UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs. Case No. 2:09-cv-229-JES-SPC

FOUNDING PARTNERS CAPITAL MANAGEMENT CO. and WILLIAM L. GUNLICKS,

Defendants,

FOUNDING PARTNERS STABLE-VALUE FUND, LP, FOUNDING PARTNERS STABLE-VALUE FUND II, LP, FOUNDING PARTNERS GLOBAL FUND, LTD., and FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

SUN CAPITAL HEALTHCARE, INC. AND SUN CAPITAL, INC.'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION and INCORPORATED MEMORANDUM

Sun Capital Healthcare, Inc. ("SCHI") and Sun Capital, Inc. ("SCI") (together, "Sun Capital"), pursuant to Federal Rule of Civil Procedure 65 and Local Rules 4.05 and 4.06, hereby move this Court, on an emergency basis, for a temporary restraining order and preliminary injunction to prevent irreparable harm to Sun Capital and its 22 hospital clients resulting from certain Transfer Notices sent by the Receiver for the Founding Partners entities (the "FP Receiver") to SunTrust Bank, freezing certain Sun Capital operating accounts and instructing that all funds flowing into those accounts be

permanently redirected to the FP Receiver, in his capacity as the current representative of Founding Partners Stable-Value Fund, LP ("Stable-Value" or "Lender"). Sun Capital seeks a temporary restraining order and preliminary injunction (a) declaring that the stated Transfer Notices are null and void and requiring the FP Receiver to withdraw them, and (b) prohibiting the FP Receiver, the Lender, or any of their representatives from taking any further self-help steps or contractual remedies or otherwise altering the *status quo* without a court order on notice to Sun Capital and with an opportunity to be heard until the contracting parties' rights and obligations have been adjudicated.

This motion is based upon the documents submitted in Sun Capital's June 26, 2009 motion for modification of the Court's Order Appointing Replacement Receiver to permit Sun Capital and/or its affiliates to prosecute their legal claims against the Lender and/or the FP Receiver (the "June 26 Motion," [Doc. 98] attached hereto as **Exhibit A**),[1] as well as the accompanying Affidavit of Howard Koslow dated July 22, 2009 (the "7/22/09 Koslow Aff." attached hereto as **Exhibit B**) and Mr. Koslow's previous affidavit, dated May 4, 2009 (the "5/4/09 Koslow Aff.") attached hereto as **Exhibit C**).

PRELIMINARY STATEMENT

In its June 26, 2009 Motion, Sun Capital sought a modification of the Court's May 20, 2009 Order Appointing Replacement Receiver, which enjoins Sun Capital and

[1] This motion is directly related to Sun Capital's June 26 Motion, which was granted in part and denied in part on July 17, 2009. (Doc. 120). The FP Receiver responded to that motion by among other things, serving certain Transfer Notices freezing Sun Capital's lockbox accounts and requiring the Bank to direct all incoming funds to the FP Receiver – which is the very risk that motivated Sun Capital to seek the ability to defend itself through its June 26 Motion as well as its earlier May 4 Motion for Modification of Order Appointing Receiver with Temporary Restraining Order (Doc. 42, the "May 4 Motion".)

its affiliates from pursuing their rightful legal remedies against the Lender and/or the FP Receiver without first obtaining permission from this Court. Sun Capital sought permission to prosecute its claims, in part, because it needed to have the ability to defend itself in the event that the FP Receiver chose to begin exercising harsh contractual self-help remedies following the issuance of certain purported (but unfounded) Notices of Default. As explained in that motion, the exercise of such remedies might effectively force Sun Capital to cease its financing operations, triggering the immediate closure of its 22 hospital clients, with grave repercussions for the more than 1000 critically ill patients served by those hospitals and their 3500 employees.[2] (June 26 Motion at 2-3).

That threatened risk has now occurred. Rather than simply responding to Sun Capital's motion, the FP Receiver also (a) filed a new complaint against Sun Capital and one of their affiliates on July 14, 2009 (Case No. 2:09-cv-445-FtM-99SPC), seeking, among other things, an adjudication from this Court that SCHI and SCI breached their respective Credit and Security Agreements, and (b) delivered notices to SunTrust Bank, instructing it to freeze the "lockbox" bank accounts into which Sun Capital's proceeds from third-party accounts receivable are deposited and to redirect all incoming funds to the FP Receiver.

Sun Capital properly uses the money in those bank accounts, every day on a continuing basis, to finance the ongoing operations of its 22 hospital clients. The FP

[2] Of the 22 hospitals Sun Capital has been funding, one closed at the end of June pursuant to a longstanding plan because the landlord sold the property. However, Sun Capital continues to fund certain hospital expenses in return for an agreement that its receivables will still be paid. (7/22/09 Koslow Aff. p. 10 n.5.)

