance and related tax consequences, the Company may choose to make contributions to the plan in any given year.

Information about the expected benefit payments for the plan is as follows:

	Expected benefit payments:
2005	\$ 342
2006	510
2007	744
2008	515
2009	1,154
2010-2014	2,757

Effective January 1, 1995, the Company established a 401(k) salary reduction plan for all eligible employees. Employees may contribute up to 15% of their compensation into the plan. The Company will contribute an additional 30% of the employee's contributed amount on the first 6% of compensation. For the years ended December 31, 2002, 2003 and 2004, the Company's expense for the 401(k) plan amounted to \$0.3 million, \$0.5 million and \$0.9 million, respectively.

## 12. COMMITMENTS AND CONTINGENCIES

**Lease Commitments**—The Company leases office premises, educational facilities and various equipment for varying periods through the year 2020 at basic annual rentals (excluding taxes, insurance, and other expenses under certain leases) as follows:

Year Ending December 31,	Finance Obligations	Operating Leases	Capital Leases
2005	\$ 1,258	\$ 12,095	\$ 372
2006	1,258	11,784	320
2007	1,258	11,478	236
2008	1,258	10,943	236
2009	1,258	9,393	164
Thereafter	8,915	47,445	275
	15,205	103,138	1,603
Less amount representing interest	(15,205)	—	(309)
	\$ —	\$ 103,138	\$ 1,294

## 12. COMMITMENTS AND CONTINGENCIES (Continued)

On December 28, 2001, the Company completed a sale and leaseback of four owned facilities to a third party for net proceeds of approximately \$8.8 million. The initial term of the lease is 15 years with two ten-year extensions. The lease is an operating lease that starts at \$1.2 million in the first year and increases annually by the consumer price index. The lease includes an option near the end of the initial lease term to purchase the facilities at fair value, as defined. In connection with this transaction, \$9.0 million of cash received was required to be maintained as collateral security under the previous loan agreement and was reflected as restricted cash. Upon entering into the Credit Agreement on February 11, 2003, these restrictions were effectively eliminated. This transaction is being accounted for as a financing. The net proceeds received have been reflected in the consolidated balance sheet as a finance obligation. The lease payments are included as a component of interest expense.

Rent expense, included in general and administrative expenses in the accompanying financial statements for the years ended December 31, 2002, 2003 and 2004, is \$11.5 million, \$11.8 million and \$15.2 million, respectively. Interest expense related to the financing obligation in the accompanying financial statements for the years ended December 31, 2002, 2003 and 2004 is \$1.2 million.

**Litigation and Regulatory Matters**—The Company has been named as a defendant in actions resulting from the normal course of operations. Based, in part, on the opinion of counsel, management believes that the resolution of these matters will not have a material effect on its financial position, results of operations and cash flows.

**Letters of Credit**—The Company has available \$9.0 million of letters of credit under the Credit Agreement. There are outstanding letters of credit relative to bonding and building rental agreements in the amount of \$2.6 million, \$5.8 million and \$4.0 million at December 31, 2002, 2003 and 2004, respectively.

## 13. INCOME TAXES

Provision (benefit) for income taxes includes the following:

	December 31,		
	2002	2003	2004
Currently payable:			
Federal	\$ 39	\$ 3,401	\$ 7,774
State	391	669	1,797
Total	430	4,070	9,571
Deferred:			
Federal	(337)	859	(329)
State	(194)	426	—
Total	(531)	1,285	(329)
Total provision (benefit)	\$ (101)	\$ 5,355	\$ 9,242

The components of the deferred tax assets are as follows:

	December 31,	
	2003	2004
<b>Deferred tax assets</b>		
<b>Current:</b>		
Vacation	\$ 291	\$ 350
Allowance for bad debts	2,160	2,809
Accrued student fees	898	706
Accrued legal fees	21	22
Accrued bonus	1,412	—
Medical claims	543	594
<b>Other</b>	<b>29</b>	<b>28</b>
<b>Total current deferred tax assets</b>	<b>5,354</b>	<b>4,509</b>
<b>Noncurrent:</b>		
Accrued rent	396	1,042
Stock-based compensation	316	813
Depreciation	951	1,783
Other intangibles	195	297
Sale leaseback—deferred gain	1,497	1,627
<b>Total noncurrent deferred tax assets</b>	<b>3,355</b>	<b>5,562</b>
<b>Total deferred tax assets</b>	<b>8,709</b>	<b>10,071</b>
<b>Deferred tax liabilities</b>		
<b>Noncurrent:</b>		
Other	—	(24)
Goodwill	(453)	(1,444)
Prepaid pension cost	(1,910)	(1,928)
<b>Total deferred tax liabilities</b>	<b>(2,363)</b>	<b>(3,396)</b>
<b>Total net noncurrent deferred tax assets</b>	<b>992</b>	<b>2,166</b>
<b>Total net deferred tax assets</b>	<b>\$ 6,346</b>	<b>\$ 6,675</b>

As of December 31, 2003, the Company had utilized all available net operating loss carry forwards.

The difference between the actual tax provision (benefit) and the tax provision (benefit) that would result from the use of the Federal statutory rate is as follows:

	Year Ended December 31,					
	2002		2003		2004	
Income (loss) before taxes	\$ (775)	100.0 %	\$ 13,574	100.0 %	\$ 22,220	100.0 %
Expected tax (benefit)	\$ (264)	(34.0) %	\$ 4,615	34.0 %	\$ 7,777	35.0 %
Other nondeductible items	—	—	161	1.2	297	1.3
Other	(47)	(6.1)	(144)	(1.0)	—	—
State tax expense (net of Federal benefit)	210	27.1	723	5.3	1,168	5.3
Total	\$ (101)	(13.0) %	\$ 5,355	39.5 %	\$ 9,242	41.6 %

#### 14. SEGMENT REPORTING

The Company follows SFAS No. 131, "*Disclosures About Segments of an Enterprise and Related Information*." SFAS 131 establishes standards for the way that public business enterprises report certain information about operating segments in their financial reports. Operating segments are defined as components of an enterprise about which separate financial information is available that is evaluated on a regular basis by the chief operating decision maker, or decision making group, in assessing performance of the segment and in deciding how to allocate resources to an individual segment. SFAS No. 131 also established standards for related disclosures about products and services, geographic areas and major customers.

The Company's principal business is providing post-secondary education. Accordingly, the Company's operations aggregate into one reporting segment.

#### 15. RELATED PARTY TRANSACTIONS

The Company had a consulting agreement with Hart Capital LLC, which was terminated by its terms in June, 2004, to advise the Company in identifying acquisition and merger targets and assisting with the due diligence reviews of and negotiations with these targets. Hart Capital LLC is the managing member of Five Mile River Capital Partners LLC, which is the second largest stockholder of the Company. Steven Hart, the owner and President of Hart Capital LLC, sits on the Company's board of directors. The Company paid Hart Capital LLC a monthly retainer, reimbursement of expenses and an advisory fee for its work on successful acquisitions or mergers. In accordance with the agreement, the Company paid Hart Capital LLC approximately \$0.7 million, \$0.6 million and \$0.4 million for the years ended December 31, 2002, 2003 and 2004, respectively. Pursuant to the agreement, the Company may have future obligations to make certain payments to Hart Capital with respect to acquisition opportunities identified for the Company by Hart Capital prior to the termination of the agreement, if the Company consummates any such acquisition opportunities within the twelve months following the termination of the agreement. Accordingly, in connection with the consummation of the NETI acquisition, which closed on January 11, 2005, the Company paid Hart Capital \$0.3 million for its services.

In 2003, the Company entered into a management service agreement with its majority stockholder, Stonington Partners. In accordance with this agreement, the Company pays Stonington Partners a management fee of \$0.75 million per year for management consulting and financial and business advisory services. Such services include valuing acquisitions and structuring their financing and assisting with new loan agreements. This agreement will terminate by its terms upon the Company's completion of an initial public offering.

As discussed in Note 10, during 2002, the Company advanced certain members of senior management approximately \$0.4 million in the aggregate in connection with their purchase of Company stock. These notes have been reflected as a reduction in stockholders' equity. During 2004, approximately \$0.2 million of these loans were repaid.

## 16. SALE/DISPOSAL OF ASSETS

During 2002, the Company sold certain assets and property at the Oak Lawn, Illinois school for net proceeds of approximately \$1.3 million and recognized a gain on this sale of approximately \$1.0 million. In connection with the sale, the Company recorded another current asset of approximately \$0.3 million representing a reimbursement due from the State of Illinois for environmental remediation costs incurred. This reimbursement was received in 2003.

During 2002, the Company sold certain assets for net proceeds of \$0.2 million and recognized a gain of approximately \$0.1 million.

During 2004, the Company vacated its facility in Indianapolis resulting in a loss on the disposal of assets of approximately \$0.3 million. The Company is currently seeking to sell the property and has reclassified the assets to assets held for sale.

## 17. UNAUDITED QUARTERLY FINANCIAL INFORMATION

Quarterly financial information for 2003 and 2004 is as follows (in thousands except per share data):

2003	Quarter			
	First	Second	Third	Fourth
Net revenues	\$ 41,246	\$ 43,751	\$ 53,711	\$ 60,173
Income (loss) from operations	883	(1,452)	6,540	10,017
Net income available to common shareholders	43	(1,082)	3,499	5,759
Income per share:				
Basic	\$ 0.00	\$ (0.05)	\$ 0.16	\$ 0.27
Diluted	0.00	(0.05)	0.16	0.26

2004	Quarter			
	First	Second	Third	Fourth
Net revenues	\$ 59,574	\$ 59,206	\$ 69,196	\$ 73,299
Income from operations	3,632	2,119	8,293	11,079
Net income available to common shareholders	1,618	860	4,393	6,107
Income per share:				
Basic	\$ 0.07	\$ 0.04	\$ 0.20	\$ 0.28
Diluted	0.07	0.04	0.19	0.27

## 18. ACCOUNTING FOR LEASES

In connection with the recent clarification by the Securities and Exchange Commission (the "SEC") of existing accounting literature related to lease accounting, the Company has completed a review of its lease accounting policies. As a result of that review, it is correcting its lease accounting practices for certain matters relating to lease accounting, as described below.

As a result, the Company has recorded a one-time, non-cash rent charge of \$0.7 million (\$0.4 million net of tax, related to prior years) in its fourth quarter of fiscal 2004 related to the timing of rent expense for its schools during the period of construction of leasehold improvements as well as to align the depreciation lives of certain of its leasehold improvements to the noncancellable lease terms, including renewal options. Previously, the Company did not report rent expense until the lease commencement date. The Company will record rent expense when the landlord allows it to begin construction of the leasehold improvements, which is typically three to four months before the lease commencement date.

The Company's financial statements for prior periods have not been restated since the amount, \$0.4 million, net of tax, related to prior years was deemed to be immaterial to its results of operations and statements of financial position and cash flows for the current year or any individual prior year. This correction does not impact historical or future cash flows or timing of payments under related leases.

## 19. INITIAL PUBLIC OFFERING

On September 30, 2004, the Company wrote-off \$2.1 million of deferred offering costs as a result of a delay in filing the Company's registration statement. The Company is presently preparing an initial public offering of its common stock. Completion of such offering cannot be assured.

## 20. SUBSEQUENT EVENT

The Company has negotiated a new credit agreement with a syndicate of banks led by its existing lender. Under the terms of the agreement, which closed on February 15, 2005, the syndicate has committed to provide the Company with a \$100 million credit facility with a term of five years. The credit agreement permits the issuance of letters of credit, up to \$20 million, the amount of which reduces the availability of permitted borrowings under the agreement.

The obligations of the Company and its subsidiaries under the credit agreement are secured by a lien on substantially all of the assets of the Company and its subsidiaries and any assets that it or its subsidiaries may acquire in the future, including a pledge of substantially all of its and its subsidiaries' common stock. Outstanding borrowings bear interest at the rate of adjusted LIBOR plus 1.0% to 1.75%, as defined or a base rate (as defined in the credit agreement). In addition to paying interest on outstanding principal under the credit agreement, the Company and its subsidiaries are required to pay a commitment fee to the lender with respect to the unused amounts available under the credit agreement at a rate equal to 0.25% to .40% per year, as defined.

On January 11, 2005, the Company acquired the rights, title and interests in the assets used in the conduct and operations of NETI for a purchase price of approximately \$20 million. The Company has not yet finalized the allocation of the purchase price to the fair value of the net assets acquired. On a preliminary basis, however, they have allocated \$1.3 million to a non-compete agreement and \$0.4 million to the value of student contracts.

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**LINCOLN EDUCATIONAL SERVICES CORPORATION**  
**Schedule II—Valuation and Qualifying Accounts**  
**(in thousands)**

Description	Balance at Beginning of Period	Charged to Expense	Deductions	Balance at End of Period
<b>Allowance accounts for the year ended:</b>				
December 31, 2002				
Allowance for accounts receivable	\$1,828	5,696	4,146	\$3,378
December 31, 2003				
Allowance for accounts receivable	\$3,378	7,415	5,324	\$5,469
December 31, 2004				
Allowance for accounts receivable	\$5,469	9,247	7,693	\$7,023

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Until , 2005 (25 days after the commencement of the offering), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to unsold allotments or subscriptions.

**4,000,000 Shares**



**Lincoln Educational Services Corporation**

**Common Stock**

—  
**PROSPECTUS**  
—

**Merrill Lynch & Co.  
Banc of America Securities LLC  
Lehman Brothers  
Harris Nesbitt  
Jefferies & Company, Inc.  
Robert W. Baird & Co.**

, 2005

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## PART II

### INFORMATION NOT REQUIRED IN THE PROSPECTUS

#### Item 13. Other Expenses of Issuance and Distribution

The following are the estimated expenses to be incurred in connection with the issuance and distribution of the securities registered under this Registration Statement, other than underwriting discounts and commissions. All amounts shown are estimates except the Securities and Exchange Commission registration fee and the National Association of Securities Dealers, Inc. filing fee. The following expenses will be borne solely by the Registrant.

SEC Registration Fee	\$	16,919
National Association of Securities Dealers, Inc. Filing Fee		14,875
Nasdaq Listing Fee		5,000
Printing and Engraving Expenses		475,000
Legal Fees and Expenses		1,050,000
Accounting Fees and Expenses		500,000
Transfer Agent and Registrar Fees and Expenses		2,000
Miscellaneous		336,206
		<hr/>
Total		2,400,000
		<hr/>

#### Item 14. Indemnification of Directors and Officers

The New Jersey Business Corporation Act permits or requires indemnification of officers and directors in the event that certain statutory standards of conduct are met.

We expect that our amended and restated certificate of incorporation, which we expect to adopt prior to the completion of this offering, will provide as follows:

The Corporation shall indemnify any and all persons who may serve or who have served at any time as directors or officers of the corporation, or who, at the request of the Board of Directors of the corporation may serve or at any time have served as directors or officers of another corporation in which the corporation at such time owned or may own shares of stock or of which it was or may be a creditor, and their respective heirs, administrators, successors, and assigns, against any and all expenses, including amounts paid upon judgments, counsel fees, fines and amounts paid in settlement, actually and necessarily incurred by such persons in connection with the defense or settlement of any pending or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative, in which they, or any of them, are made parties, or a party, or which may be asserted against them or any of them, by reason of being or having been directors or officers or a director or officer of the corporation, or of such other corporation, except if a judgment or other final adjudication adverse to the corporate agent establishes that his acts or omissions (a) were in breach of his duty of loyalty to the corporation or its shareholders (as defined in N.J.S.A. 14A:2-7(3)), (b) were not in good faith or involved a knowing violation of law, or (c) resulted in the receipt by the corporate agent of an improper personal benefit. Such indemnification shall be in addition to any other rights to which those indemnified may be entitled under any law, bylaw, agreement, vote of stockholders, or otherwise.

We expect that our amended and restated bylaws, which we expect to adopt prior to the completion of this offering, will provide as follows:

The Corporation shall indemnify any and all persons who may serve or who have served at any time as directors or officers of the corporation, or who, at the request of the Board of Directors of the corporation, may serve or at any time have served as directors or officers of another corporation in which the corporation at such time owned or may own shares of stock or of

which it was or may be a creditor, and their respective heirs, administrators, successors, and assigns, against any and all expenses, including amounts paid upon judgments, counsel fees, fines and amounts paid in settlement, actually and necessarily incurred by such persons in connection with the defense or settlement of any pending or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative, in which they, or any of them, are made parties, or a party, or which may be asserted against them or any of them, by reason of being or having been directors or officers or a director or officer of the corporation, or of such other corporation, except if a judgment or other final adjudication adverse to the corporate agent establishes that his acts or omissions (a) were in breach of his duty of loyalty to the corporation or its shareholders (as defined in N.J.S.A. 14A:2-7(3)), (b) were not in good faith or involved a knowing violation of law, or (c) resulted in the receipt by the corporate agent of an improper personal benefit. Such indemnification shall be in addition to any other rights to which those indemnified may be entitled under any law, bylaw, agreement, vote of stockholders, or otherwise.

See Item 17 for our undertaking to submit to adjudication for violation of these security laws.

**Item 15. Recent Sales of Unregistered Securities**

During the past three years, we have issued unregistered securities to a limited number of persons, as described below. None of these transactions involved any underwriters or any public offerings and we believe that each of these transactions was exempt from registration requirements pursuant to Section 3(a)(9) or Section 4(2) of the Securities Act of 1933, as amended, Regulation D promulgated thereunder or Rule 701 of the Securities Act of 1933 pursuant to compensatory benefit plans and contracts related to compensation as provided under Rule 701. The recipients of the securities in these transactions represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were affixed to the share certificates and instruments issued in these transactions.

On July 30, 2001, three senior members of management and a member of the Board of Directors purchased 222,448 shares from the Company for cash proceeds of \$689,588.

During 2002, 147,563 shares were purchased by certain officers and directors. In connection with the purchase of these shares, the Company received promissory notes for approximately \$432,000, payable in 10 years. Interest is payable annually at an annual interest rate of 5.6%. These notes have been reflected as a reduction in shareholder's equity. As of March 24, 2005, the promissory notes were repaid in full.

**Item 16. Exhibits and Financial Statement Schedules**

(a) *Exhibits.*

Exhibit Number	Description
1.1	Form of Underwriting Agreement.
**3.1	Certificate of Incorporation of Registrant and amendments thereto.
3.2	Form of Amended and Restated Certificate of Incorporation of Registrant (to become effective upon completion of the offering).
**3.3	Bylaws of registrant.
3.4	Form of Amended and Restated Bylaws of Registrant (to become effective upon completion of the offering).
*4.1	Specimen Certificate evidencing shares of common stock.

- \*\*4.2 Stockholders' Agreement, dated as of September 15, 1999, among Lincoln Technical Institute, Inc., Back to School Acquisition, L.L.C., and Five Mile River Capital Partners LLC.
- \*\*4.3 Letter agreement, dated August 9, 2000, by Back to School Acquisition, L.L.C., amending the Stockholders' Agreement.
- \*\*4.4 Letter agreement, dated August 9, 2000, by Lincoln Technical Institute, Inc., amending the Stockholders' Agreement.
- \*\*4.5 Stockholders' Agreement, dated as of June 21, 1999, among Lincoln Technical Institute, Inc., Back to School Acquisition, L.L.C., P.J. Santangelo and James Santangelo.
- \*\*4.6 Management Stockholders Agreement, dated as of January 1, 2002, by and among Lincoln Technical Institute, Inc., Back to School Acquisition, L.L.C. and the Stockholders and other holders of options under the Management Stock Option Plan listed therein.
- \*\*4.7 Form of Registration Rights Agreement between Lincoln Educational Services Corporation and Back to School Acquisition, L.L.C.
- \*5.1 Form of Opinion of Lindabury, McCormick & Estabrook, P.A. regarding legality of common stock.
- \*\*10.1 Credit Agreement, dated as of February 15, 2005, among Lincoln Educational Services Corporation, the Guarantors from time to time parties thereto, the Lenders from time to time parties thereto and Harris Trust and Savings Bank, as Administrative Agent.
- \*\*10.2 Employment Agreement, dated as of January 3, 2005, between Lincoln Educational Services Corporation and David F. Carney.
- \*\*10.3 Amended Employment Agreement, dated as of March 1, 2005, between Lincoln Educational Services Corporation and David F. Carney.
- \*\*10.4 Employment Agreement, dated as of January 3, 2005, between Lincoln Educational Services Corporation and Lawrence E. Brown.
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- \*\*10.12 Lincoln Educational Services Corporation 2005 Deferred Compensation Plan.
- 10.13 [Omitted]
- \*\*10.14 Lincoln Technical Institute Management Stock Option Plan, effective January 1, 2002.
- \*\*10.15 Form of Stock Option Agreement, dated January 1, 2002, between Lincoln Technical Institute, Inc. and certain participants.

- \*\*10.16 Management Stock Subscription Agreement, dated January 1, 2002, among Lincoln Technical Institute, Inc. and certain management investors.
- \*\*21.1 Subsidiaries of Registrant.
- \*23.1 Consent of Lindabury, McCormick & Estabrook, P.A. (included in Exhibit 5.1).
- 23.2 Consent of Deloitte & Touche LLP.
- \*\*24.1 Power of Attorney.
- \*\*24.2 Power of Attorney of John Petillo.

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\* To be filed by amendment.

\*\* Previously filed.

(b) *Financial Statement Schedules.*

All schedules for which a provision is made in the applicable accounting regulations of the Securities and Exchange Commission and are required under the related instructions are as follows:

1. Lincoln Educational Services Corporation, Schedule II—Valuation and Qualifying Accounts.

#### **Item 17. Undertakings**

(a) 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 informed 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 Securities Act and will be governed by the final adjudication of such issue.

(b) The undersigned Registrant undertakes that:

- i. 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 the 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; and
- ii. 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.

(c) The undersigned Registrant undertakes to provide to the underwriters at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.



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Jerry G. Rubenstein

Director

June 7, 2005

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Peter S. Burgess

Director

June 7, 2005

II-6

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## EXHIBIT INDEX

The following exhibits are filed with this Registration Statement.

Exhibit Number	Description
1.1	Form of Underwriting Agreement.
**3.1	Certificate of Incorporation of Registrant and amendments thereto.
3.2	Form of Amended and Restated Certificate of Incorporation of Registrant (to become effective upon completion of the offering).
**3.3	Bylaws of registrant.
3.4	Form of Amended and Restated Bylaws of Registrant (to become effective upon completion of the offering).
*4.1	Specimen Certificate evidencing shares of common stock.
**4.2	Stockholders' Agreement, dated as of September 15, 1999, among Lincoln Technical Institute, Inc., Back to School Acquisition, L.L.C., and Five Mile River Capital Partners LLC.
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LINCOLN EDUCATIONAL SERVICES CORPORATION

(a New Jersey corporation)

[ ] Shares of Common Stock

PURCHASE AGREEMENT

Dated: [ ], 2005

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LINCOLN EDUCATIONAL SERVICES CORPORATION

(a New Jersey corporation)

[ ] Shares of Common Stock

(No Par Value Per Share)

**PURCHASE AGREEMENT**

[ ], 2005

MERRILL LYNCH & CO.  
Merrill Lynch, Pierce, Fenner & Smith  
Incorporated  
Banc of America Securities LLC  
Lehman Brothers Inc.  
as Representatives of the several Underwriters  
c/o MERRILL LYNCH & CO.  
4 World Financial Center  
New York, New York 10080

Ladies and Gentlemen:

Lincoln Educational Services Corporation, a New Jersey corporation (the "Company"), and the persons listed in Schedule B hereto (the "Selling Shareholders") confirm their respective agreements with Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), Banc of America Securities LLC, Lehman Brothers Inc. and each of the other Underwriters named in Schedule A hereto (collectively, the "Underwriters", which term shall also include any underwriter substituted as hereinafter provided in Section 10 hereof), for whom Merrill Lynch, Banc of America Securities LLC and Lehman Brothers Inc. are acting as representatives (in such capacity, the "Representatives"), with respect to (i) the sale by the Company and the Selling Shareholders, acting severally and not jointly, and the purchase by the Underwriters, acting severally and not jointly, of the respective numbers of shares of Common Stock, no par value per share, of the Company ("Common Stock") set forth in Schedules A and B hereto and (ii) the grant by the Company and the Selling Shareholders to the Underwriters, acting severally and not jointly, of the option described in Section 2(b) hereof to purchase all or any part of [ ] additional shares of Common Stock to cover overallocments, if any. The aforesaid [ ] shares of Common Stock (the "Initial Securities") to be purchased by the Underwriters and all or any part of the [ ] shares of Common Stock subject to the option described in Section 2(b) hereof (the "Option Securities") are hereinafter called, collectively, the "Securities."

The Company and the Selling Shareholders understand that the Underwriters propose to make a public offering of the Securities as soon as the Representatives deem advisable after this Agreement has been executed and delivered.

The Company, the Selling Shareholders and the Underwriters agree that up to [ ] shares of the Securities to be purchased by the Underwriters (the "Reserved Securities") shall be

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reserved for sale by the Underwriters to certain eligible employees and persons having business relationships with the Company (the "Invitees"), as part of the distribution of the Securities by the Underwriters, subject to the terms of this Agreement, the applicable rules, regulations and interpretations of the National Association of Securities Dealers, Inc. and all other applicable laws, rules and regulations. To the extent that such Reserved Securities are not orally confirmed for purchase by Invitees by the end of the first business day after the date of this Agreement, such Reserved Securities may be offered to the public as part of the public offering contemplated hereby.

The Company has filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-1 (No. 333-123644), including the related preliminary prospectus or prospectuses, covering the registration of the Securities under the Securities Act of 1933, as amended (the "1933 Act"). Promptly after execution and delivery of this Agreement, the Company will prepare and file a prospectus in accordance with the provisions of Rule 430A ("Rule 430A") of the rules and regulations of the Commission under the 1933 Act (the "1933 Act Regulations") and paragraph (b) of Rule 424 ("Rule 424(b)") of the 1933 Act Regulations. The information included in such prospectus that was omitted from such registration statement at the time it became effective but that is deemed to be part of such registration statement at the time it became effective pursuant to paragraph (b) of Rule 430A is referred to as "Rule 430A Information." Each prospectus used before such registration statement became effective, and any prospectus that omitted the Rule 430A Information, that was used after such effectiveness and prior to the execution and delivery of this Agreement, is herein called a "preliminary prospectus." Such registration statement, including the exhibits and any schedules thereto, at the time it became effective, and including the Rule 430A Information, is herein called the "Registration Statement." Any registration statement filed pursuant to Rule 462(b) of the 1933 Act Regulations is herein referred to as the "Rule 462(b) Registration Statement," and after such filing the term "Registration Statement" shall include the Rule 462(b) Registration Statement. The final prospectus in the form first furnished to the Underwriters for use in connection with the offering of the Securities is herein called the "Prospectus." For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system ("EDGAR").

SECTION 1. Representations and Warranties.

(a) *Representations and Warranties by the Company.* The Company represents and warrants to each Underwriter as of the date hereof, as of the Closing Time referred to in Section 2(c) hereof, and as of each Date of Delivery (if any) referred to in Section 2(b) hereof, and agrees with each Underwriter, as follows:

(i) Compliance with Registration Requirements. Each of the Registration Statement, any Rule 462(b) Registration Statement and any post-effective amendment thereto has become effective under the 1933 Act and no stop order suspending the effectiveness of the Registration Statement, any Rule 462(b) Registration Statement or any post-effective amendment thereto has been issued under the 1933 Act and no proceedings for that purpose have been instituted or are pending or, to the knowledge of

the Company, are contemplated by the Commission, and any request on the part of the Commission for additional information has been complied with.

At the respective times the Registration Statement, any Rule 462(b) Registration Statement and any post-effective amendments thereto became effective and at the Closing Time (and, if any Option Securities are purchased, at the Date of Delivery), the Registration Statement, the Rule 462(b) Registration Statement and any amendments and supplements thereto complied and will comply in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations and did not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and the Prospectus, any preliminary prospectus and any supplement thereto or prospectus wrapper prepared in connection therewith, at their respective times of issuance and at the Closing Time, complied and will comply in all material respects with any applicable laws or regulations of foreign jurisdictions in which the Prospectus and such preliminary prospectus, as amended or supplemented, if applicable, are distributed in connection with the offer and sale of Reserved Securities. Neither the Prospectus nor any amendments or supplements thereto (including any prospectus wrapper), at the time the Prospectus or any such amendment or supplement was issued and at the Closing Time (and, if any Option Securities are purchased, at the Date of Delivery), included or will include an untrue statement of a material fact or omitted or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties in this subsection shall not apply to statements in or omissions from the Registration Statement or Prospectus made in reliance upon and in conformity with written information furnished to the Company by any Underwriter through Merrill Lynch expressly for use in the Registration Statement (or any amendment thereto) or the Prospectus (or any amendment or supplement thereto).

Each preliminary prospectus and the prospectus filed as part of the Registration Statement as originally filed or as part of any amendment thereto complied when so filed in all material respects with the 1933 Act Regulations and each preliminary prospectus and the Prospectus delivered to the Underwriters for use in connection with this offering was identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(ii) Independent Accountants. The accountants who certified the financial statements and supporting schedules included in the Registration Statement are independent public accountants as required by the 1933 Act and the 1933 Act Regulations.

(iii) Financial Statements. The financial statements included in the Registration Statement and the Prospectus, together with the related schedules and notes, present fairly the financial position of the Company and its consolidated subsidiaries at the dates indicated and the statement of operations, shareholders' equity and cash flows of the Company and its consolidated subsidiaries; said financial statements have been prepared in conformity with generally accepted accounting

principles (“GAAP”) applied on a consistent basis throughout the periods involved. The supporting schedules included in the Registration Statement present fairly in accordance with GAAP the information required to be stated therein. The selected financial data and the summary financial information included in the Prospectus present fairly the information shown therein and have been compiled on a basis consistent with that of the audited financial statements included in the Registration Statement. The pro forma financial statements and the related notes thereto included in the Registration Statement and the Prospectus present fairly the information shown therein, have been prepared in accordance with the Commission’s rules and guidelines with respect to pro forma financial statements and have been properly compiled on the bases described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein.

(iv) No Material Adverse Change in Business. Since the respective dates as of which information is given in the Registration Statement and the Prospectus, except as otherwise stated therein, (A) there has been no material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business (a “Material Adverse Effect”), (B) there have been no transactions entered into by the Company or any of its subsidiaries, other than those in the ordinary course of business, that are material with respect to the Company and its subsidiaries considered as one enterprise and (C) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(v) Good Standing of the Company. The Company has been duly organized and is validly existing as a corporation in good standing under the laws of the State of New Jersey and has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and to enter into and perform its obligations under this Agreement; and the Company is duly qualified as a foreign corporation to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not reasonably be expected to result in a Material Adverse Effect.

(vi) Good Standing of Subsidiaries. Each “significant subsidiary” of the Company (as such term is defined in Rule 1-02 of Regulation S-X) (each a “Subsidiary” and, collectively, the “Subsidiaries”) has been duly organized and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not reasonably be expected to result in a Material Adverse Effect; except as otherwise

disclosed in the Registration Statement, all of the issued and outstanding capital stock of each such Subsidiary has been duly authorized and validly issued, is fully paid and nonassessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity; none of the outstanding shares of capital stock of any Subsidiary was issued in violation of the preemptive or similar rights of any securityholder of such Subsidiary. The only subsidiaries of the Company are the subsidiaries listed on Exhibit 21.1 to the Registration Statement.

(vii) Capitalization. The authorized, issued and outstanding capital stock of the Company is as set forth in the Prospectus as of the date indicated in the column entitled “Actual” under the caption “Capitalization” and notes thereto (except for subsequent issuances, if any, pursuant to this Agreement, pursuant to reservations, agreements or employee benefit plans referred to in the Prospectus or pursuant to the exercise of convertible securities or options referred to in the Prospectus). The shares of issued and outstanding capital stock, including the Securities to be purchased by the Underwriters from the Selling Shareholders, have been duly authorized and validly issued and are fully paid and nonassessable; none of the outstanding shares of capital stock, including the Securities to be purchased by the Underwriters from the Selling Shareholders, was issued in violation of the preemptive or other similar rights of any securityholder of the Company.

(viii) Authorization of Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(ix) Authorization and Description of Securities. The Securities to be purchased by the Underwriters from the Company have been duly authorized for issuance and sale to the Underwriters pursuant to this Agreement and, when issued and delivered by the Company pursuant to this Agreement against payment of the consideration set forth herein, will be validly issued and fully paid and nonassessable; the Common Stock conforms to all statements relating thereto contained in the Prospectus and such description conforms to the rights set forth in the instruments defining the same; no holder of the Securities will be subject to personal liability by reason of being such a holder; and the issuance of the Securities is not subject to the preemptive or other similar rights of any securityholder of the Company.

(x) Absence of Defaults and Conflicts. Neither the Company nor any of its subsidiaries is in violation of its charter or by-laws or in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound, or to which any of the property or assets of the Company or any subsidiary is subject (collectively, “Agreements and Instruments”) except for such defaults that would not reasonably be expected to result in a Material Adverse Effect; and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein and in the Registration Statement (including the issuance and sale of the Securities and the use of the proceeds from the

sale of the Securities as described in the Prospectus under the caption “Use of Proceeds”) and compliance by the Company with its obligations hereunder have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or Repayment Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any subsidiary pursuant to, the Agreements and Instruments (except for such conflicts, breaches, defaults or Repayment Events or liens, charges or encumbrances that would not reasonably be expected to result in a Material Adverse Effect), nor will such action result in any violation of (A) the provisions of the charter or by-laws of the Company or any subsidiary or (B) except for any such violation that would not reasonably be expected to result in a Material Adverse Effect, any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over the Company or any subsidiary or any of their assets, properties or operations, including, without limitation, the Higher Education Act of 1965, as amended, and the regulations promulgated thereunder (the “HEA”). As used herein, a “Repayment Event” means any event or condition that gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any subsidiary.

(xi) Absence of Labor Dispute. No labor dispute with the employees of the Company or any subsidiary exists or, to the knowledge of the Company, is imminent, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its or any subsidiary’s principal suppliers, manufacturers, customers or contractors, which, in either case, would reasonably be expected to result in a Material Adverse Effect.