Receiver's rash and unjustified asset freeze puts an immediate halt to this proper and beneficial use of the funds to finance the operations of these hospitals in the same manner as for the last eight years – which has been beneficial for the FP investors as well as for Sun Capital and the hospitals. The immediate effect will be that Sun Capital will be forced to cease its healthcare financing operations entirely and each of the 21 operating hospitals, which are heavily dependent upon Sun Capital's financing, will likely be forced to shut down in short order, endangering their critically ill patients and putting 3500 employees out of work.

This Court has already held that Sun Capital has a "legitimate ownership interest" in the money it received from the Lender (*see* Order Granting Sun Capital's Motion to Dismiss [Doc. 89] at 2, 6), which necessarily means Sun Capital has a legitimate ownership interest in the money in the bank accounts at SunTrust. The FP Receiver's action to freeze the bank accounts is an apparent attempt to sidestep this Court's orders (i) recognizing that Sun Capital is not a proper "relief defendant" or mere repository of the Defendants' ill-gotten assets, (ii) denying the SEC's motion to freeze Sun Capital's assets, and (iii) denying the FP Receiver's motion to expand its powers over Sun Capital. (Doc. 70.) The FP Receiver is attempting to exercise self-help to obtain the very relief already denied by the Court, without concern for the disastrous harm that will befall the hospitals and patients that rely on Sun Capital's financing operations. Moreover, because forcing hospitals to close will cause hundreds of millions of dollars' worth of receivables to become uncollectable, the FP Receiver is irreparably injuring the very FP investors whose interests he is supposed to be protecting.

In contrast to the immediate irreparable harm suffered by Sun Capital and its hospital clients and their patients and employees, there is no harm, let alone any irreparable harm, to the FP Receiver if the injunctive relief sought herein is implemented to maintain the *status quo* pending adjudication of the parties' disputes. Indeed, a review of the FP Receiver's complaint against Sun Capital demonstrates that the sole basis for the alleged "defaults" purporting to justify this catastrophic action is the allegation that certain modifications to the loan agreements, concededly *agreed to* by the Lender, over the eight-year period of the loan were retroactive "defaults," some as long as eight years ago. During that same period of time, the Lender never did – and never could have – declared Sun Capital in default and Sun Capital paid the Lender over $230 million in interest principally related to transactions the FP Receiver now seeks to re-characterize as "defaults." Despite being given access to monitor Sun Capital's bank accounts and voluminous current financial information and having his expert accountants spend days at Sun Capital with Sun Capital's CFO and his staff, *no financial improprieties have been uncovered* because there are none. Sun Capital, as previously explained to this Court, is in the unfortunate position of having to deal with a problem not at all of its own making, while trying as well to operate an extremely important critical healthcare business desperately needed in communities throughout the country. (5/4/09 Koslow Aff. ¶¶ 21-25.)

Prior to bringing this motion, Sun Capital, upon learning of the FP Receiver's account freeze (from the Bank, not from the FP Receiver), made several efforts to warn the FP Receiver about the huge harm he is causing and to negotiate a resolution without

the need to make this motion. Those efforts were unavailing.

In a last-ditch effort to negotiate a resolution, Sun Capital met with the FP Receiver on Sunday, July 19, 2009. Sun Capital was forced to agree to onerous terms in exchange for the FP Receiver's agreement to give Sun Capital access to the funds currently in the lockbox accounts no later than 10:00 AM Monday, and to release up to $14 million this week to fund hospital receivables (the "Temporary Agreement", 7/22/09 Koslow Aff. Ex. 1). In fact, Sun Capital was not given access to any funds until late Monday as the bank cannot process the FP Receiver's instructions in a method that will allow for proper funding, absent a full withdrawal of the FP Receiver's Transfer Notices. Thus, the irreparable harm to Sun Capital and its hospital clients continues. Currently, the Bank is processing transactions manually and wire transfers are not getting out fast enough to avoid checks bouncing. The Bank has advised the FP Receiver the arrangement is "impossible". At the same time, the FP Receiver has conceded that patients' lives are at stake and "time is critical and the funds need to be released to ensure the continued operation of the hospitals." (7/22/09 Koslow Aff. Exs. 7, 8.)

Because the FP Receiver's action in seizing all the Sun Capital SunTrust bank accounts has such dire consequences, and preventing it will not harm FP (and indeed will in fact preserve collateral for the investors), Sun Capital respectfully requests that this Court enter a temporary restraining order and preliminary injunction to reverse the freezing of the SunTrust bank accounts and to prevent the FP Receiver from taking further steps without court order and on notice to Sun Capital to impair Sun Capital's crucial and beneficial healthcare financing operations.