(xii) Absence of Proceedings. There is no action, suit, proceeding, inquiry or investigation before or brought by any court or governmental agency or body, domestic or foreign, now pending, or, to the knowledge of the Company, threatened, against or affecting the Company or any subsidiary, that is required to be disclosed in the Registration Statement (other than as disclosed therein), or that might reasonably be expected to result in a Material Adverse Effect, or which might reasonably be expected to materially and adversely affect the properties or assets thereof or the consummation of the transactions contemplated in this Agreement or the performance by the Company of its obligations hereunder; the aggregate of all pending legal or governmental proceedings to which the Company or any subsidiary is a party or of which any of their respective property or assets is the subject that are not described in the Registration Statement, including ordinary routine litigation incidental to the business, could not reasonably be expected to result in a Material Adverse Effect.

(xiii) No Change of Control. The issuance and sale of the Securities and the consummation of the transactions contemplated herein and in the Registration Statement will not constitute a change in ownership resulting in a “change of control” of the Company as defined under the HEA.

(xiv) Accuracy of Exhibits. There are no contracts or documents that are required by the 1933 Act or 1933 Act Regulations to be described in the Registration Statement or the Prospectus or to be filed as exhibits thereto that have not been so described and filed as required.

(xv) Regulatory Environment. The statements in the Prospectus under the heading “Regulatory Environment” fairly summarize the matters therein described.

(xvi) Possession of Intellectual Property. The Company and its subsidiaries own or possess, or believe they can acquire on reasonable terms, adequate patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks, trade names or other intellectual property (collectively, “Intellectual Property”) necessary to carry on the business now operated by them, and neither the Company nor any of its subsidiaries has received any notice or is otherwise aware of any infringement of or conflict with asserted rights of others with respect to any Intellectual Property or of any facts or circumstances which would render any Intellectual Property invalid or inadequate to protect the interest of the Company or any of its subsidiaries therein, and which infringement or conflict (if the subject of any unfavorable decision, ruling or finding) or invalidity or inadequacy, singly or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

(xvii) Absence of Further Requirements. Except as described in the Prospectus, no filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency is necessary or required for the performance by the Company of its obligations hereunder, in connection with the offering, issuance or sale of the Securities hereunder or the consummation by it of the transactions contemplated by this Agreement, except such as have been already obtained or as may be required under the 1933 Act or the 1933 Act Regulations or state securities or blue sky laws.

(xviii) Absence of Manipulation. Neither the Company nor any affiliate of the Company has taken, nor will the Company or any affiliate take, directly or indirectly, any action that is designed to or that has constituted or which would be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(xix) Possession of Licenses and Permits. Except as disclosed in the Prospectus, the Company and its subsidiaries possess such permits, licenses, approvals, consents and other authorizations (collectively, “Governmental Licenses”) issued by the appropriate federal, state, local or foreign regulatory agencies or bodies including, without limitation, all authorizations required for participation in federal financial aid programs under Title IV (“Title IV Program”) of the HEA, necessary to conduct the business now operated by them, except where the failure so to possess would not, singly or in the aggregate, result in a Material Adverse Effect; the Company and its subsidiaries are in compliance with the terms and conditions of all such Governmental Licenses, except where the failure so to comply would not, singly or in the aggregate,

result in a Material Adverse Effect; all of the Governmental Licenses are valid and in full force and effect, except when the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not, singly or in the aggregate, result in a Material Adverse Effect; and neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any such Governmental Licenses that, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Material Adverse Effect.

(xx) Title to Property. The Company and its subsidiaries have good and marketable title to all real property owned by the Company and its subsidiaries and good title to all other properties owned by them, in each case, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances of any kind except such as (a) are described in the Prospectus or (b) do not, singly or in the aggregate, materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company or any of its subsidiaries; and all of the leases and subleases material to the business of the Company and its subsidiaries, considered as one enterprise, and under which the Company or any of its subsidiaries holds properties described in the Prospectus, are in full force and effect, and neither the Company nor any subsidiary has any notice of any material claim of any sort that has been asserted by anyone adverse to the rights of the Company or any subsidiary under any of the leases or subleases mentioned above, or affecting or questioning the rights of the Company or such subsidiary to the continued possession of the leased or subleased premises under any such lease or sublease.

(xxi) Investment Company Act. The Company is not, and upon the issuance and sale of the Securities as herein contemplated and the application of the net proceeds therefrom as described in the Prospectus will not be, an “investment company” within the meaning of the Investment Company Act of 1940, as amended (the “1940 Act”).

(xxii) Environmental Laws. Except as described in the Registration Statement and except as would not, singly or in the aggregate, be reasonably expected to result in a Material Adverse Effect, (A) neither the Company nor any of its subsidiaries is in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products, asbestos-containing materials or mold (collectively, “Hazardous Materials”) or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, “Environmental Laws”), (B) the Company and its subsidiaries have all permits, authorizations and approvals required under any applicable Environmental Laws and are each in compliance with their requirements, (C) there are no pending or, to the knowledge of the Company, threatened, administrative, regulatory

or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company or any of its subsidiaries and (D) there are no events or circumstances known to the Company that would reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or governmental body or agency, against or affecting the Company or any of its subsidiaries relating to Hazardous Materials or any Environmental Laws.

(xxiii) Registration Rights. Except as described in the Prospectus, there are no persons with registration rights or other similar rights to have any securities registered pursuant to the Registration Statement or otherwise registered by the Company under the 1933 Act.

(xxiv) Accounting Controls. The Company and each of its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (1) transactions are executed in accordance with management's general or specific authorizations; (2) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (3) access to assets is permitted only in accordance with management's general or specific authorization; and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(b) *Representations and Warranties by the Selling Shareholders*. Each Selling Shareholder severally represents and warrants to each Underwriter as of the date hereof, as of the Closing Time, and, if the Selling Shareholder is selling Option Securities on a Date of Delivery, as of each such Date of Delivery, and agrees with each Underwriter, as follows:

(i) Accurate Disclosure. Such Selling Shareholder has reviewed and is familiar with the Registration Statement and the Prospectus and, in respect of any statements in or omissions from the Registration Statement or the Prospectus or any amendments or supplements thereto (including any prospectus wrapper), in each case made in reliance upon and in conformity with information furnished in writing to the Company by such Selling Shareholder specifically for use in connection with the preparation thereof, on the date hereof, on the date of any filing of the Prospectus pursuant to Rule 424(b) and at the Closing Time (and, if any Option Securities are purchased, on any Date of Delivery) and any settlement date, such statements did not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein in light of the circumstances under which they were made not misleading; in connection with the sale of the Securities by the Selling Shareholder, such Selling Shareholder is not prompted to sell the Securities to be sold by such Selling Shareholder hereunder by any material, non-public information concerning the Company or any subsidiary of the Company which is not set forth in the Prospectus and whose failure to be set forth in the Prospectus constitutes a violation of the anti-fraud rules of the federal securities laws.

(ii) Authorization of this Agreement. This Agreement has been duly authorized, executed and delivered by or on behalf of such Selling Shareholder.

(iii) Authorization of Power of Attorney and Custody Agreement. The Power of Attorney and Custody Agreement, in the form heretofore furnished to the Representatives (the “Power of Attorney and Custody Agreement”), has been duly authorized, executed and delivered by such Selling Shareholder and is the valid and binding agreement of such Selling Shareholder, except as rights to indemnity and contribution hereunder may be limited by federal or state securities laws or public policy underlying such law, and except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors’ rights generally and by equitable principles (whether enforcement is sought by proceedings in equity or at law).

(iv) Noncontravention. The execution and delivery of this Agreement and the Power of Attorney and Custody Agreement and the sale and delivery of the Securities to be sold by such Selling Shareholder and the consummation of the transactions contemplated herein and compliance by such Selling Shareholder with its obligations hereunder do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default under, or result in the creation or imposition of any tax, lien, charge or encumbrance upon the Securities to be sold by such Selling Shareholder or any property or assets of such Selling Shareholder pursuant to any material contract, indenture, mortgage, deed of trust, loan or credit agreement, note, license, lease or other agreement or instrument to which such Selling Shareholder is a party or by which such Selling Shareholder may be bound, or to which any of the property or assets of such Selling Shareholder is subject, except for those that would not adversely affect such Selling Shareholder’s ability to perform its obligations hereunder or otherwise have a material adverse effect on such Selling Shareholder or its business or assets, nor will such action result in any violation of the provisions of the charter or by-laws or other organizational instrument of such Selling Shareholder, if applicable, or any applicable treaty, law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over such Selling Shareholder or any of its properties.

(v) Certificates Suitable for Transfer. The Securities to be sold by such Selling Shareholder pursuant to this Agreement are certificated securities in registered form and are not held in any securities account or by or through any securities intermediary within the meaning of the Uniform Commercial Code as in effect in the State of New York (the “UCC”). Certificates for all of the Securities to be sold by such Selling Shareholder pursuant to this Agreement, in suitable form for transfer by delivery or accompanied by duly executed instruments of transfer or assignment in blank with signatures guaranteed, have been placed in custody with Continental Stock Transfer and Trust Company (the “Custodian”) with irrevocable conditional instructions to deliver such Securities to the Underwriters pursuant to this Agreement.

(vi) Valid Title. Such Selling Shareholder has, and at the Closing Time will have, and, if the Selling Shareholder is selling Option Securities on a Date of Delivery, as of each such Date of Delivery, will have, valid title to the Securities to be sold by such Selling Shareholder free and clear of all security interests, claims, liens, equities or other

encumbrances and the legal right and power, and all authorization and approval required by law, to enter into this Agreement and the Power of Attorney and Custody Agreement and to sell, transfer and deliver the Securities to be sold by such Selling Shareholder.

(vii) Delivery of Securities. Upon the delivery to the Depository Trust Company (“DTC”) or its agent of the Securities registered in the name of Cede & Co., as nominee for DTC against payment by the several Underwriters therefor, and the crediting by DTC of the Securities to the securities accounts of the several Underwriters with DTC, DTC will be a “protected purchaser” of the Securities (as defined in Section 8-303 of the New York Uniform Commercial Code) and will acquire its interest in the Securities (including, without limitation, all rights that such Selling Shareholder had or has the power to transfer in such Securities) free of any adverse claim (as defined in Section 8-102(a)(1) of the UCC) assuming neither DTC nor any Underwriter has notice of any adverse claim and the Underwriters will acquire valid security entitlements (within the meaning of Section 8-501 of the UCC) in respect of the Securities to be purchased by them, and no action (whether framed in conversion, replevin, constructive trust, equitable lien, or other theory) based on an adverse claim to such Securities may be asserted against the Underwriters assuming they have no notice of any adverse claim.

(viii) Absence of Manipulation. Such Selling Shareholder has not taken, and will not take, directly or indirectly, any action which is designed to or which has constituted or would be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities in violation of any state or federal laws.

(ix) Absence of Further Requirements. No filing with, or consent, approval, authorization, order, registration, qualification or decree of, any court or governmental authority or agency, domestic or foreign, is necessary or required for the performance by such Selling Shareholder of its obligations hereunder or in the Power of Attorney and Custody Agreement, or in connection with the sale and delivery of the Securities hereunder by such Selling Shareholder or the consummation of the transactions contemplated by this Agreement by such Selling Shareholder, except such as may have previously been made or obtained or as may be required under the 1933 Act or the 1933 Act Regulations or state securities or blue sky laws.

(x) Restriction on Sale of Securities. Such Selling Shareholder has duly authorized, executed and delivered to the Underwriters a lock-up agreement substantially in the form of Exhibit F hereto.

(xi) No Association with NASD. Neither such Selling Shareholder nor any of its affiliates directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, or is a person associated with (within the meaning of Article I (dd) of the By-laws of the National Association of Securities Dealers, Inc.), any member firm of the National Association of Securities Dealers, Inc. (the “NASD”).

(c) *Officer's Certificates.* Any certificate signed by any officer of the Company or any of its subsidiaries delivered to the Representatives or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby; and any certificate signed by or on behalf of any of the Selling Shareholders as such and delivered to the Representatives or to counsel for the Underwriters pursuant to the terms of this Agreement shall be deemed a representation and warranty by such Selling Shareholder to the Underwriters as to the matters covered thereby.

SECTION 2. Sale and Delivery to Underwriters: Closing.

(a) *Initial Securities.* On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company and each Selling Shareholder, severally and not jointly, agree to sell to each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Company and each Selling Shareholder, at the price per share set forth in Schedule C, that proportion of the number of Initial Securities set forth in Schedule B opposite the name of the Company or such Selling Shareholder, as the case may be, which the number of Initial Securities set forth in Schedule A opposite the name of such Underwriter, plus any additional number of Initial Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof, bears to the total number of Initial Securities, subject, in each case, to such adjustments among the Underwriters as the Representatives in their sole discretion shall make to eliminate any sales or purchases of fractional securities.

(b) *Option Securities.* In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company and the Selling Shareholders, acting severally and not jointly, hereby grant an option to the Underwriters, severally and not jointly, to purchase up to an additional [ ] shares of Common Stock, as set forth in Schedule B, at the price per share set forth in Schedule C, less an amount per share equal to any dividends or distributions declared by the Company and payable on the Initial Securities but not payable on the Option Securities. The option hereby granted will expire 30 days after the date hereof and may be exercised in whole or in part from time to time only for the purpose of covering overallocments which may be made in connection with the offering and distribution of the Initial Securities upon notice by Merrill Lynch to the Company and the Selling Shareholders setting forth the number of Option Securities as to which the several Underwriters are then exercising the option and the time and date of payment and delivery for such Option Securities. Any such time and date of delivery (a "Date of Delivery") shall be determined by Merrill Lynch, but shall not be later than seven full business days after the exercise of said option, nor in any event prior to the Closing Time, as hereinafter defined. If the option is exercised as to all or any portion of the Option Securities, each of the Underwriters, acting severally and not jointly, will purchase from the Company that proportion of the total number of Option Securities then being purchased which the number of Initial Securities set forth in Schedule A opposite the name of such Underwriter

bears to the total number of Initial Securities, subject in each case to such adjustments as Merrill Lynch in its discretion shall make to eliminate any sales or purchases of fractional shares.

(c) *Payment.* Payment of the purchase price for, and delivery of certificates for, the Initial Securities shall be made at the offices of O'Melveny & Myers LLP, Times Square Tower, 7 Times Square, New York, New York, 10036, or at such other place as shall be agreed upon by the Representatives; the Company and the Selling Shareholders, at 9:00 A.M. (Eastern time) on the third business day after the date hereof (unless postponed in accordance with the provisions of Section 10), or such other time not later than ten business days after such date as shall be agreed upon by the Representatives; the Company and the Selling Shareholders (such time and date of payment and delivery being herein called "Closing Time").

In addition, in the event that any or all of the Option Securities are purchased by the Underwriters, payment of the purchase price for, and delivery of certificates for, such Option Securities shall be made at the above-mentioned offices, or at such other place as shall be agreed upon by the Representatives; the Company and the Selling Shareholders, on each Date of Delivery as specified in the notice from the Representatives to the Company and the Selling Shareholders.

Payment shall be made to the Company and the Selling Shareholders by wire transfer of immediately available funds to bank accounts designated by the Company and the Custodian pursuant to each Selling Shareholder's Power of Attorney and Custody Agreement, as the case may be, against delivery to the Representatives for the respective accounts of the Underwriters of certificates for the Securities to be purchased by them. It is understood that each Underwriter has authorized the Representatives, for their account, to accept delivery of, receipt for, and make payment of the purchase price for, the Initial Securities and the Option Securities, if any, which it has agreed to purchase. Merrill Lynch, individually and not as representative of the Underwriters, may (but shall not be obligated to) make payment of the purchase price for the Initial Securities or the Option Securities, if any, to be purchased by any Underwriter whose funds have not been received by the Closing Time or the relevant Date of Delivery, as the case may be, but such payment shall not relieve such Underwriter from its obligations hereunder.

(d) *Denominations; Registration.* Certificates for the Initial Securities and the Option Securities, if any, shall be in such denominations and registered in such names as the Representatives may request in writing at least one full business day before the Closing Time or the relevant Date of Delivery, as the case may be. The certificates for the Initial Securities and the Option Securities, if any, will be made available for examination and packaging by the Representatives in The City of New York not later than 10:00 A.M. (Eastern time) on the business day prior to the Closing Time or the relevant Date of Delivery, as the case may be.

(e) *Appointment of Qualified Independent Underwriter.* The Company and the Selling Shareholders hereby confirm their engagement of Merrill Lynch as, and Merrill Lynch hereby confirms its agreement with the Company and the Selling Shareholders to render services as, a "qualified independent underwriter" within the meaning of Rule 2720 of the Conduct Rules of the NASD with respect to the offering and sale of the Securities. Merrill Lynch, solely in its

capacity as qualified independent underwriter and not otherwise, is referred to herein as the “Independent Underwriter”.