Although notice of this motion is being provided automatically via CM/ECF, this Court, pursuant to Local Rule 4.05, should enter the temporary restraining order without a hearing and without waiting for responsive papers from the FP Receiver because Sun is concerned that even the making of this application could cause the FP Receiver to take further rash steps to cut off funding, again causing irreparable harm so imminent that any delay for a hearing on this motion is impractical.[3]

BRIEF FACTS

Most of the pertinent factual background has recently been recited in Sun Capital's June 26 Motion for modification of the Court's Order Appointing Replacement Receiver. (Ex. A hereto.) It is briefly stated here.

SCHI and SCI each entered into a Credit and Security Agreement ("CSA") as borrower with Founding Partners Multi-Strategy Fund L.P. (subsequently renamed Founding Partners Stable-Value Fund, L.P.) as lender in June 2000 and January 2002, respectively. (5/4/09 Koslow Aff. ¶ 2). Since 2000, the Lender has made periodic loans to Sun Capital pursuant to Sun Capital's draw-down requests under the CSAs, secured by all assets of Sun Capital, including all receivables; and Sun Capital has made monthly interest payments (at a high rate of interest) totaling $230 million. Until January 2009, when the Lender defaulted on its loan obligations, Sun Capital never failed to make a single interest payment. Stable-Value did not ever claim Sun Capital had defaulted, nor did it ever have any basis to do so. (*Id.*)

[3] The FP Receiver, pursuant to the Local Rules, will have time to file responsive papers as part of the preliminary injunction procedure. (*See* M.D. Fla. L.R. 4.05 and 4.06.)

As part of the lending relationship between Stable-Value and Sun Capital, the parties set up two lockbox accounts into which accounts payable revenues would flow, for disposition by Sun Capital as appropriate under the CSAs. The lockbox accounts are governed by a Master Wholesale Lockbox Deposit and Blocked Account Service Agreement among Sun Capital, SunTrust Bank, and the Lender (the "Master Lockbox Agreement," 7/22/09 Koslow Aff. Ex. 2). Under that Agreement, the Bank, upon delivery of a Transfer Notice in the form of Exhibit A by the Lender, must (i) transfer all funds in the lockbox account to the Lender's account at the end of each day, (ii) cease transferring funds to Sun Capital's collection account, and (iii) follow the directions of the Lender and not of Sun Capital concerning all matters related to the accounts and the Agreement. (*Id.* § 1). There is no requirement of any advance notice to Sun Capital that the Lender will be issuing such Transfer Notice, or even that Sun Capital be given a copy of the Transfer Notice when it is delivered to the Bank, nor is there any ability by Sun Capital to issue a countermanding or disputing notice. (7/22/09 Koslow Aff. ¶ 7.) Since Sun Capital never defaulted on its agreed upon loan obligations, the Lender never had occasion to serve such a Transfer Notice in the parties' entire 8½-year relationship.

Over the years, starting in late 2002 or 2003, Stable-Value refused to allow repayments of principal under the CSA (*see* SEC Complaint [Doc. 1] ¶ 30) and instead, in order to achieve a stable return for Stable-Value's investors based upon Sun Capital's interest payments, repeatedly (a) encouraged and approved various expansions of the financing activities for which Sun Capital used the funds loaned by Stable-Value, (b) increased the total available credit line to cover the expanded financing activities of Sun

Capital, and (c) extended the loan maturity date each year so that it always remained a five-year term loan. Thus, as of January 2009, the SCHI CSA, as amended, provided for a total credit line of $550 million available to Sun Capital, and the maturity date was and is February 1, 2013. (*Id.* ¶¶ 3, 30, 32; *see also* 5/4/09 Koslow Aff. ¶¶ 5-8, 14; June 26 Motion Ex. B.)

On January 27, 2009, Sun Capital made a $5 million funding request pursuant to the CSA. Stable-Value failed to fund that request despite availability on the line of credit under the CSA. (June 26 Motion Ex. C). Stable-Value thus defaulted on its obligations under the CSA. On January 29, 2009, Stable-Value's principal, Mr. Gunlicks, advised Sun Capital to stop making interest payments. (5/4/09 Koslow Aff. ¶ 3.)

On April 20, 2009, this Court entered an Order Appointing Receiver over the property of Founding Partners Capital Management Co. and the related Relief Defendants, including Stable-Value. (Doc. 9.)

On April 29, 2009, the FP Receiver sent letters to Sun Capital (i) purporting to serve as Notices of Default under the CSAs, (ii) demanding payment in full, and (iii) reserving her rights to "take whatever actions [Lender] deems necessary." (Ex. E to June 26 Motion). Sun Capital maintains that those purported Notices of Default are without merit and that Stable-Value is the one that has defaulted on its contractual obligations. Indeed, the Lender's January 2009 default has caused great harm to Sun Capital and its 22 hospital clients, as well as potentially to the patients and employees of those hospitals. (5/4/09 Koslow Aff. ¶¶ 3-4, 21, 25.)

After receiving these purported notices of default, Sun Capital moved on May 4,

2009 to modify the Order Appointing Receiver and moved for a temporary restraining order to prevent the FP Receiver from acting on the purported notices of default. (Doc. 42.) On May 13, 2009, this Court removed the FP Receiver and, informally directed that the *status quo* be maintained until a new receiver was appointed and up to speed. The Court indicated that it would grant Sun Capital's motion to modify the order appointing receiver once the new receiver had an opportunity to familiarize himself with the case. (Doc. 70 at 6).

On May 20, 2009, the Court appointed Mr. Newman as the new FP Receiver. (Doc. 71.) Since then, Sun Capital has used its best efforts to provide to him and his accounting experts massive volumes of current information about the status of the loan collateral and Sun Capital's financial matters, including voluntarily offering and giving him electronic access to the lockbox accounts to monitor Sun Capital's transactions, and to demonstrate that the money is being used for valid purposes and is not in any danger of being "squandered" or "diminished." (7/22/09 Koslow Aff. ¶¶ 13, 21, 22.)

After an initial introductory meeting with the FP Receiver held at Sun's request and attended by its principals just after his appointment, Sun Capital has been attempting for weeks to set up meetings with the new FP Receiver and to reach agreement on multiple issues, including having the FP Receiver withdraw the April 29, 2009 notices of default. The FP Receiver, however, refused to withdraw the purported notices of default and refused to meet with Sun Capital (until Sunday), demanding onerous and unworkable preconditions to a meeting, including (i) irrelevant historical documents, (ii) confidential, proprietary and trade secret information while refusing any confidentiality agreement (as

"inconsistent" with his receivership duties), and (iii) a fully-formed written repayment plan (while refusing to first discuss which of several types of plans might be acceptable to the Receiver). (*Id.* ¶¶ 21-22.)

Sun Capital was thus forced to renew its motion to modify the Order Appointing Replacement Receiver so that it could prosecute its claims and defend itself against any wrongful attempts by the FP Receiver to seize its assets under the purported Notices of Default. In response to Sun Capital's June 26 Motion, on July 15, 2009, the FP Receiver filed a complaint against Sun Capital and an affiliate, claiming, among other things, that Sun Capital breached the CSAs. (Doc. 118.) Also, apparently after business hours that evening, the FP Receiver sent Transfer Notices to SunTrust Bank concerning Sun Capital's accounts. (*See* 7/22/09 Koslow Aff. Ex. 3.)

Sun Capital uses the receivable repayments received from its clients that are automatically deposited into the lockbox accounts pursuant to the Master Lockbox Agreement to purchase replacement accounts receivable from hospitals, and in that manner, continues to finance the hospitals' operations. (7/22/09 Koslow Aff. ¶ 6.) Additionally, until Founding Partners defaulted on the CSAs, Sun Capital made every interest payment at a high monthly interest rate to Founding Partners for more than 100 consecutive months, totaling more than $230 million.

Sun Capital learned of the Transfer Notices from a SunTrust banker – not from the FP Receiver – Thursday morning, July 16, 2009. (*Id*. ¶ 11.) SunTrust has two business days to turn over the funds following a Transfer Notice, but the lockbox accounts were immediately frozen, causing vendors' checks to be rejected and preventing

Sun Capital from continuing to finance the hospitals' immediate medical needs, such as for the purchase of medicines required over the weekend. (*Id*.)

Upon learning that the bank accounts were seized, Sun Capital's principals immediately began to mobilize for the emergency evacuation of the Promise/Success hospitals and prepared to notify all its clients that Sun Capital has been forced to immediately cease its financing operations absent some immediate relief. Each of these hospitals has emergency and regulatory procedures that it must begin taking to evacuate all patients, including notifying state regulators and, for some hospitals, notifying bankruptcy courts. Sun Capital's clients are subject to civil and criminal liabilities if they do not follow the regulatory protocol and if they fail to handle patient care appropriately during the process. (*Id*. ¶¶ 18-19.)

Since Sun Capital learned of the Transfer Notices and the seizure of the bank accounts Thursday morning, it has made repeated and substantial efforts to speak and negotiate with the Receiver and to explain the immediate disastrous and irreversible nature of the harm he is causing. Initially, the FP Receiver offered no reasons for shutting down Sun Capital or its hospital clients, and has throughout been indifferent to the harm he has been causing. (*Id.* ¶¶ 23-25.) After informing the FP Receiver that Sun Capital would be forced to file this motion seeking injunctive relief, the FP Receiver created *ex post facto* explanations for his actions and agreed to a Sunday meeting. The FP Receiver, however, proposed a wholly-improper and unworkable method for continued funding of the hospitals, seeking to micromanage (without any experience in running a hospital) each hospital's funding requests on an expense-by-expense basis and

to "reloan" funds based upon what is "in the best interests of the Receivership Estate," not what is in the interests of patient safety. (*Id.* ¶¶ 26-27, 30-32, Exs. 4, 5.)