SECTION 3. Covenants of the Company. The Company covenants with each Underwriter as follows:

(a) *Compliance with Securities Regulations and Commission Requests*. The Company, subject to Section 3(b), will comply with the requirements of Rule 430A or Rule 434, as applicable, and will notify the Representatives immediately, and confirm the notice in writing, (i) when any post-effective amendment to the Registration Statement shall become effective, or any supplement to the Prospectus or any amended Prospectus shall have been filed, (ii) of the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or for additional information and (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or of any order preventing or suspending the use of any preliminary prospectus, or of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes. The Company will effect the filings necessary pursuant to and in compliance with Rule 424(b) and will take such steps as it deems necessary to ascertain promptly whether the form of prospectus transmitted for filing under Rule 424(b) was received for filing by the Commission and, in the event that it was not, it will promptly file such prospectus. The Company will make every reasonable effort to prevent the issuance of any stop order and, if any stop order is issued, to obtain the lifting thereof at the earliest possible moment.

(b) *Filing of Amendments*. The Company will give the Representatives notice of its intention to file or prepare any amendment to the Registration Statement (including any filing under Rule 462(b)) or any amendment, supplement or revision to either the prospectus included in the Registration Statement at the time it became effective or to the Prospectus, will furnish the Representatives with copies of any such documents a reasonable amount of time prior to such proposed filing or use, as the case may be, and will not file or use any such document to which the Representatives or counsel for the Underwriters shall reasonably object.

(c) *Delivery of Registration Statements*. The Company has furnished or will deliver to the Representatives and counsel for the Underwriters, without charge, signed copies of the Registration Statement as originally filed and of each amendment thereto (including exhibits filed therewith or incorporated by reference therein) and signed copies of all consents and certificates of experts, and will also deliver to the Representatives, without charge, a conformed copy of the Registration Statement as originally filed and of each amendment thereto (without exhibits) for each of the Underwriters. The copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(d) *Delivery of Prospectuses*. The Company has delivered to each Underwriter, without charge, as many copies of each preliminary prospectus as such Underwriter reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the 1933 Act. The Company will furnish to each Underwriter, without charge, during the period

when the Prospectus is required to be delivered under the 1933 Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) *Continued Compliance with Securities Laws.* The Company will comply with the 1933 Act and the 1933 Act Regulations so as to permit the completion of the distribution of the Securities as contemplated in this Agreement and in the Prospectus. If at any time when a prospectus is required by the 1933 Act to be delivered in connection with sales of the Securities, any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or for the Company, to amend the Registration Statement or amend or supplement the Prospectus in order that the Prospectus will not include any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser, or if it shall be necessary, in the opinion of such counsel, at any such time to amend the Registration Statement or amend or supplement the Prospectus in order to comply with the requirements of the 1933 Act or the 1933 Act Regulations, the Company will promptly, upon becoming aware of such event, condition or circumstance, prepare and file with the Commission, subject to Section 3(b), such amendment or supplement as may be necessary to correct such statement or omission or to make the Registration Statement or the Prospectus comply with such requirements, and the Company will furnish to the Underwriters such number of copies of such amendment or supplement as the Underwriters may reasonably request.

(f) *Blue Sky Qualifications.* The Company will use its reasonable best efforts, in cooperation with the Underwriters, to qualify the Securities for offering and sale under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Representatives may reasonably designate and to maintain such qualifications in effect for a period of not less than one year from the later of the effective date of the Registration Statement and any Rule 462(b) Registration Statement; provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(g) *Rule 158.* The Company will timely file such reports pursuant to the Securities Exchange Act of 1934 (the "1934 Act") as are necessary in order to make generally available to its securityholders as soon as practicable an earning statement for the purposes of, and to provide the benefits contemplated by, the last paragraph of Section 11(a) of the 1933 Act.

(h) *Use of Proceeds.* The Company will use the net proceeds received by it from the sale of the Securities in the manner specified in the Prospectus under "Use of Proceeds."

(i) *Listing.* The Company will use its best efforts to effect and maintain the quotation of the Common Stock (including the Securities) on the Nasdaq National Market.

(j) *Restriction on Sale of Securities.* During a period of 180 days from the date of the Prospectus, the Company will not, without the prior written consent of Merrill Lynch, (i) directly

or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of, directly or indirectly, any share of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or file any registration statement under the 1933 Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Common Stock, whether any such swap or transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (i) the Securities, including the Reserved Shares, to be sold hereunder, (ii) the exercise of options or warrants or the conversion of Securities already outstanding, (iii) the exercise of options granted or Common Stock issued under existing plans as in effect on the date hereof, (iv) shares of Common Stock issued under director or other existing plans as in effect on the date hereof, and (v) shares issued in connection with acquisitions (so long as the aggregate dollar amount of such shares does not exceed \$20.0 million and so long as any recipients of such shares agree to be bound by the terms of this Section 3(j)).

(k) *Reporting Requirements.* The Company, during the period when the Prospectus is required to be delivered under the 1933 Act, will file all documents required to be filed with the Commission pursuant to the 1934 Act within the time periods required by the 1934 Act and the rules and regulations of the Commission thereunder.

(l) *Compliance with NASD Rules.* The Company hereby agrees that it will ensure that the Reserved Securities will be restricted as required by the NASD or the NASD rules from sale, transfer, assignment, pledge or hypothecation for a period of three months following the date of this Agreement. The Underwriters will notify the Company as to which persons will need to be so restricted. At the request of the Underwriters, the Company will direct the transfer agent to place a stop transfer restriction upon such securities for such period of time. Should the Company release, or seek to release, from such restrictions any of the Reserved Securities, the Company agrees to reimburse the Underwriters for any reasonable expenses (including, without limitation, legal expenses) they incur in connection with such release.

#### SECTION 4. Payment of Expenses.

(a) *Expenses.* The Company will pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and of each amendment thereto, (ii) the preparation, printing and delivery to the Underwriters of this Agreement, any Agreement among Underwriters and such other documents as may be required in connection with the offering, purchase, sale, issuance or delivery of the Securities, (iii) the preparation, issuance and delivery of the certificates for the Securities to the Underwriters, including any stock or other transfer taxes and any stamp or other duties payable upon the sale, issuance or delivery of the Securities to the Underwriters, (iv) the fees and disbursements of the Company's counsel, accountants and other advisors, (v) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(f) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of the Blue Sky Survey and any

supplement thereto, (vi) the printing and delivery to the Underwriters of copies of each preliminary prospectus and of the Prospectus and any amendments or supplements thereto, (vii) the preparation, printing and delivery to the Underwriters of copies of the Blue Sky Survey and any supplement thereto, (viii) the fees and expenses of any transfer agent or registrar for the Securities, (ix) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the Securities, including without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations, travel and lodging expenses of the representatives and officers of the Company and any such consultants, and the cost of aircraft and other transportation chartered in connection with the road show, (x) the filing fees incident to, and the reasonable fees and disbursements of counsel to the Underwriters in connection with, the review by the NASD of the terms of the sale of the Securities, (xi) the fees and expenses incurred in connection with the inclusion of the Securities in the Nasdaq National Market and (xii) all reasonable costs and expenses of the Underwriters, including the fees and disbursements of counsel for the Underwriters, in connection with matters related to the Reserved Securities that are designated by the Company for sale to Invitees.

(b) *Expenses of the Selling Shareholders.* Except for those expenses to be paid by the Company under the terms of that certain Stockholders' Agreement, dated as of September 15, 1999 among the Company, Back to School Acquisition, L.L.C. and Five Mile River Capital Partners LLC, the Selling Shareholders will pay all of their respective expenses incident to the performance of their respective obligations under, and the consummation of the transactions contemplated by this Agreement, including any stamp duties, capital duties and stock transfer taxes, if any, payable upon the sale of the Securities to the Underwriters.

(c) *Termination of Agreement.* If this Agreement is terminated by the Representatives in accordance with the provisions of Section 5, Section 9(a)(i) or Section 11 hereof, the Company shall reimburse the Underwriters for all of their out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Underwriters.

(d) *Allocation of Expenses.* The provisions of this Section shall not affect any agreement that the Company and the Selling Shareholders may make for the sharing of such costs and expenses.

SECTION 5. Conditions of Underwriters' Obligations. The obligations of the several Underwriters hereunder are subject to the accuracy of the representations and warranties of the Company and the Selling Shareholders contained in Section 1 hereof or in certificates of any officer of the Company or any subsidiary of the Company or on behalf of any Selling Shareholder delivered pursuant to the provisions hereof, to the performance by the Company of its covenants and other obligations hereunder, and to the following further conditions:

(a) *Effectiveness of Registration Statement.* The Registration Statement, including any Rule 462(b) Registration Statement, has become effective and at Closing Time no stop order suspending the effectiveness of the Registration Statement shall have been issued under the 1933 Act or proceedings therefor initiated or threatened by the Commission, and any request on the

part of the Commission for additional information shall have been complied with to the reasonable satisfaction of counsel to the Underwriters. A prospectus containing the Rule 430A Information shall have been filed with the Commission in accordance with Rule 424(b) (or a post-effective amendment providing such information shall have been filed and declared effective in accordance with the requirements of Rule 430A).

(b) *Opinion of General Counsel for Company*. At Closing Time, the Representative shall have received the favorable opinion, dated as of Closing Time, Alexandra M. Luster, General Counsel for the Company, in form and substance satisfactory to counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters to the effect set forth in Exhibit A hereto and to such further effect as counsel to the Underwriters may reasonably request.

(c) *Opinion of Outside Counsel for the Company*. At Closing Time, the Representative shall have received the favorable opinion, dated as of Closing Time, of Shearman & Sterling LLP, outside counsel for the Company, in form and substance satisfactory to counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters to the effect set forth in Exhibit B hereto and to such further effect as counsel to the Underwriters may reasonably request.

(d) *Opinion of Counsel for Five Mile River Capital Partners LLC*. At Closing Time, the Representative shall have received the favorable opinion, dated as of Closing Time, of Shipman & Goodwin LLP, counsel for Five Mile River Capital Partners LLC, in form and substance satisfactory to counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters to the effect set forth in Exhibit C hereto and to such further effect as counsel to the Underwriters may reasonably request.

(e) *Opinion of Regulatory Counsel for the Company*. At Closing Time, the Representative shall have received the favorable opinion, dated as of Closing Time, of Powers Pyles Sutter & Verville, P.C., outside regulatory counsel for the Company, in form and substance satisfactory to counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters to the effect set forth in Exhibit D hereto and to such further effect as counsel to the Underwriters may reasonably request.

(f) *Opinion of Lindabury, McCormick & Estabrook, P.A.* At Closing Time, the Representative shall have received the favorable opinion, dated as of Closing Time, of Lindabury, McCormick & Estabrook, P.A., New Jersey counsel for the Company, in form and substance satisfactory to counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters to the effect set forth in Exhibit E hereto and to such further effect as counsel to the Underwriters may reasonably request.

(g) *Opinion of Counsel for Underwriters*. At Closing Time, the Representative shall have received the favorable opinion, dated as of Closing Time, of O'Melveny & Myers LLP, counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters with respect to the matters set forth in clauses (v), (vi) (solely as to preemptive or other similar rights arising by operation of law or under the charter or by-laws of

the Company), (viii) through (x), inclusive, (xi), (xiii) (solely as to the information in the Prospectus under “Description of Capital Stock—Common Stock”) and the penultimate paragraph of Exhibit A hereto. In giving such opinion such counsel may rely, as to all matters governed by the laws of jurisdictions other than the law of the State of New York, the federal law of the United States and Delaware General Corporation Law, upon the opinions of counsel satisfactory to the Representative. Such counsel may also state that, insofar as such opinion involves factual matters, they have relied, to the extent they deem proper, upon certificates of officers of the Company and its subsidiaries and certificates of public officials.

(h) *Officers’ Certificate.* At Closing Time, there shall not have been, since the date hereof or since the respective dates as of which information is given in the Prospectus, any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, and the Representatives shall have received a certificate of the President or a Vice President of the Company and of the chief financial or chief accounting officer of the Company, dated as of Closing Time, to the effect that, to the best of their knowledge (i) there has been no such material adverse change, (ii) the representations and warranties in Section 1(a) hereof are true and correct with the same force and effect as though expressly made at and as of Closing Time, (iii) the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to Closing Time and (iv) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or are pending or, to their knowledge, contemplated by the Commission.

(i) *Certificate of Selling Shareholders.* At Closing Time, the Representatives shall have received a certificate of an Attorney-in-Fact on behalf of each Selling Shareholder, dated as of Closing Time, to the effect that (i) the representations and warranties of such Selling Shareholder contained in Section 1(b) hereof are true and correct in all respects with the same force and effect as though expressly made at and as of Closing Time and (ii) such Selling Shareholder has complied in all material respects with all agreements and all conditions on its part to be performed under this Agreement at or prior to Closing Time.

(j) *Accountant’s Comfort Letter.* At the time of the execution of this Agreement, the Representatives shall have received from each of (i) Deloitte & Touche LLP and (ii) Kostin, Ruffkess & Company, LLC, a letter dated such date, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letter for each of the other Underwriters containing statements and information of the type ordinarily included in accountants’ “comfort letters” to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement and the Prospectus.

(k) *Bring-down Comfort Letter.* At Closing Time, the Representatives shall have received from Deloitte & Touche LLP, a letter dated as of Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (j) of this Section, except that the specified date referred to shall be a date not more than three business days prior to Closing Time.

(l) *Approval of Listing.* At Closing Time, the Common Stock (including the Securities) shall have been approved for inclusion in the Nasdaq National Market, subject only to official notice of issuance.

(m) *No Objection.* The NASD has confirmed that it has not raised any objection with respect to the fairness and reasonableness of the underwriting terms and arrangements.

(n) *Lock-up Agreements.* At the date of this Agreement, the Representatives shall have received an agreement substantially in the form of Exhibit F hereto signed by the persons listed on Schedule D hereto.

(o) *Change of Control.* The U.S. Department of Education has confirmed that the issuance and sale of the Securities and the consummation of the transactions herein and in the Registration Statement will not constitute a change in ownership resulting in a “change of control” of the Company as defined under the HEA.

(p) *Officer’s Certificate of Cesar Ribeiro.* At the time of the execution of this Agreement, the Representatives shall have received from Cesar Ribeiro, in his capacity as chief financial officer of the Company, a certificate dated such date, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such certificate for each of the other Underwriters, to the effect set forth in Exhibit G hereto and to such further effect as counsel to the Underwriters may reasonably request.

(q) *Conditions to Purchase of Option Securities.* In the event that the Underwriters exercise their option provided in Section 2(b) hereof to purchase all or any portion of the Option Securities, the representations and warranties of the Company and the Selling Shareholders contained herein and the statements in any certificates furnished by the Company, any subsidiary of the Company and the Selling Shareholders hereunder shall be true and correct (to the extent set forth therein) as of each Date of Delivery and, at the relevant Date of Delivery, the Representatives shall have received:

(i) Officers’ Certificate. A certificate, dated such Date of Delivery, of the President or a Vice President of the Company and of the chief financial or chief accounting officer of the Company confirming that the certificate delivered at the Closing Time pursuant to Section 5(h) hereof remains true and correct (to the extent set forth therein) as of such Date of Delivery.

(ii) Certificate of Selling Shareholders. A certificate, dated such Date of Delivery, of an Attorney-in-Fact on behalf of each Selling Shareholder confirming that the certificate delivered at Closing Time pursuant to Section 5(i) remains true and correct (to the extent set forth therein) as of such Date of Delivery.

(iii) Opinion of General Counsel for Company. The favorable opinion of Alexandra M. Luster, General Counsel for the Company, in form and substance satisfactory to counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(b) hereof.

(iv) Opinion of Outside Counsel for Company. The favorable opinion of Shearman & Sterling LLP, outside counsel for the Company, in form and substance satisfactory to counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(c) hereof.

(v) Opinion of Counsel for Five Mile River Capital Partners LLC. The favorable opinion of Shipman & Goodwin LLP, counsel for Five Mile River Capital Partners LLC, in form and substance satisfactory to counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(d) hereof.

(vi) Opinion of Regulatory Counsel for Company. The favorable opinion of Powers Pyles Sutter & Verville, P.C., outside regulatory counsel for the Company, in form and substance satisfactory to counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinions required by Section 5(e) hereof.

(vii) Opinion of Lindabury, McCormick & Estabrook, P.A. The favorable opinion of Lindabury, McCormick & Estabrook, P.A., New Jersey counsel for the Company, in form and substance satisfactory to counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinions required by Section 5(f) hereof.

(viii) Opinion of Counsel for Underwriters. The favorable opinion of O'Melveny & Myers LLP, counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(g) hereof.

(ix) Bring-down Comfort Letter. A letter from Deloitte & Touche LLP in form and substance satisfactory to the Representatives and dated such Date of Delivery, substantially in the same form and substance as the letter furnished to the Representatives pursuant to Section 5(j) hereof, except that the "specified date" in the letter furnished pursuant to this paragraph shall be a date not more than five days prior to such Date of Delivery.

(x) Officer's Certificate of Cesar Ribeiro. A certificate, dated such Date of Delivery, of Cesar Ribeiro, in his capacity as chief financial officer of the Company, confirming that the certificate delivered at the time of execution of this Agreement pursuant to Section 5(p) hereof remains true and correct (to the extent set forth therein) as of such Date of Delivery.

(r) Additional Documents. At Closing Time and at each Date of Delivery counsel for the Underwriters shall have been furnished with such documents and opinions as they may require for the purpose of enabling them to pass upon the issuance and sale of the Securities as

herein contemplated, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company and the Selling Shareholders in connection with the issuance and sale of the Securities as herein contemplated shall be satisfactory in form and substance to the Representatives and counsel for the Underwriters.

(s) *Termination of Agreement.* If any condition specified in this Section shall not have been fulfilled when and as required to be fulfilled, this Agreement, or, in the case of any condition to the purchase of Option Securities on a Date of Delivery which is after the Closing Time, the obligations of the several Underwriters to purchase the relevant Option Securities, may be terminated by the Representatives by notice to the Company and the Selling Shareholders at any time at or prior to Closing Time or such Date of Delivery, as the case may be, and such termination shall be without liability of any party to any other party except as provided in Section 4 and except that Sections 1, 6, 7 and 8 shall survive any such termination and remain in full force and effect.

SECTION 6. Indemnification.

(a) *Indemnification of Underwriters.* (1) The Company agrees to indemnify and hold harmless each Underwriter, its affiliates, as such term is defined in Rule 501(b) under the 1933 Act (each, an "Affiliate"), its selling agents and each person, if any, who controls any Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including the Rule 430A Information or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact included in any preliminary prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 6(e) below) any such settlement is effected with the written consent of the Company;

(iii) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel chosen by Merrill Lynch), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any

claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense (A) to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by any Underwriter through Merrill Lynch expressly for use in the Registration Statement (or any amendment thereto), including the Rule 430A Information, or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto); and (B) with respect to any preliminary prospectus to the extent that any such loss, liability, claim, damage or expense of such Underwriter results solely from the fact that such Underwriter sold Securities to a person as to whom the Company shall establish that there was not sent by commercially reasonable means, at or prior to the written confirmation of such sale, a copy of the Prospectus in a case where such delivery is required by the 1933 Act, if the Company has previously furnished copies thereof in sufficient quantity to such Underwriter (in compliance with Section 3(d) hereof) and the loss, liability, claim, damage or expense of such Underwriter results from an untrue statement or omission of a material fact contained in the preliminary prospectus that was corrected in the Prospectus.

(2) In addition to and without limitation of the Company's obligation to indemnify Merrill Lynch as an Underwriter, the Company agrees to indemnify and hold harmless the Independent Underwriter, its Affiliates and selling agents and each person, if any, who controls the Independent Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, from and against any and all loss, liability, claim, damage and expense whatsoever, as incurred, incurred as a result of the Independent Underwriter's participation as a "qualified independent underwriter" within the meaning of Rule 2720 of the Conduct Rules of the NASD in connection with the offering of the Securities.

(b) *Indemnification of Underwriters by the Selling Shareholders*. Each Selling Shareholder, severally and not jointly, agrees to indemnify and hold harmless the Company, each of its directors, and each of its officers who signs the Registration Statement (or any amendment thereto), each Underwriter, its Affiliates and selling agents and each person, if any, who controls any Underwriter or the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act to the extent and in the manner set forth in subsection (a)(1) of this Section, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), including the Rule 430A Information or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Selling Shareholder expressly for use in the Registration Statement; and the Selling Shareholder's indemnity will be limited to an amount equal to the aggregate gross proceeds, net of the underwriting discounts, received by such Selling Shareholder from the sale of the Securities to the Underwriters. The Underwriters acknowledge that the name of each Selling Shareholder, the number of securities each Selling Shareholder is offering and the number of securities owned by each Selling Shareholder constitutes the only written information furnished to the Company by or on behalf of the Selling Shareholders for use in the Registration

Statement (or any amendment thereto), including the Rule 430A Information or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto).

(c) *Indemnification of Company, Directors and Officers and Selling Shareholders*. Each Underwriter severally agrees to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, and each Selling Shareholder and each person, if any, who controls any Selling Shareholder within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a)(1) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), including the Rule 430A Information or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with written information furnished to the Company by such Underwriter through Merrill Lynch expressly for use in the Registration Statement (or any amendment thereto) or such preliminary prospectus or the Prospectus (or any amendment or supplement thereto).

(d) *Actions against Parties; Notification*. Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In the case of parties indemnified pursuant to Section 6(a)(1) and 6(b) above, counsel to the indemnified parties shall be selected by Merrill Lynch, and, in the case of parties indemnified pursuant to Section 6(c) above, counsel to the indemnified parties shall be selected by the Company. An indemnifying party may participate at its own expense in the defense of any such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances; provided, that, if indemnity is sought pursuant to Section 6(a)(2), then, in addition to the fees and expenses of such counsel for the indemnified parties, the indemnifying party shall be liable for the reasonable fees and expenses of not more than one counsel (in addition to any local counsel) separate from its own counsel and that of the other indemnified parties for the Independent Underwriter in its capacity as a “qualified independent underwriter” and all persons, if any, who control the Independent Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of 1934 Act in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances if, in the reasonable judgment of the Independent Underwriter, there may exist a conflict of interest between the Independent Underwriter and the other indemnified parties. Any such separate counsel for the Independent Underwriter and such control persons of the Independent Underwriter shall be designated in writing by the Independent Underwriter. No indemnifying party shall, without the prior written consent of the indemnified parties (which consent shall not be unreasonably withheld), settle or compromise or consent to

the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 6 or Section 7 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(e) *Settlement without Consent if Failure to Reimburse.* If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a)(1)(ii) or settlement of any claim in connection with any violation referred to in Section 6(f) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

(f) *Indemnification for Reserved Securities.* In connection with the offer and sale of the Reserved Securities, the Company agrees to indemnify and hold harmless the Underwriters, their Affiliates and selling agents and each person, if any, who controls any Underwriter within the meaning of either Section 15 of the 1933 Act or Section 20 of the 1934 Act, from and against any and all loss, liability, claim, damage and expense (including, without limitation, any legal or other expenses reasonably incurred in connection with defending, investigating or settling any such action or claim), as incurred, (i) arising out of the violation of any applicable securities laws or regulations of foreign jurisdictions where Reserved Securities have been offered; (ii) arising out of any untrue statement or alleged untrue statement of a material fact contained in any prospectus wrapper or other material prepared by or with the consent of the Company for distribution to Invitees in connection with the offering of the Reserved Securities or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; (iii) caused by the failure of any Invitee to pay for and accept delivery of Reserved Securities which have been orally confirmed for purchase by any Invitee by the end of the first business day after the date of this Agreement; or (iv) related to, or arising out of or in connection with, the offering of the Reserved Securities.

(g) *Other Agreements with Respect to Indemnification.* The provisions of this Section shall not affect any agreement among the Company and the Selling Shareholders with respect to indemnification.

SECTION 7. Contribution. If the indemnification provided for in Section 6 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Selling Shareholders on the one hand and

the Underwriters on the other hand from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and the Selling Shareholders on the one hand and of the Underwriters on the other hand in connection with the statements or omissions, or in connection with any violation of the nature referred to in Section 6(f) hereof, which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company and the Selling Shareholders on the one hand and the Underwriters on the other hand in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company and the Selling Shareholders and the total underwriting discount received by the Underwriters, in each case as set forth on the cover of the Prospectus bear to the aggregate initial public offering price of the Securities as set forth on the cover of the Prospectus.

The relative fault of the Company and the Selling Shareholders on the one hand and the Underwriters on the other hand shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company, the Selling Shareholders or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission or any violation of the nature referred to in Section 6(f) hereof.

The Company, the Selling Shareholders and the Underwriters agree that Merrill Lynch will not receive any additional benefits hereunder for serving as the Independent Underwriter in connection with the offering and sale of the Securities.

The Company, the Selling Shareholders and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to above in this Section 7. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 7 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 7, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 7, no Selling Shareholder shall be required to contribute any amount in excess of the aggregate gross proceeds, net of underwriting discounts, received by such Selling Shareholder from the sale of the Securities to the Underwriters.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 7, each person, if any, who controls an Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and each Underwriter's Affiliates and selling agents shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company or any Selling Shareholder within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company or such Selling Shareholder, as the case may be. The Underwriters' respective obligations to contribute pursuant to this Section 7 are several in proportion to the number of Initial Securities set forth opposite their respective names in Schedule A hereto and not joint.

The provisions of this Section shall not affect any agreement among the Company and the Selling Shareholders with respect to contribution.

SECTION 8. Representations, Warranties and Agreements to Survive. All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company or any of its subsidiaries or the Selling Shareholders submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Underwriter or its Affiliates or selling agents, any person controlling any Underwriter, its officers or directors, any person controlling the Company or any person controlling any Selling Shareholder and (ii) delivery of and payment for the Securities.

SECTION 9. Termination of Agreement.

(a) *Termination; General.* The Representatives may terminate this Agreement, by notice to the Company and the Selling Shareholders, at any time at or prior to Closing Time (i) if there has been, since the time of execution of this Agreement or since the respective dates as of which information is given in the Prospectus, any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Representatives, impracticable or inadvisable to market the Securities or to enforce contracts for the sale of the Securities, or (iii) if trading in any securities of the Company has been suspended or materially limited by the Commission or the Nasdaq National Market, or if trading generally on the American Stock

Exchange or the New York Stock Exchange or in the Nasdaq National Market has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by such system or by order of the Commission, the National Association of Securities Dealers, Inc. or any other governmental authority or (iv) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States, or (v) if a banking moratorium has been declared by either Federal or New York authorities.

(b) *Liabilities.* If this Agreement is terminated pursuant to this Section, such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and provided further that Sections 1, 6, 7 and 8 shall survive such termination and remain in full force and effect.

SECTION 10. Default by One or More of the Underwriters. If one or more of the Underwriters shall fail at Closing Time or a Date of Delivery to purchase the Securities which it or they are obligated to purchase under this Agreement (the "Defaulted Securities"), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(i) if the number of Defaulted Securities does not exceed 10% of the number of Securities to be purchased on such date, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(ii) if the number of Defaulted Securities exceeds 10% of the number of Securities to be purchased on such date, this Agreement or, with respect to any Date of Delivery which occurs after the Closing Time, the obligation of the Underwriters to purchase and of the Company to sell the Option Securities to be purchased and sold on such Date of Delivery shall terminate without liability on the part of any non-defaulting Underwriter.

No action taken pursuant to this Section 10 shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement or, in the case of a Date of Delivery which is after the Closing Time, which does not result in a termination of the obligation of the Underwriters to purchase and the Company to sell the relevant Option Securities, as the case may be, either the (i) Representatives or (ii) the Company and any Selling Shareholder shall have the right to postpone Closing Time or the relevant Date of Delivery, as the case may be, for a period not exceeding seven days in order to effect any required changes in the Registration Statement or Prospectus or in any other documents or arrangements. As used herein, the term "Underwriter" includes any person substituted for an Underwriter under this Section 10.

SECTION 11. Default by one or more of the Selling Shareholders or the Company.

(a) If a Selling Shareholder shall fail at Closing Time or at a Date of Delivery to sell and deliver the number of Securities which such Selling Shareholder or Selling Shareholders are obligated to sell hereunder, and the remaining Selling Shareholders do not exercise the right hereby granted to increase, pro rata or otherwise, the number of Securities to be sold by them hereunder to the total number to be sold by all Selling Shareholders as set forth in Schedule B hereto, then the Underwriters may, at option of the Representatives, by notice from the Representatives to the Company and the non-defaulting Selling Shareholders, either (i) terminate this Agreement without any liability on the fault of any non-defaulting party except that the provisions of Sections 1, 4, 6, 7 and 8 shall remain in full force and effect or (ii) elect to purchase the Securities which the non-defaulting Selling Shareholders and the Company have agreed to sell hereunder. No action taken pursuant to this Section 11 shall relieve any Selling Shareholder so defaulting from liability, if any, in respect of such default.

In the event of a default by any Selling Shareholder as referred to in this Section 11, each of the Representatives, the Company and the non-defaulting Selling Shareholders shall have the right to postpone Closing Time or Date of Delivery for a period not exceeding seven days in order to effect any required change in the Registration Statement or Prospectus or in any other documents or arrangements.

(b) If the Company shall fail at Closing Time or at the Date of Delivery to sell the number of Securities that it is obligated to sell hereunder, then this Agreement shall terminate without any liability on the part of any nondefaulting party; provided, however, that the provisions of Sections 1, 4, 6, 7 and 8 shall remain in full force and effect. No action taken pursuant to this Section shall relieve the Company from liability, if any, in respect of such default.

SECTION 12. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to the Representatives at 4 World Financial Center, New York, New York 10080, attention of Toby Norris; notices to the Company shall be directed to it at 200 Executive Drive, West Orange, New Jersey, 07052, attention of Cesar Ribeiro; and notices to the Selling Shareholders shall be directed to each Selling Shareholder at the address set forth on Schedule B hereto.

SECTION 13. Parties. This Agreement shall inure to the benefit of and be binding upon, each of the Underwriters, the Company and the Selling Shareholders and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters, the Company and the Selling Shareholders and their respective successors and the controlling persons and officers and directors referred to in Sections 6 and 7 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Underwriters, the Company and the Selling Shareholders and their respective successors, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No

purchaser of Securities from any Underwriter shall be deemed to be a successor by reason merely of such purchase.

SECTION 14. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

SECTION 15. TIME. TIME SHALL BE OF THE ESSENCE OF THIS AGREEMENT. EXCEPT AS OTHERWISE SET FORTH HEREIN, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.

SECTION 16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

SECTION 17. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company and the Attorney-in-Fact for the Selling Shareholders a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the Underwriters, the Company and the Selling Shareholders in accordance with its terms.

Very truly yours,

LINCOLN EDUCATIONAL SERVICES  
CORPORATION

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

[ ]

By \_\_\_\_\_  
As Attorney-in-Fact acting on behalf of  
the Selling Shareholders named in  
Schedule B hereto

CONFIRMED AND ACCEPTED,  
as of the date first above written:

MERRILL LYNCH & CO.  
MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED

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

For itself and as Representatives of the other Underwriters named in Schedule A hereto.

**SCHEDULE A**

<b>Name of Underwriter</b>	<b>Number of Initial Securities</b>
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Banc of America Securities LLC	
Lehman Brothers Inc.	
Jefferies & Company, Inc.	
Harris Nesbitt Corp.	
Robert W. Baird & Co. Incorporated	
Total	[ ]

**SCHEDULE B**

	<u>Number of Initial Securities To Be Sold</u>	<u>Maximum Number of Option Securities To Be Sold</u>
Lincoln Educational Services Corporation		
Five Mile River Capital Partners LLC 131 Rowayton Avenue Rowayton, Connecticut 06853		
Steven W. Hart c/o Hart Capital LLC 131 Rowayton Avenue Rowayton, Connecticut 06853		
Steven W. Hart 2003 Grantor, Retained Annuity Trust c/o Hart Capital LLC 131 Rowayton Avenue Rowayton, Connecticut 06853		
Total		

**SCHEDULE C**

LINCOLN EDUCATIONAL SERVICES CORPORATION

[       ] Shares of Common Stock  
(No Par Value Per Share)

1.        The initial public offering price per share for the Securities shall be \$[     ].
  
2.        The purchase price per share for the Securities to be paid by the several Underwriters shall be \$[     ], being an amount equal to the initial public offering price set forth above less \$[     ] per share; provided that the purchase price per share for any Option Securities purchased upon the exercise of the overallotment option described in Section 2(b) shall be reduced by an amount per share equal to any dividends or distributions declared by the Company and payable on the Initial Securities but not payable on the Option Securities.

Sch C-1

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**SCHEDULE D**

[List of persons and entities subject to lock-up]

Sch D-1

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**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**LINCOLN EDUCATIONAL SERVICES CORPORATION**

Lincoln Educational Services Corporation, a corporation organized and existing under the laws of the State of New Jersey, restates and integrates its Certificate of Incorporation, as heretofore amended, to read in full as herein set forth:

**ARTICLE I**

Name

The name of the corporation is Lincoln Educational Services Corporation (the “Corporation”).

**ARTICLE II**

Registered Office and Registered Agent

The address of the registered office of the Corporation in the State of New Jersey is 200 Executive Drive, Suite 340, West Orange, New Jersey 07052. The name of the registered agent of the Corporation at such address is Alexandra Luster.

**ARTICLE III**

Corporate Purpose

The purpose of the Corporation is to engage in any lawful act or activity within the purposes for which corporations may be organized under the New Jersey Business Corporation Act, Section 14A, Corporations, General, of the New Jersey Statutes (the “Act”).

**ARTICLE IV**

Capital Stock

Section 1. Shares, Classes and Series Authorized. The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 110,000,000 shares, of which 100,000,000 shares shall be Common Stock, no par value per share (hereinafter called “Common Stock”) and 10,000,000 shares shall be Preferred Stock, no par value per share (hereinafter called “Preferred Stock”), issuable in one or more series.

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Section 2. Issuance of Capital Stock. The Board of Directors of the Corporation (the “Board”) may from time to time offer for subscription or otherwise issue or sell any or all of the unissued stock of any class, or any shares of stock of any class which may be held in the treasury of the Corporation, to such persons, firms or corporations and for such consideration (so far as may be permitted by the laws of the State of New Jersey) as it shall from time to time in its absolute discretion determine.