The parties met on Sunday, July 19. Despite the crisis nature of the situation created by the Receiver, Sun Capital met all the Receiver's "preconditions" to meet, including flying in its investment banker who made a full presentation concerning the status of refinancing efforts and presenting a restructuring proposal. (*Id.* ¶ 28.) The FP Receiver still refused to withdraw his Transfer Notices because he believes that his sole appointed function is to consider the receivership estate and therefore he has no responsibility or liability for anything that occurs so long as he fulfills that function.

Consequently, to get funds released Monday so that patients were not placed at risk and hospitals have a chance to remain open, Sun Capital agreed to several extreme demands of the FP Receiver in exchange for his agreement to give Sun Capital access to the funds currently in the lockbox accounts no later than 10:00 AM Monday, and to release up to $14 million this week to fund hospital receivables.[4] Sun Capital was forced to provide additional collateral for the money the FP Receiver agreed to release to Sun Capital, despite the fact that no collateral will be lost since Sun Capital is merely recycling receivables. Most important, however, the FP Receiver refused to make any commitments with respect to funding the hospitals beyond Friday, July 24, 2009. Sun Capital cannot fund its acute care hospital clients and those hospitals cannot – and will not agree – to operate on this basis. (*Id.* ¶ 29.)

[4] In fact, the FP Receiver apparently has already reneged on the agreement by instructing the Bank to only release up to $13.1 million. (7/22/09 Koslow Aff. p.12 n.6.)

ARGUMENT

THIS COURT SHOULD ENTER A TEMPORARY RESTRAINING ORDER TO PREVENT IRREPARABLE HARM AND MAINTAIN THE *STATUS QUO*

The Sun Companies respectfully seek a temporary restraining order and preliminary injunction (a) declaring the existing Transfer Notices to be null and void and requiring the FP Receiver to withdraw them, and (b) prohibiting the FP Receiver, the Lender, or their representatives from taking any further self-help steps or contractual remedies or otherwise altering the *status quo* without a court order on notice to Sun Capital and with an opportunity to be heard until the contracting parties' rights and obligations have been adjudicated.

Local Rule 4.05 provides, where, as here, the threatened injury is so imminent that notice and a hearing on the motion is impracticable if not impossible, then the Court will enter the temporary restraining order on an emergency basis solely on the basis of the movant's brief and supporting papers.

Courts evaluate four factors in determining whether to grant a temporary restraining order: (1) the movant's substantial likelihood of success on the merits; (2) whether movant will suffer irreparable injury if the relief is not granted; (3) whether the threatened injury to movant outweighs the harm the relief would inflict on the non-movant; and (4) whether entry of the relief would serve the public interest. *Schiavo v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005); M.D. Fla. Local R. 4.05(b)(4).

The factors for determining preliminary injunctive relief operate as a sliding scale, and where one factor, such as irreparable harm, weighs so heavily in favor of granting

relief, the focus of the Court upon the remaining factors, such as likelihood of success on the merits, wanes accordingly. *See Faculty Senate of Florida Int'l University v. Winn*, 477 F. Supp. 2d 1198, 1203 (S.D. Fla. 2007) ("a sliding scale can be employed, balancing the hardships associated with the issuance or denial of a preliminary injunction with the degree of likelihood of success on the merits."); *Louis v. Meissen*, 530 F. Supp. 924, 925 (S.D. Fla. 1981) ("a showing that plaintiffs will be more severely prejudiced by a denial of the temporary restraining order or injunction than will defendants should it be granted, lessens the standard likelihood of success that must be met.").

Here, each of the factors weighs heavily in favor of granting the requested relief, particularly insofar as the requested injunctive relief seeks only to maintain the *status quo* between the parties to the longstanding, contractual credit relationship until there can be a proper adjudication of their claims.

A. Without a Temporary Restraining Order, Sun Capital, Its Hospital Clients, and Their Patients and Staff Will Suffer Irreparable Harm

Sun Capital's entire remaining healthcare financing business, which has been operating on a diminished basis since the Lender defaulted in January 2009, is dependent upon its ability to continue using the funds in the lockbox accounts to purchase new receivables as older receivables are paid. Without the funds in the SunTrust accounts, Sun Capital will be irreparably harmed because it will be forced to go out of business. *See ABC Charters, Inc. v. Bronson*, 591 F. Supp. 2d 1272, 1308 (S.D. Fla. 2008) (holding threat of business closure irreparable injury); *Westin v. McDaniel*, 760 F. Supp. 1563, 1569 (M.D. Ga. 1991) ("Monetary losses can rise to the level of an irreparable injury . . . if the party seeking an injunction will be forced out of business without it.").