Section 3. Description of Capital Stock. The following is a description of each of the classes of capital stock which the Corporation has authority to issue with the designations, preferences, voting powers and participating, optional or other special rights and the qualifications, limitations or restrictions thereof:

(a) Rights and Restrictions of Preferred Stock. (1) Authority is hereby expressly vested in the Board, subject to the provisions of this Article IV and to the limitations prescribed by law, without Stockholder action, to authorize the issue from time to time of one or more series of Preferred Stock and with respect to each such series to fix by resolution or resolutions adopted by the affirmative vote of a majority of the whole Board providing for the issue of such series the voting powers, full or limited, if any, of the shares of such series and the designations, preferences and relative, participating, optional or other special rights and the qualifications, limitations or restrictions thereof. The authority of the Board with respect to each series shall include, but not be limited to, the determination or fixing of the following:

- (i) The designation of such series.
- (ii) The dividend rate of such series, the conditions and dates upon which such dividends shall be payable, the relation which such dividends shall bear to the dividends payable on any other class or classes or series of the Corporation’s capital stock, and whether such dividends shall be cumulative or non-cumulative.
- (iii) Whether the shares of such series shall be subject to redemption for cash, property or rights, including securities of the Corporation or of any other corporation, by the Corporation at the option of either the Corporation or the holder or both or upon the happening of a specified event, and, if made subject to any such redemption, the times or events, prices and other terms and conditions of such redemption.
- (iv) The terms and amount of any sinking fund provided for the purchase or redemption of the shares of such series.
- (v) Whether or not the shares of such series shall be convertible into, or exchangeable for, at the option of either the holder or the Corporation or upon the happening of a specified event, shares of any other class or classes or of any other series of the same or any other class or classes of the Corporation’s capital stock, and, if provision be made for conversion or exchange, the times or events, prices, rates, adjustments and other terms and conditions of such conversions or exchanges.
- (vi) The restrictions, if any, on the issue or reissue of any additional Preferred Stock.

(vii) The rights of the holders of the shares of such series upon the voluntary or involuntary liquidation, dissolution or winding-up of the Corporation.

(viii) The provisions as to voting (which may be one or more votes per share or a fraction of a vote per share), optional and/or other special rights and preferences, if any.

The Board may change the designation, rights, preferences, limitations, description and terms of, and number of shares in, any series as to which no shares have theretofore been issued.

All shares of any one series shall be identical in all respects with all the other shares of such series, except that shares of any one series issued at different times may differ as to the dates from which dividends thereon shall be cumulative.

(2) Shares of any series of Preferred Stock which have been redeemed (whether through the operation of a sinking fund or otherwise) or purchased by the Corporation, or which, if convertible, have been converted into shares of the Corporation of any other class or classes, shall have the status of authorized and unissued shares of Preferred Stock which are not classified into any series.

For all purposes, this Certificate of Incorporation shall include each certificate of designation (if any) setting forth the terms of a series of Preferred Stock approved by the Board in accordance with Section 14A:7-2 of the Act and duly filed in accordance with the procedures set forth in Section 14A:7-2(4) of the Act.

(b) Rights and Restrictions of Common Stock. The powers, preferences, rights, qualifications, limitations or restrictions thereof in respect to the Common Stock are as follows:

(i) The Common Stock is junior to the Preferred Stock and is subject to all the powers, rights, privileges, preferences and priorities of the Preferred Stock as herein or in any resolution or resolutions adopted by the Board pursuant to authority expressly vested in it by the provisions of Section 3(a) of this Article IV and duly filed in accordance with the procedures set forth in Section 14A:7-2(4) of the Act.

(ii) The Common Stock shall have voting rights for the election of directors and for all other purposes, each holder of Common Stock being entitled to one vote for each share thereof held by such holder, except as otherwise required by law. The ability of the stockholders to engage in cumulative voting is hereby specifically denied.

(iii) Subject to the rights of the holders of any series of Preferred Stock, holders of Common Stock shall be entitled to receive such dividends and distributions (whether payable in cash or otherwise) as may be declared on the shares of Common Stock by the Board from time to time out of assets or funds of the Corporation legally available therefor.

(iv) Subject to the rights of the holders of any series of Preferred Stock, in the event of any liquidation, dissolution or winding-up of the Corporation (whether voluntary

or involuntary), the assets of the Corporation available for distribution to stockholders shall be distributed in equal amounts per share to the holders of Common Stock.

(v) Optional rights to purchase shares of Common Stock may be granted, on such terms, at such price, in such manner and at such time or times as may be expressed in a resolution or resolutions adopted by the Board, and warrants or other evidence of such optional rights may be issued.

(vi) No holder of Common Stock shall have any pre-emptive right as such holder to subscribe for, purchase or receive any part of any new or additional issue of stock of any class, including unissued and treasury stock, or obligations or other securities convertible into or exchangeable for stock of any class, or warrants or other instruments evidencing rights or options to subscribe for, purchase or receive any stock of any class, whether now or hereafter authorized and whether issued for cash or other consideration or by way of dividend.

(vii) The Common Stock shall not be convertible into shares of any other class or classes of capital stock of the Corporation or of any series of the same or any other class or classes.

(viii) The Corporation shall not be required to issue any fraction of a share of Common Stock of the Corporation.

(c) Increase or Decrease in Amount of Authorized Shares. The number of authorized shares of any class or classes of capital stock of the Corporation may be increased or decreased by an amendment to this Certificate of Incorporation authorized by the affirmative vote of the holders of a majority of the shares of the Common Stock outstanding and entitled to vote thereon and, except as expressly provided in this Certificate of Incorporation, as amended from time to time, including in any duly filed amendments approved by the Board pursuant to authority expressly vested in it by the provisions of Section 3 of this Article IV with respect to the Preferred Stock and except as otherwise provided by law, no vote by holders of capital stock of the Corporation other than the Common Stock shall be required to approve such action.

(d) Shares Entitled to More or Less than One Vote. If any class or series of the Corporation's capital stock shall be entitled to more or less than one vote for any share, on any matter, every reference in this Certificate of Incorporation and in any relevant provision of law to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock.

## ARTICLE V

### Directors

Section 1. General Powers. The business and affairs of the Corporation shall be managed by the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law, this Certificate of Incorporation or the Bylaws directed or required to be exercised or done by stockholders.

Section 2. Number and Term of Office. The number of directors shall be such number, not less than three, as shall be fixed from time to time by the Board. Directors need not be stockholders. The Bylaws shall prescribe the manner in which the number of directors necessary to constitute a quorum of the Board of Directors shall be determined. Advance notice of nomination by a proposed nominee for election as director may be made by a stockholder in the manner provided in the Bylaws. If for any cause the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in the Bylaws. The election of directors need not be by ballot unless the Bylaws of the Corporation so provide.

Section 3. Resignation. Any director may resign at any time by delivering his written resignation to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board. If no such specification is made, it shall be deemed effective at the time of receipt by the Secretary. When one or more directors shall resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his successor shall have been duly elected and qualified.

Section 4. Removal. Subject to the rights of the holders of any series of Preferred Stock then outstanding, (a) any director, or the entire Board, may be removed from office at any time, but only for cause, by the affirmative vote of the holders of record of outstanding shares representing at least a majority of the voting power of all the shares of capital stock of the Corporation then entitled to vote generally in the election of directors, voting together as a single class, and (b) any director may be removed from office at any time, but only for cause, by the affirmative vote of a majority of the entire Board.

Section 5. Vacancies. Any vacancies on the Board resulting from death, resignation, disqualification, removal or other causes, and any newly created directorships resulting from any increase in the number of directors, shall be filled only by the affirmative vote of a majority of the remaining directors, even though less than a quorum of the Board. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board shall be deemed to exist in the case of the death, removal or resignation of any director.

Section 6. Meetings. (a) Annual Meetings. The annual meeting of the Board shall be held immediately before or after the annual meeting of stockholders and may be at the place where such meeting is held. No notice of an annual meeting of the Board shall be necessary and such meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

(b) Regular Meetings. Except as hereinafter otherwise provided, regular meetings of the Board shall be held in the office of the Corporation required to be maintained pursuant to Section 1.01 of the Bylaws. Regular meetings of the Board may also be held at any place within or without the State of New Jersey that has been designated by resolution of the Board or the written consent of all directors.

(c) Special Meetings. Special meetings of the Board may be held at any time and place within or without the State of New Jersey whenever called by the Chairman of the Board, the Chairman of the Board or the President or any two of the directors.

(d) Telephone Meetings. Any member of the Board, or of any committee thereof, may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting by such means shall constitute presence in person at such meeting.

(e) Notice of Meetings. Notice of the time and place of all special meetings of the Board shall be orally or in writing, by telephone, facsimile, electronic mail, telegraph or telex, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting, or sent in writing to each director by first class mail, charges prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting at the beginning of the meetings to the transaction of any business because the meeting is not lawfully called or convened.

(f) Waiver of Notice. The transaction of all business at any meeting of the Board, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present shall sign a written waiver of notice. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

(g) Quorum and Manner of Acting. One-half the total number of directors then in office shall be present in person at any meeting of the Board in order to constitute a quorum for the transaction of business at such meeting, and the vote of a majority of those directors present at any such meeting at which a quorum is present shall be necessary for the passage of any resolution or act of the Board, except as otherwise expressly required by law, this Certificate of Incorporation or the Bylaws. In the absence of a quorum for any such meeting, a majority of the directors present thereat may adjourn such meeting from time to time until a quorum shall be present.

(h) Organization. At each meeting of the Board, one of the following shall act as chairman of the meeting and preside, in the following order of precedence:

- (i) the Chairman;
- (ii) the President;

- (iii) any director chosen by a majority of the directors present.

The Secretary or, in the case of his absence, any person (who shall be an Assistant Secretary, if an Assistant Secretary is present) whom the chairman of the meeting shall appoint shall act as secretary of such meeting and keep the minutes thereof.

Section 7. Committees of the Board. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees including an executive committee, each committee to consist of one or more directors. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. Any such committee, to the extent provided in the resolution of the Board designating such committee or in the Bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation subject to applicable law. Each committee of the Board shall keep regular minutes of its proceedings and report the same to the Board in accordance with Section 14A:6-9(3) of the Act.

Section 8. Directors' Consent in Lieu of Meeting. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, without prior notice and without a vote, if a consent in writing or by electronic transmission, setting forth the action so taken, shall be signed by all the members of the Board or such committee and such consent or electronic transmission or transmissions is filed with the minutes of the proceedings of the Board or such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 9. Compensation. The Board may determine the compensation of directors. In addition, as determined by the Board, directors may be reimbursed by the Corporation for their expenses, if any, in the performance of their duties as directors. No such compensation or reimbursement shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 10. Transactions Involving Interested Directors.

(a) No contract or other transaction between the Corporation and one or more of its directors, or between the Corporation and any domestic or foreign corporation, firm, or association of any type or kind in which one or more of the directors are directors or otherwise interested, shall be void or voidable solely by reason of such common directorship or interest, or solely because such director or directors are present at the meeting of the Board or a committee thereof which authorizes or approves the contract or transaction, or solely because his or her votes are counted for such purpose, if any of the following is true:

- (i) The contract or other transaction is fair and reasonable to the Corporation at the time it is authorized, approved or ratified; or
- (ii) The fact of the common directorship or interest is disclosed or known to the Board or committee and the Board or committee authorizes, approves, or ratifies the contract or transaction by unanimous written consent, provided at least one director so

consenting is disinterested, or by affirmative vote of a majority of the disinterested directors, even if the disinterested directors are less than a quorum; or

(iii) The fact of the common directorship or interest is disclosed or known to the shareholders, and they ratify authorize, approve, or ratify the contract or transaction.

(b) Common or interested directors may be counted in determining the presence of a quorum at a Board or committee meeting at which a contract or transaction described in this Article V, Section 10 is authorized, approved or ratified.

Section 11. Other Constituencies. In taking any action, including action that may involve or relate to a change or potential change in the control of the Corporation, a director of the Corporation may consider, among other things, both the long-term and short-term interest of the Corporation and its stockholders and the effects that the Corporation's actions may have in the short term or long term upon any one or more of the following matters:

- (i) the prospects for potential growth, development, productivity and profitability of the Corporation;
- (ii) the Corporation's current employees;
- (iii) the Corporation's employees and other beneficiaries receiving or entitled to receive retirement, welfare or similar benefits from or pursuant to any plan sponsored, or agreement entered into, by the Corporation;
- (iv) the Corporation's customers and creditors; and
- (v) the ability of the Corporation to provide, as a going concern, goods, services, employment opportunities and employment benefits and otherwise to contribute to the communities in which it does business.

Nothing in this Section 11 shall create any duty owed by any director of the Corporation to any person or entity to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to the foregoing matters. No such employee, former employee, beneficiary, customer, creditor or community or member thereof shall have any rights against any director of the Corporation or the Corporation under this Section 11.

Section 12. Amendment of this Article V. Notwithstanding anything contained in this Amended and Restated Certificate of Incorporation to the contrary, the affirmative vote of the majority of the directors and the affirmative vote of at least 66 <sup>2</sup>/<sub>3</sub>% of the combined voting power of the then outstanding shares of the stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend, adopt any provision inconsistent with or repeal this Article V.

## ARTICLE VI

### Meetings of Stockholders; Corporation Books

Section 1. Stockholders Meetings. Meetings of holders of capital stock of the Corporation may be held outside the State of New Jersey if the Bylaws so provide. Any action required or permitted to be taken by the holders of capital stock of the Corporation must be effected at a duly called annual or special meeting of holders of capital stock of the Corporation, other than a consent in writing adopted by all Stockholders entitled to vote thereon pursuant to Section 14A:5-6(1) of the New Jersey Business Corporation Act. Meetings of holders of capital stock of the Corporation may be called only by (i) the President or (ii) by the Board pursuant to a resolution adopted by the affirmative vote of a majority of the entire Board, or (iii) pursuant to an order of the New Jersey Superior Court in accordance with Section 14A:5-3 of the Act. The ability of the stockholders to call a special meeting of stockholders of the Corporation is specifically denied other than pursuant to an order of the New Jersey Superior Court in accordance with Section 14A:5-3 of the Act. Notwithstanding anything contained in this Amended and Restated Certificate of Incorporation to the contrary, the affirmative vote of the majority of the directors and the affirmative vote of at least 66<sup>2</sup>/<sub>3</sub>% of the combined voting power of the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend, adopt any provision inconsistent with or repeal this Article VI.

Section 2. Books of Corporation. Except as otherwise provided by law, the books of the Corporation may be kept outside the State of New Jersey at such place or places as may be designated from time to time by the Board or in the Bylaws of the Corporation. The Board of Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions and regulations the accounts, books and records of the Corporation or any of them shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document or record of the Corporation except as conferred by statute or authorized by the Board of Directors or by a resolution of the stockholders.

## ARTICLE VII

### Director and Officer Liability and Indemnification

To the fullest extent permitted by the laws of the State of New Jersey, as they exist or may hereafter be amended, directors and officers of the Corporation shall not be personally liable to the Corporation or its stockholders for damages for breach of any duty owed to the Corporation or its stockholders, except that the provisions of this Article VII shall not relieve a director or officer from liability for any breach of duty based upon an act or omission (a) in breach of such person's duty of loyalty to the Corporation or its stockholders, (b) not in good faith or involving a knowing violation of law or (c) resulting in receipt by such person of an improper personal benefit. A "Corporate Agent" of the Corporation shall be any person who is or was a director, officer, employee, or agent of the Corporation or any constituent corporation absorbed by this Corporation in a consolidation or merger, and other persons serving at the request of the Corporation as a director, officer, trustee, employee, or agent of another corporation, association, partnership, limited liability company, joint venture, trust, or other

enterprise. The Corporation shall have the authority to indemnify any Corporate Agent against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement, incurred in connection with any pending or threatened action, suit, or proceeding, whether civil, criminal, administrative, or investigative, with respect to which the Corporate Agent is a party, or is threatened to be made a party, to the fullest extent permitted by the Act. The indemnification provided in this paragraph shall not be deemed exclusive of any other right, including the right to be indemnified against liabilities and expenses incurred in proceedings by or in the right of the Corporation, to which the Corporate Agent may be entitled under any by-law, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in that Corporate Agent's official capacity and as to action in another capacity. However, no indemnification shall be made to any Corporate Agent if a judgment or other final adjudication establishes that the Corporate Agent engaged in conduct that (1) breached the duty of loyalty to the Corporation or its stockholders, (2) was not undertaken in good faith, (3) involved a knowing violation of the law, or (4) resulted in the receipt of an improper personal benefit. Conduct breaching the duty of loyalty is conduct that a person knows or believes to be contrary to the best interests of the Corporation or its stockholders in connection with a matter in which he or she has a material conflict of interest. These indemnification rights shall inure to the benefit of the heirs, executors, and administrators of the Corporate Agent. The Corporation shall have the power to purchase and maintain insurance on behalf of its Corporate Agents against any liability asserted against the Corporate Agent and incurred by the Corporate Agent in any capacity, arising out of the Corporate Agent's status as a Corporate Agent, whether or not the Corporation would have the power to indemnify the Corporate Agent against the liability under the provisions of this Amended and Restated Certificate of Incorporation.