Additionally, the FP Receiver's precipitous and wrongful action will cause further irreparable harm to Sun Capital and its three principals by damaging their business reputations, and destroying the goodwill they have developed in the community for years. *See BellSouth Telecomm., Inc. v. Mcimetro Access Transmission Serv., LLC,* 425 F.3d 964, 970 (11th Cir. 2005) ("loss of customers and goodwill is an irreparable injury") (quoting *Ferrero v. Assoc. Materials Inc.*, 923 F.2d 1441, 1449 (11th Cir. 1991).

Sun Capital provides receivable financing to 21 acute care hospitals across the country. This is the primary operating capital of these hospitals, and the hospitals require this financing on a reliable, ongoing basis. The seizure of the funds used to finance these hospitals will cause immense and irreparable harm to the hospitals, which will be forced to shut down. All of the patients, over 1,000 acute care patients, will have to be relocated to other facilities, which poses significant danger to those patients. Indeed, even if the emergency evacuation plans were activated, it would take up to a week to relocate all patients to other hospitals and, in the meantime, the hospitals must have funds to pay their operating expenses and the costs of executing the emergency patient evacuation plan and to wind down the hospital operations. (7/22/09 Koslow Aff. ¶ 16.) Those costs are estimated to be $13 million to $15 million. In addition to the harm to the patients, the hospitals' 3500 professional staff and employees would be out of work. (*Id*.)

The risk of this harm is imminent – since the Temporary Agreement expires Friday. As discussed above, SunTrust has already frozen the bank accounts pursuant to the Transfer Notices sent by the FP Receiver. Despite having created this life-threatening emergency, the FP Receiver concedes "time is critical and the funds need to be released

to ensure the continued operation of the hospitals." (7/22/09 Koslow Aff. Exs. 7, 8.)

Given the immediate and disastrous effects of stopping the flow of funds essential to the operations of Sun Capital and its hospital clients, there is no time to engage in briefing and a preliminary injunction hearing before the hospitals will be forced to move patients and begin to shut down. Notice to hospital managers and the start of emergency procedures as required by law had begun last weekend and will have to be undertaken again unless this Court provides emergency relief. Neither Sun nor its hospital clients are able or willing to continue under what has become in essence a law firm receivership of their businesses. (7/22/09 Koslow Aff. ¶¶ 18-19, 30.) Once the process of moving patients and shutting down hospitals is begun, it cannot be stopped. Thus, the Receiver's actions will cause massive irreparable damage, unless reversed. (*Id.* ¶ 20.)

Moreover, if the hospitals close, many of the receivables will never be recoverable because they are receivables owed by governmental agencies that only make payments if the hospitals are operating when the payments are due. (*Id.* ¶ 17; 5/4/09 Koslow Aff. ¶¶ 10, 21, 25.) Also, many other receivables will be lost when hospital records and staff are unavailable to respond to government and insurer follow-up inquiries on claims. (7/22/09 Koslow Aff. ¶ 17.) Thus, the FP Receiver's rash asset freeze will result in the loss of hundreds of million of dollars of receivables, harming the collateral of the FP investors, which the FP Receiver is supposed to be protecting.

B. The Temporary Restraining Order Will Not Cause Any Irreparable Harm to Stable-Value or the FP Receiver

By contrast, the temporary relief sought by Sun Capital will not result in any irreparable harm to Stable-Value or the FP Receiver. The FP Receiver seeks only to

recover money and thus, he cannot assert that a TRO would cause any irreparable harm. *See Cunningham v. Adams*, 808 F.2d 815, 821 (11th Cir. 1987) ("an injury is 'irreparable' only if it cannot be undone through monetary remedies."); *Performance Paint Yacht Refinishing v. Haines*, 190 F.R.D. 699, 700 (S.D. Fla. 1999) (holding that irreparable harm cannot be established where "award of damages would adequately compensate for the losses allegedly suffered.").

Moreover, there is not even any evidence of any imminent danger that Sun Capital's loan proceeds or collateral will be lost. As the FP Receiver well knows because Sun Capital has voluntarily provided voluminous financial information to the FP Receiver (*see* 7/22/09 Koslow Aff. ¶¶ 13, 21, 22), the proceeds from the loans FP made to Sun Capital pursuant to the CSAs are not "diminishing" or "being squandered," but rather the *status quo* is being maintained to protect both the FP investors' money and the hospitals. Indeed, Sun Capital has been using the funds in the lockbox accounts to operate a reduced version of the beneficial healthcare financing business that had been successfully operating for 8½ years before the Lender defaulted on its obligations to Sun Capital in January 2009. Moreover, as explained in the 7/22/09 Koslow Affidavit, approximately $14 million a week from the lockbox accounts is used to purchase additional receivables, and a like amount flows back into the accounts during the same period, so that at the end of the period approximately the same amount of receivables and cash exists and the *status quo* is maintained. Thus, there would be no net loss to the FP Receiver or to the FP investors (even if they were entitled to the Sun Capital funds, which they are not). (*Id.* ¶ 29; *see also* 5/4/09 Koslow Aff. ¶¶ 21-25.)

For these reasons, especially that Sun Capital's accounts are frozen, Sun Capital submits that the Court should require that no security be deposited by Sun Capital under Federal Rule 65(c). It is well-established in the Eleventh Circuit that "the amount of security required by the rule is a matter within the discretion of the trial court" and "the court may elect to require no security at all." *BellSouth Telecomm., Inc. v. Mcimetro Access Transmission Serv., LLC*, 425 F.3d 964, 971 (11th Cir. 2005) (holding failure to set bond not abuse of discretion). When there is little risk of monetary loss to the non-movant as a result of a preliminary injunction, as is the case here, and particularly where, as here, no money is available as a result of the FP Receiver's actions in freezing Sun Capital's accounts, no security is required. *See, e.g., Gay-Straight Alliance of Yulee High School v. School Board of Nassau County*, 2009 WL 635966, at *4 (M.D. Fla. Mar. 11 2009) (waiving security requirement where "little risk of monetary loss to Defendant").

C. Sun Capital Is Likely to Succeed on the Merits

As a threshold matter, it must be noted that Sun Capital has already succeeded on the merits of its position in this SEC action, in which the FP Receiver was appointed to preserve and protect the assets of the FP entities for possible future disgorgement for the benefit of allegedly defrauded FP investors. This Court has held that even if Sun Capital received monies originally "ill-gotten" by its Lender, they were not ill-gotten by Sun Capital and therefore Sun Capital's possession of the funds is not a basis to seek recovery from Sun Capital. Sun Capital is not alleged to have done anything wrong vis-à-vis any FP investors, and, significantly, it has already succeeded on the merits of its position that it may not be treated as a "relief defendant" or a mere appendage of the FP entities. In

rejecting the SEC's effort to name Sun Capital as purported relief defendants, this Court has already adjudicated that Sun Capital has a legitimate claim to the funds it has received from its Lender over the years, and cannot be treated as a mere repository of Defendants' assets. (Doc. 89). Thus, even if some of the money that Stable-Value loaned to Sun Capital over their longstanding, arm's-length relationship turns out to have been "ill-gotten" by Stable-Value in the first instance, it may not thereby be deemed to have been "ill-gotten" by Sun Capital.

Lacking any basis in the existing SEC action to treat Sun Capital's loan proceeds as "belonging to" the FP investors or properly subject to disgorgement by Sun Capital, the FP Receiver instead contrived certain purported breach of contract claims against Sun Capital to create an apparent ground to seize all Sun Capital's funds, which are not due to be repaid to its Lender until February 2013. The FP Receiver's claims, previously threatened and now asserted in the complaint he filed on July 14, 2009, are based on the theory that Sun Capital was repeatedly breaching the CSAs for five years every time it used the loaned funds for purposes that, while they went beyond the stated scope of the original CSAs, had been authorized and approved by the Lender (and produced excellent returns for the FP investors). That is, the FP Receiver, after taking charge of the FP entities, has asserted contract claims that are inconsistent with the actual course of conduct under the agreements, as modified by the parties over the years. Indeed, the FP Receiver conceded as much in ¶ 189 of his complaint, in which he alleges that William Gunlicks, the President, CEO and director of the general partner of the Lender, "allow[ed] and acquiesc[ed] in the Sun Entities' use of Stable-Value funds to purchase

Defaulted Accounts and accounts receivable that did not meet the definition of Eligible Account, to fund the working capital needs" of the Promise and Success hospitals.

New York law, which the parties agree governs the loan agreements (*see* FP Receiver's Limited Opposition to Sun Capital's Motion for Modification of Order Appointing Replacement Receiver [Doc. 118] at n.1), provides no legal support for such a position. In a decision from New York's highest court, the New York State Court of Appeals, the Court dispatched the same argument the FP Receiver seeks to make, holding that oral modifications to a contract and the parties' course of conduct consistent with those modifications are enforceable, even in instances where the contract contains a provision preventing such modifications. *Rose v. Spa Realty Assocs.*, 397 N.Y.S.2d 922, 926-27 (1977) ("the court may consider not only past oral exchanges, but also the course of conduct of the parties.... the conduct of the parties evidences an indisputable mutual departure from the written agreement.") Additionally, "once a party to a written agreement has induced another's significant and substantial reliance upon an oral modification, the first party may be equitably estopped from invoking the statute to bar proof of that oral modification." *Id.* at 927. New York courts have consistently followed this decision, as they are required to do.