#### **ARTICLE VIII**

##### Duration

The duration of the Corporation shall be perpetual.

#### **ARTICLE IX**

##### Amendments

The Corporation reserves the right to amend, alter, change or repeal any of the provisions contained in this Amended and Restated Certificate of Incorporation in the manner now or hereafter prescribed by law, and all rights conferred on officers, directors and/or stockholders herein are granted subject to this reservation.

#### **ARTICLE X**

##### Bylaws

The Board shall have the power to adopt, amend or repeal Bylaws of the Corporation. No adoption, amendment or repeal of a bylaw by action of the stockholders shall be effective unless approved by the affirmative vote of not less than a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote on such

matter, voting together as a single class. Any vote of stockholders required by this Article X shall be in addition to any other vote of stockholders that may be required by law, this Certificate of Incorporation, the bylaws of the Corporation, any agreement with a national securities exchange or otherwise.

## ARTICLE XI

### Directors

The number of directors constituting the current Board of Directors of the Corporation is eight. The names and addresses of said directors are as follows:

David F. Carney	200 Executive Drive, Suite 340, West Orange, New Jersey 07052
Alexis P. Michas	200 Executive Drive, Suite 340, West Orange, New Jersey 07052
James J. Burke, Jr.	200 Executive Drive, Suite 340, West Orange, New Jersey 07052
Steven W. Hart	200 Executive Drive, Suite 340, West Orange, New Jersey 07052
Jerry G. Rubenstein	200 Executive Drive, Suite 340, West Orange, New Jersey 07052
Peter S. Burgess	200 Executive Drive, Suite 340, West Orange, New Jersey 07052
John Petillo	200 Executive Drive, Suite 340, West Orange, New Jersey 07052
Paul Glaske	200 Executive Drive, Suite 340, West Orange, New Jersey 07052

## ARTICLE XII

### New Jersey Shareholders Protection Act

The Corporation shall be governed by the provisions of the New Jersey Shareholders Protection Act, Section 14A:10A-1 et. seq. of the Act, as the same shall be amended from time to time (the "SPA"). Notwithstanding any other provisions of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation (and in addition to any other vote that may be required by law, this Amended and Restated Certificate of Incorporation or the Bylaws), this Article XII may be amended only by the affirmative vote, in person or by proxy, of the holders of 66  $\frac{2}{3}$ % in interest of the issued and outstanding voting stock of the Corporation (considered for this purpose as one class) including the holders of 66  $\frac{2}{3}$ % of the outstanding voting stock of the Corporation held by persons other than "Interested Stockholders" as such term is defined Section 14:10A-3 of the SPA; provided, however, that such provision may be amended, altered, repealed or adopted, by either (a) the affirmative vote of 66  $\frac{2}{3}$ % of the Corporation's issued and outstanding voting stock or (b) the approval of the majority of the Disinterested Directors and the holders of a majority in interest of the issued and outstanding voting stock of the Corporation. For purposes of this Article XIV, "Disinterested Director" means any member of the Board of Directors of the Corporation who is unaffiliated with, and not a nominee of, an Interested Stockholder and was a member of the Board prior to the time that the Interested Stockholder became an Interested Stockholder, and any successor of a Disinterested Director who is unaffiliated with, and not a nominee of, an Interested Stockholder and who is recommended to succeed a Disinterested Director then on the Board of Directors. The SPA shall be deemed to apply to transactions which, but for this provision in this Amended and Restated Certificate of Incorporation, would otherwise be exempt from the SPA pursuant to Section 14A: 10A-6(b) of the Act.

IN WITNESS WHEREOF, Lincoln Educational Services Corporation has caused this Amended and Restated Certificate of Incorporation to be duly executed this [ ] day of [ ] 2005.

Lincoln Educational Services Corporation

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

**BYLAWS**  
**OF**  
**LINCOLN EDUCATIONAL SERVICES CORPORATION**

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**BYLAWS**  
**OF**  
**LINCOLN EDUCATIONAL SERVICES CORPORATION**

**ARTICLE I**

**OFFICES**

SECTION 1.01. Registered Office. The registered office of Lincoln Educational Services Corporation (the "Corporation") in the State of New Jersey shall be at the principal office of the corporation and the registered agent in charge thereof shall be Alexandra Luster.

SECTION 1.02. Other Offices. The Corporation may also have an office or offices at any other place or places within or without the State of New Jersey as the Board of the Corporation (the "Board") may from time to time determine or the business of the Corporation may from time to time require.

**ARTICLE II**

**MEETINGS OF STOCKHOLDERS**

SECTION 2.01. Annual Meetings. The annual meeting of stockholders of the Corporation for the election of directors of the Corporation, and for the transaction of such other business as may properly come before such meeting, shall be held at such place, date and time as shall be fixed by the Board and designated in the notice or waiver of notice of such annual meeting.

SECTION 2.02. Special Meetings. Special meetings of stockholders for any purpose or purposes may be called by the Chairman of the Board or the President or by the Board pursuant to a resolution duly adopted by a majority of the members of the entire Board, to be held at such place, date and time as shall be designated in the notice or waiver of notice thereof. Only business within the purposes described in the notice required by Section 2.03 of this Article II may be conducted at the special meeting. The Superior Court, at the request of holder or holders of not less than 10% of the shares entitled to vote at the meeting, may call a special meeting of stockholders of the Corporation pursuant to Section 14A:5-3 of the New Jersey Business Corporation Act ("NJBCA").

SECTION 2.03. Notice and Business of Meetings. (a) General. Except as otherwise provided by law, written notice of each meeting of stockholders shall be given either by delivering a notice personally or mailing a notice to each stockholder of record entitled to vote thereat. If mailed, the notice shall be directed to the stockholder in a postage-prepaid envelope at his address as it appears on the stock books of the Corporation unless, prior to the time of mailing, he or she shall have filed with the Secretary a written request that notices intended for him be mailed to some other address, in which case it shall be mailed to the address designated

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in such request. Notice of each meeting of stockholders shall be in such form as is approved by the Board and shall state the purpose or purposes for which the meeting is called, the date and time when and the place where it is to be held, and shall be delivered personally or mailed not more than sixty (60) days and not less than ten (10) days before the day of the meeting. Except as otherwise provided by law, the business which may be transacted at any special meeting of stockholders shall consist of and be limited to the purpose or purposes so stated in such notice. The Secretary or an Assistant Secretary or the transfer agent of the Corporation shall, after giving such notice, make an affidavit stating that notice has been given, which shall be filed with the minutes of such meeting.

(b) Advance Notice Provisions for Business to Be Transacted at Annual Meeting. (i) No business may be transacted at an annual meeting of stockholders, other than business that is either (A) specified in the notice of meeting (or any supplement thereto) given by the President or the Chairman or at the direction of the Board (or any duly authorized committee thereof), (B) otherwise properly brought before the annual meeting by or at the direction of the Board (or any duly authorized committee thereof) or (C) otherwise properly brought before the annual meeting by any stockholder of the Corporation who (1) is a stockholder of record on both (x) the date of the giving of the notice provided for in this Section 2.03 and (y) the record date for the determination of stockholders entitled to vote at such annual meeting, (2) complies with the notice procedures set forth in this Section 2.03(b) and (3) meets the other qualifications established from time to time by the U.S. Securities and Exchange Commission.

(ii) In addition to any other applicable requirements and unless otherwise provided by law, for business to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

(A) To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than one hundred twenty (120) days nor more than one hundred fifty (150) days prior to the first anniversary of the date the proxy statement was released to shareholders for the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced by more than thirty (30) days or delayed by more than sixty (60) days from such anniversary date, notice by the stockholder to be timely must be delivered not earlier than the one hundred fiftieth (150th) day prior to such annual meeting and not later than the close of business on the later of the one hundred twentieth (120th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made; provided further that for purposes of the annual meeting of stockholders held following the end of the fiscal year ending on December 31, 2005, the date the proxy statement was released to shareholders for the preceding year's annual meeting shall be deemed to be April 30, 2005.

(B) To be in proper written form, a stockholder's notice to the Secretary must set forth as to each matter such stockholder proposes to bring before the annual meeting (1) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (2) the name and record address of such stockholder, (3) the class or series and number of shares of capital stock

of the Corporation which are owned beneficially or of record by such stockholder, (4) a description of all arrangements or understandings between such stockholder and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and any material interest of such stockholder in such business and (5) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting. As used in these by-laws, "beneficially owned" means all shares which such person is deemed to beneficially own pursuant to Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

(iii) No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 2.03, provided, however, that, once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 2.03 shall be deemed to preclude discussion by any stockholder of any such business. If the chairman of an annual meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

(c) Advance Notice Provisions for Election of Directors. (i) In addition to any other applicable requirements and unless otherwise provided by law, for a nomination for election of a director to be made by a stockholder of the Corporation, such stockholder must (A) be a stockholder of record on both (1) the date of the giving of the notice provided for in this Section 2.03 and (2) the record date for the determination of stockholders entitled to vote at such annual meeting and (B) have given timely notice thereof in proper written form to the Secretary of the Corporation. If a stockholder is entitled to vote only for a specific class or category of directors at a meeting of the stockholders, such stockholder's right to nominate one or more persons for election as a director at the meeting shall be limited to such class or category of directors.

(ii) To be timely in connection with the annual meeting of the stockholders, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than one hundred twenty (120) days nor more than one hundred fifty (150) days prior to the first anniversary of the date the proxy statement was released to shareholders for the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced by more than thirty (30) days or delayed by more than sixty (60) days from such anniversary date, notice by the stockholder to be timely must be delivered not earlier than the one hundred fiftieth (150th) day prior to such annual meeting and not later than the close of business on the later of the one hundred twentieth (120th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made; provided further that for purposes of the annual meeting of stockholders held following the end of the fiscal year ending on December 31, 2005, the date the proxy statement was released to shareholder's for the preceding year's annual meeting shall be deemed to be April 30, 2005. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any stockholder entitled to vote for the election of such director(s) at such meeting and satisfying the requirements specified in Section 2.03(c)(i) may nominate a person or persons (as the case may

be) for election to such position(s) as are specified in the Corporation's notice of such meeting, but only if the stockholder notice required by Section 2.03(c)(iii) hereof shall be delivered to the Secretary at the principal executive office of the Corporation not later than the close of business on the tenth (10th) day following the first day on which the date of the special meeting and either the names of all nominees proposed by the Board to be elected at such meeting or the number of directors to be elected shall have been publicly announced.

(iii) To be in proper written form, a stockholder's notice to the Secretary must be set forth (A) as to each person whom the stockholder proposes to nominate for election as a director (1) the name, age, business address and residence address of the person, (2) the principal occupation or employment of the person, (3) the class or series and number of shares of capital stock of the Corporation, if any, which are owned beneficially or of record by the person and (4) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; and (B) as to the stockholder giving notice (1) the name and record address of such stockholder, (2) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder, (3) a description of all arrangements or understandings between such stockholder and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such stockholder, (4) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to nominate the person(s) named in its notice and (5) any other information relating to such stockholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

(iv) No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 2.03(c). If the chairman of an annual meeting determines that a nomination was not made in accordance with the foregoing procedures, the chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

(v) This Section 2.03(c) shall not apply to any nomination of a director in an election in which only the holders of one or more series of Preferred Stock of the Corporation issued pursuant to Article IV of the Certificate of Incorporation of the Corporation (the "Certificate of Incorporation") are entitled to vote (unless otherwise provided in the terms of such series of Preferred Stock).

(d) Definition of Publicly Announced. For purposes of this Section 2.03, a matter shall be deemed to have been "publicly announced" if such matter is disclosed in a press release reported by the Dow Jones News Service, the Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission.

SECTION 2.04. Waiver of Notice. Notice of any annual or special meeting of stockholders need not be given to any stockholder who files a written waiver of notice with the Secretary, signed by the person entitled to notice, whether before or after such meeting. Neither the business to be transacted at, nor the purpose of, any meeting of stockholders need be specified in any written waiver of notice thereof. Attendance of a stockholder at a meeting, in person or by proxy, without protesting prior to the conclusion of said meeting the transaction of any business on the grounds that the notice of such meeting was inadequate or improperly given.

SECTION 2.05. Adjournments. Whenever a meeting of stockholders, annual or special, is adjourned to another date, time or place, notice need not be given of the adjourned meeting if the date, time and place thereof are announced at the meeting at which the adjournment is taken. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder entitled to vote thereat. At the adjourned meeting, any business may be transacted which might have been transacted at the original meeting.

SECTION 2.06. Quorum. Except as otherwise provided by law or the Certificate of Incorporation, the recordholders of a majority of the shares entitled to vote thereat, present in person or by proxy, shall constitute a quorum for the transaction of business at all meetings of stockholders, whether annual or special. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all action taken by the holders of a majority of the vote cast, excluding abstentions, at any meeting at which a quorum is present shall be valid and binding upon the Corporation; provided, however, that directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of the votes cast, including abstentions, by the holders of shares of such class or classes or series shall be the act of such class or classes or series.

SECTION 2.07. Voting. Except as otherwise provided in the Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder which has voting power upon the matter in question. The ability of the stockholders to engage in cumulative voting is specifically denied. If the Certificate of Incorporation provides for more or less than one vote for any share on any matter, every reference in these Bylaws to a majority or other proportion of shares of stock shall refer to such majority or other proportion of the votes of such shares of stock. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after eleven

months from its date, unless the proxy provides for a longer period. Such proxy shall be filed with the Secretary before such meeting of stockholders. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power, regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally pursuant to Section 14A:5-19 of the NJBCA. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person by written ballot or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary. Voting at meetings of stockholders need not be by written ballot unless so directed by the chairman of the meeting or the Board or otherwise required by law.

SECTION 2.08. Action Without Meeting. Action may be taken by the stockholders without a meeting only by written consent adopted by all the stock holders entitled to vote thereon in accordance with Section 14A:5-6 of the NJBCA.

SECTION 2.09. Organization. (a) At every meeting of stockholders, the Chairman of the Board, or, if a Chairman has not been appointed or is absent, the Chief Executive Officer, or if a Chief Executive Officer has not been appointed or is absent, the President, or, if the President is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his or her absence, an Assistant Secretary directed to do so by the Chief Executive Officer, or President, shall act as secretary of the meeting.

(b) The Board shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the Corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

### ARTICLE III

#### BOARD

SECTION 3.01. General Powers. The business and affairs of the Corporation shall be managed by the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law, the Certificate of Incorporation or these Bylaws directed or required to be exercised or done by stockholders.

SECTION 3.02. Number and Term of Office. The number of directors constituting the Board shall be the number, not less than three nor more than 11, as shall be fixed from time to time by the Board. Directors need not be stockholders. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws. No decrease in the number of directors constituting the Board shall shorten the term of any incumbent director.

SECTION 3.03. Resignation. Any director may resign at any time by delivering his written resignation to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board. If no such specification is made, it shall be deemed effective upon receipt by the Secretary. When one or more directors shall resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his successor shall have been duly elected and qualified.

SECTION 3.04. Removal. Subject to the rights of the holders of any series of Preferred Stock then outstanding, (a) any director, or the entire Board, may be removed from office at any time, but only for cause, by the affirmative vote of the holders of record of outstanding shares representing at least a majority of the voting power of all the shares of capital stock of the Corporation then entitled to vote generally in the election of directors, voting together as a single class, and (b) any director may be removed from office at any time, but only for cause, by the affirmative vote of a majority of the entire Board.

SECTION 3.05. Vacancies. Unless otherwise provided in the Certificate of Incorporation, any vacancies on the Board resulting from death, resignation, disqualification, removal or other causes, and any newly created directorships resulting from any increase in the number of directors, shall be filled only by the affirmative vote of a majority of the remaining directors, even though less than a quorum of the Board. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy on the Board shall be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director. Notwithstanding the above, in the event that the Board shall fail to fill such a vacancy, the stockholders may fill such vacancy at an annual stockholders meeting or at a special meeting of stockholders called for that purpose.

SECTION 3.06. Meetings. (a) Annual Meetings. The annual meeting of the Board shall be held immediately before or after the annual meeting of stockholders and may be at the place where such meeting is held. No notice of an annual meeting of the Board shall be necessary and such meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

(b) Regular Meetings. Except as hereinafter otherwise provided, regular meetings of the Board shall be held in the office of the Corporation required to be maintained

pursuant to Section 1.02 hereof. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board may also be held at any place within or without the State of New Jersey which has been designated by resolution of the Board or the written consent of all directors.

(c) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board may be held at any time and place within or without the State of New Jersey whenever called by the Chairman of the Board, the President, the Chief Financial Officer or any two of the directors.

(d) Telephone Meetings. Any member of the Board, or of any committee thereof, may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(e) Notice of Meetings. Notice of the time and place of all special meetings of the Board shall be orally or in writing, by telephone, facsimile, electronic mail, telegraph or telex, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting, or sent in writing to each director by first class mail, charges prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, without protesting the lack of proper notice prior to the conclusion of the meeting.

(f) Waiver of Notice. The transaction of all business at any meeting of the Board, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present shall sign a written waiver of notice. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

(g) Quorum and Manner of Acting. A majority of the total number of directors then in office shall be present in person at any meeting of the Board in order to constitute a quorum for the transaction of business at such meeting, and the vote of a majority of those directors present at any such meeting at which a quorum is present shall be necessary for the passage of any resolution or act of the Board, except as otherwise expressly required by law, the Certificate of Incorporation or these Bylaws. In the absence of a quorum for any such meeting, a majority of the directors present thereat may adjourn such meeting from time to time for up to ten (10) days until a quorum shall be present if the time and place of the adjourned meeting is given at the original meeting.

(h) Organization. At each meeting of the Board, one of the following shall act as chairman of the meeting and preside, in the following order of precedence:

- (i) the Chairman;
- (ii) the President;

- (iii) any director chosen by a majority of the directors present.

The Secretary or, in the case of his absence, any person (who shall be an Assistant Secretary, if an Assistant Secretary is present) whom the chairman of the meeting shall appoint shall act as secretary of such meeting and keep the minutes thereof.

SECTION 3.07. Committees of the Board. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more directors. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. Any such committee, to the extent provided in the resolution of the Board designating such committee, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation subject to applicable law, and may authorize the seal of the Corporation to be affixed to all papers which may require it; provided, however, that no such committee shall have such power or authority in reference to making, altering or replacing any bylaw of the corporation, electing or appointing any director or removing any officer or director, submitting to shareholders any action that requires shareholder approval or amending or repealing any resolutions theretofore adopted by the Board which by its terms is amendable or repealable only by the Board. Each committee of the Board shall keep regular minutes of its proceedings and report the same to the Board at the next following Board meeting following the committee meeting; provided, however, that when the meeting of the Board is held within two days after the committee meeting, such report shall, if not made at the first meeting, be made to the Board at its second meeting following such committee meeting.

SECTION 3.08. Directors' Consent in Lieu of Meeting. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, without prior notice and without a vote, if a consent in writing or by electronic transmission, setting forth the action so taken, shall be signed by all the members of the Board or such committee and such consent or electronic transmission or transmissions is filed with the minutes of the proceedings of the Board or such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

SECTION 3.09. Compensation. Unless otherwise restricted by the Certificate of Incorporation, the Board may determine the compensation of directors by an affirmative vote of a majority of directors in office. In addition, as determined by the Board, directors may be reimbursed by the Corporation for their expenses, if any, in the performance of their duties as directors. No such compensation or reimbursement shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

SECTION 3.10. Interested Directors; Quorum. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, limited liability company, joint venture, trust, association or other organization or other entity in which one or more of its directors or officers serve as directors, officers, trustees or in a similar capacity or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the

contract or transaction, or solely because the directors' or officers' votes are counted for such purpose, if: (i) the material facts as to the directors' or officers' relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum or by unanimous written consent, provided, in either case, at least one director so consenting is disinterested; or (ii) the material facts as to the directors' or officers' relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by a vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

## ARTICLE IV

### OFFICERS

SECTION 4.01. Officers. The officers of the Corporation shall be the Chairman, the Chief Executive Officer, the President, the Chief Operating Officer, the Secretary and a Treasurer and may include one or more Vice Presidents and one or more Assistant Secretaries and one or more Assistant Treasurers. Any two or more offices may be held by the same person.

SECTION 4.02. Authority and Duties. All officers shall have such authority and perform such duties in the management of the Corporation as may be provided in these Bylaws or, to the extent not so provided, by resolution of the Board.

SECTION 4.03. Term of Office, Resignation and Removal. (a) Each officer shall be appointed by the Board and shall hold office for such term as may be determined by the Board. Each officer shall hold office until his successor has been appointed and qualified or his earlier death or resignation or removal in the manner hereinafter provided. The Board may require any officer to give security for the faithful performance of his duties.

(b) Any officer may resign at any time by giving written notice to the Board, the Chairman, the Chief Executive Officer or the Secretary. Such resignation shall take effect at the time specified in such notice or, if the time be not specified, upon receipt thereof by the Board, the Chairman, the Chief Executive Officer or the Secretary, as the case may be. Unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

(c) All officers and agents appointed by the Board shall be subject to removal, with or without cause, at any time by the Board or, if elected by stockholders, by the action of the recordholders of a majority of the shares entitled to vote thereon.

SECTION 4.04. Vacancies. Any vacancy occurring in any office of the Corporation, for any reason, shall be filled by action of the Board. Unless earlier removed pursuant to Section 4.03 hereof, any officer appointed by the Board to fill any such vacancy shall

serve only until such time as the unexpired term of his predecessor expires unless reappointed by the Board.

SECTION 4.05. The Chairman. The Chairman shall have the power to call special meetings of stockholders, to call special meetings of the Board and, if present, to preside at all meetings of stockholders and all meetings of the Board. The Chairman shall perform all duties incident to the office of Chairman of the Board and all such other duties as may from time to time be assigned to him by the Board or these Bylaws.

SECTION 4.06. The Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation and shall have general and active management and control of the business and affairs of the Corporation, subject to the control of the Board, and shall see that all orders and resolutions of the Board are carried into effect. The Chief Executive Officer shall perform all duties incident to the office of Chief Executive Officer and all such other duties as may from time to time be assigned to him by the Board or these Bylaws.

SECTION 4.07. The President. The President shall perform such duties as may be prescribed from time to time by the Chairman, the Chief Executive Officer or the Board, and in the absence or disability of the Chief Operating Officer, shall perform the duties and exercise the powers of the Chief Operating Officer.

SECTION 4.08. The Chief Operating Officer. The Chief Operating Officer shall perform duties as may be prescribed from time to time by the Chairman, the Chief Executive Officer or the Board.

SECTION 4.09. Vice Presidents. Vice Presidents, if any, in order of their seniority or in any other order determined by the Board, shall generally assist the Chief Executive Officer and perform such other duties as the Board or the Chief Executive Officer shall prescribe.

SECTION 4.10. The Secretary. The Secretary shall, to the extent practicable, attend all meetings of the Board and all meetings of stockholders and shall record all votes and the minutes of all proceedings in a book to be kept for that purpose, and shall perform the same duties for any committee of the Board when so requested by such committee. He or she shall give or cause to be given notice of all meetings of stockholders and of the Board, shall perform such other duties as may be prescribed by the Board, the Chairman or the Chief Executive Officer and shall act under the supervision of the Chairman. He or she shall keep in safe custody the seal of the Corporation and affix the same to any instrument that requires that the seal be affixed to it and which shall have been duly authorized for signature in the name of the Corporation and, when so affixed, the seal shall be attested by his signature or by the signature of the Treasurer of the Corporation (the "Treasurer") or an Assistant Secretary or Assistant Treasurer of the Corporation. He or she shall keep in safe custody the certificate books and stockholder records and such other books and records of the Corporation as the Board, the Chairman or the Chief Executive Officer may direct and shall perform all other duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board, the Chairman or the Chief Executive Officer.

SECTION 4.11. Assistant Secretaries. Assistant Secretaries of the Corporation ("Assistant Secretaries"), if any, in order of their seniority or in any other order determined by the Board, shall generally assist the Secretary and perform such other duties as the Board or the Secretary shall prescribe, and, in the absence or disability of the Secretary, shall perform the duties and exercise the powers of the Secretary.

SECTION 4.12. The Treasurer. The Treasurer shall have the care and custody of all the funds of the Corporation and shall deposit such funds in such banks or other depositories as the Board, or any officer or officers, or any officer and agent jointly, duly authorized by the Board, shall, from time to time, direct or approve. He or she shall disburse the funds of the Corporation under the direction of the Board and the Chief Executive Officer. He or she shall keep a full and accurate account of all moneys received and paid on account of the Corporation and shall render a statement of his accounts whenever the Board, the Chairman or the Chief Executive Officer shall so request. He or she shall perform all other necessary actions and duties in connection with the administration of the financial affairs of the Corporation and shall generally perform all the duties usually appertaining to the office of treasurer of a corporation. When required by the Board, he or she shall give bonds for the faithful discharge of his duties in such sums and with such sureties as the Board shall approve.

SECTION 4.13. Assistant Treasurers. Assistant Treasurers of the Corporation (“Assistant Treasurers”), if any, in order of their seniority or in any other order determined by the Board, shall generally assist the Treasurer and perform such other duties as the Board or the Treasurer shall prescribe, and, in the absence or disability of the Treasurer, shall perform the duties and exercise the powers of the Treasurer.

## ARTICLE V

### CHECKS, DRAFTS, NOTES, AND PROXIES

SECTION 5.01. Checks, Drafts and Notes. All checks, drafts and other orders for the payment of money, notes and other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall be determined, from time to time, by resolution of the Board.

SECTION 5.02. Execution of Proxies. The Chairman or the Chief Executive Officer, or, in the absence or disability of both of them, the President or any Vice President, may authorize, from time to time, the execution and issuance of proxies to vote shares of stock or other securities of other corporations held of record by the Corporation and the execution of consents to action taken or to be taken by any such corporation. All such proxies and consents, unless otherwise authorized by the Board, shall be signed in the name of the Corporation by the Chairman, the Chief Executive Officer, the President or any Vice President.

## ARTICLE VI

### SHARES AND TRANSFERS OF SHARES

SECTION 6.01. Certificates Evidencing Shares. Shares shall be evidenced by certificates in such form or forms as shall be approved by the Board; provided that the Board may provide by resolution or resolutions that some or all of any class or classes or series of stock shall be uncertificated shares; provided further that any such resolution shall not apply to any shares represented by a certificate theretofore issued until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board every holder of uncertificated shares shall be entitled to have a certificate signed by or in the name of the

Corporation (as provided below) representing the number of shares and setting forth the information set forth in NJBCA 14A:7-11(6). Certificates shall be issued in consecutive order and shall be numbered in the order of their issue, and shall be signed by the Chairman, the Vice Chairman, the Chief Executive Officer, the President or any Vice President and by the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer. Any or all of the signatures on the certificate may be a facsimile. In the event any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to hold such office, transfer agent or registrar or to be employed by the Corporation before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such officer had held such office on the date of issue. Certificates representing shares of stock of the Corporation may bear such legends regarding restrictions on transfer or other matters as any officer or officers of the Corporation may determine to be lawful or appropriate. The Corporation shall not have the power to issue a certificate in bearer form.

SECTION 6.02. Stock Ledger. A stock ledger in one or more counterparts shall be kept by the Secretary, in which shall be recorded the name and address of each person, firm or corporation owning the shares evidenced by each certificate evidencing shares issued by the Corporation, the number of shares evidenced by each such certificate, the date of issuance thereof and, in the case of cancellation, the date of cancellation. Except as otherwise expressly required by law, the person in whose name shares stand on the stock ledger of the Corporation shall be deemed the owner and recordholder thereof for all purposes.

SECTION 6.03. Transfers of Shares. Registration of transfers of shares shall be made only in the stock ledger of the Corporation upon request of the registered holder of such shares, or of his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, and upon the surrender of the certificate or certificates evidencing such shares properly endorsed or accompanied by a stock power duly executed, together with such proof of the authenticity of signatures as the Corporation may reasonably require.

SECTION 6.04. Addresses of Stockholders. Each stockholder shall designate to the Secretary an address at which notices of meetings and all other corporate notices may be served or mailed to such stockholder, and, if any stockholder shall fail to so designate such an address, corporate notices may be served upon such stockholder by mail directed to the mailing address, if any, as the same appears in the stock ledger of the Corporation or at the last known mailing address of such stockholder.

SECTION 6.05. Lost, Destroyed and Mutilated Certificates. Each recordholder of shares shall promptly notify the Corporation of any loss, destruction or mutilation of any certificate or certificates evidencing any share or shares of which he or she is the recordholder. The Board may, in its discretion, cause the Corporation to issue a new certificate in place of any certificate theretofore issued by it and alleged to have been mutilated, lost, stolen or destroyed, upon the surrender of the mutilated certificate or, in the case of loss, theft or destruction of the certificate, upon satisfactory proof of such loss, theft or destruction, and the Board may, in its discretion, require the recordholder of the shares evidenced by the lost, stolen or destroyed certificate or his legal representative to give the Corporation a bond sufficient to indemnify the Corporation against any claim made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

SECTION 6.06. Regulations. The Board may make such other rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates evidencing shares.

SECTION 6.07. Fixing Date for Determination of Stockholders of Record. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other such action. A determination of the stockholders entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of such meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

## ARTICLE VII

### SEAL

SECTION 7.01. Seal. The Board may approve and adopt a corporate seal, which shall be in the form of a circle and shall bear the full name of the Corporation, the year of its incorporation and the words "Corporate Seal New Jersey".

## ARTICLE VIII

### FISCAL YEAR

SECTION 8.01. Fiscal Year. The fiscal year of the Corporation shall end on the thirty-first day of December of each year unless changed by resolution of the Board.

## ARTICLE IX

### INDEMNIFICATION AND INSURANCE

SECTION 9.01. Indemnification. Any former, present or future director, officer or employee of the Corporation or the legal representative of any such director, officer or employee shall be indemnified by the Corporation:

- (a) against reasonable costs, disbursements and counsel fees paid or incurred where such person has been successful in the defense on the merits or otherwise of any pending, threatened or completed civil, criminal, administrative or arbitrative action, suit or proceeding, and any appeal therein and any inquiry or investigation which could lead to such action, suit or proceeding, or in defense of any claim, issue or matter therein, brought by reason of such person's being or having been such director, officer or employee, and
- (b) with respect to the defense of any such action, suit, proceeding, inquiry or investigation for which indemnification is not made under (a) above, against reasonable

costs, disbursements (which shall include amounts paid in satisfaction of settlements, judgments, fines and penalties, exclusive, however, of any amount paid or payable to the Corporation) and counsel fees if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and in connection with any criminal proceeding such person also had no reasonable cause to believe the conduct was unlawful, with the determination as to whether the applicable standard of conduct was met to be made by a majority of the members of the Board (sitting as a committee of the Board) who were not parties to such inquiry, investigation, action, suit or proceeding or by any one or more disinterested counsel to whom the question may be referred by the Board; provided, however, in connection with any proceeding by or in the right of the Corporation, no indemnification shall be provided as to any person adjudged by any court to be liable to the Corporation except as and to the extent determined by such court.

The termination of any such inquiry, investigation, action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that such person did not meet the standards of conduct set forth in subsection (b) above.

Reasonable costs, disbursements and counsel fees incurred by such person in connection with any inquiry, investigation, action, suit or proceeding may be paid by the Corporation in advance in the final disposition of such matter if authorized by a majority of the Board (sitting as a committee of the Board) not parties to such matter upon receipt by the Corporation of an undertaking by or on behalf of such person to repay such amount unless it is ultimately determined that such person is entitled to be indemnified as set forth herein.

SECTION 9.02. Directors, Trustees, Officers and Employees of Other Companies. The Board may, at any regular or special meeting of the Board, by resolution, accord similar indemnification (prospective or retroactive) to any director, trustee, officer or employee of any other company who is serving as such at the request of the Corporation and any officer, director or employee of any constituent corporation absorbed by the Corporation in a consolidation or merger, or the legal representative of any such director, trustee, officer or employee.

SECTION 9.03. Indemnification Not Exclusive. The indemnification and advancement of expenses provided for in this Article IX shall not exclude any other rights to which any person contemplated by this Article IX may be entitled as a matter of law or which may be lawfully granted; provided that no indemnification shall be made to or on behalf of such person if a judgment or other final adjudication adverse to such person establishes that his or her acts or omissions (a) were in breach of his or her duty of loyalty to the Corporation or its stockholders, (b) were not in good faith or involved a knowing violation of law or (c) resulted in receipt by such person of an improper personal benefit.

SECTION 9.04. Insurance. The Corporation may purchase and maintain insurance to protect itself and any person contemplated by this Article IX against any expenses incurred in any proceeding and any liabilities asserted against him or her by reason of his or her being or having been a director, officer or employee, whether or not the Corporation would have

the power to indemnify him or her against such expenses and liabilities under the provisions of this Article IX. The Corporation may purchase such insurance from, or such insurance may be reinsured in whole or in part by, an insurer owned by or otherwise affiliated with the Corporation, whether or not such insurer does business with other insureds.

## **ARTICLE X**

### **AMENDMENTS**

SECTION 10.01. General Procedure. The Board of Directors shall have power to make, alter and repeal Bylaws of the Corporation by a vote of a majority of all of the directors at any regular or special meeting of the Board, provided that, unless every director shall be present at such meeting, the notice or waiver of notice of such meeting shall have specified or summarized the proposed action. The stockholders may make, alter, and repeal Bylaws of the Corporation by a vote of a majority of the stockholders at any meeting, provided that the notice or waiver of notice of such meeting shall have specified or summarized the proposed action.

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**Exhibit 23.2**

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Stockholders of  
Lincoln Educational Services Corporation  
West Orange, New Jersey

We consent to the use in this Registration Statement of Lincoln Educational Services Corporation on Form S-1 of our report dated March 28, 2005 (which report expresses an unqualified opinion and includes an explanatory paragraph related to a change in accounting method for stock based compensation) appearing in the Prospectus, which is a part of this Registration Statement, and to the references to us under the heading "Experts" in such Prospectus.

DELOITTE & TOUCHE LLP  
Parsippany, New Jersey  
June 6, 2005

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