Furthermore, to the extent the FP Receiver claims that Sun Capital has breached the loan agreements by failing to make interest payments, that position is also insupportable under New York law. A party may not insist upon the performance of a contract where he or she has brought about its breach. N.Y. Jur. 2d § 417. A "total breach by the obligor on a contract excuses the obligee from the duty of further

performance." *Id.*; *see also Melodies, Inc. v. Mirabile*, 179 N.Y.S.2d 991, 993 (App. Div. 1958) ("total breach of contract . . . renders the breacher liable in damages [and] . . . excuses the obligee from the duty of further performance."); *Pui Sang Lai v. Shuk Yim Lau*, 855 N.Y.S.2d 615, 617 (App. Div. 2008) (one party's failure to perform obligations under agreement rendered agreement unenforceable); *Legend Artists Mgmt. Inc. v. Blackmore*, 709 N.Y.S.2d 85, 86 (App. Div. 2000) (material breach grounds to terminate agreement and suspend performance); 23 Williston on Contracts § 63:8 (4th ed.) (breaching party may not maintain action against other party even if other party subsequently breaches contract unless initial breach did not go to root of contract).

Sun Capital is thus likely to succeed on the merits of these contract disputes with the FP Receiver. As explained in the May 4, 2009 Koslow Affidavit, and as asserted by both the SEC and the FP Receiver in their complaints, Stable-Value agreed to and authorized the conduct that is asserted by the FP Receiver to constitute defaults or breaches. (5/4/09 Koslow Aff. ¶¶ 6-8.) Indeed, this Court has already held that Stable-Value made loans to Sun Capital pursuant to written loan agreements, which allowed Sun Capital to use the loan proceeds to purchase healthcare and commercial receivables; and that "[t]he permitted uses of the loan proceeds were expanded by Stable-Value beginning in 2004." (Doc. 89.) Moreover, as also explained in the Koslow Affidavit, it is Stable-Value that defaulted, in January 2009, when it refused, in violation of its contractual obligations, to extend credit to Sun Capital. (5/4/09 Koslow Aff. ¶¶ 2-3.) Prior to the Stable-Value receivership, Sun Capital was never placed in default by its Lender, nor could it have been, and had never once failed to make its required (very high) interest

payments for 8 years, totaling over $230 million, the result of investments the FP Receiver now calls "defaults".

More specifically, on June 6, 2000, and January 24, 2002, respectively, SCHI and SCI executed the CSAs permitting them to use Lender funds to purchase third-party-payable accounts receivable and other Lender-approved investments. (5/4/09 Koslow Aff. ¶ 2; June 26 Motion Ex. A.) The CSAs extended to Sun Capital an initial $2 million revolving line of credit payable within five years or such other date as agreed upon by the parties. (*See* June 26 Motion Ex. A.) The Lender then periodically agreed to extend the due dates and to increase the lines of credit under the CSAs, so that, by January 2009, the loans were not due to be repaid until February 2013. (*See* SEC Complaint ¶¶ 3, 30, 32; 5/4/09 Koslow Aff. ¶¶ 5-8, 14; June 26 Motion Ex. B.)

Sun Capital used all funds advanced under the CSAs in a manner permitted under the contract and pursuant to the parties' modifications thereof, and satisfied all of its obligations pursuant to the CSAs, including making timely interest payments for more than 100 consecutive months totaling over $230 million in payments to the Lender. (5/4/09 Koslow Aff. ¶¶ 2, 7, 8.)

As of January 2009, the lines of credit under the CSAs had been increased to $550 million, and the balance due to the Lender was approximately $530.9 million. (*See* June 26 Motion Exs. B, C.) Thus, no less than $19 million was still available to Sun Capital under the lines of credit. On January 27, 2009, SCHI sent a notice to the Lender in accordance with Section 2.1.2 of the SCHI CSA, requesting $5 million from the line of credit. (5/4/09 Koslow Aff. ¶ 3.)

Under Section 2.1.3 in the CSAs, the Lender is obligated upon a request from Sun Capital to provide a loan from the line of credit, subject to the terms and conditions of the CSA. If those terms and conditions are met – which they were here – then the Lender has no discretion to decline to provide funds. (June 26 Motion Ex. A.) However, the Lender wrongfully refused to disburse the requested funds to SCHI. At or about that time, the Lender informed SCHI and SCI that it would no longer fund any requests made by SCHI and SCI to draw on the lines of credit. (5/4/09 Koslow Aff. ¶¶ 3, 29.)

The Lender thus committed a material breach of the SCHI CSA and an anticipatory repudiation of the SCI CSA. Those breaches suspended any performance obligations of Sun Capital. Thus, Sun Capital is likely to succeed on the merits of its claims (and in defending against the FP Receiver's claims), and the FP Receiver's purported Notices of Default are meritless.

D. <u>The Temporary Restraining Order Will Serve the Public Interest</u>

As discussed above, if the Court does not enter the temporary restraining order reversing the freezing of Sun Capital's assets, then Sun Capital's hospital clients will be forced to shut down. This will cause more than 1000 critically ill patients at acute care hospitals throughout the United States to require immediate relocation to other hospitals, a dangerous process; will cause 3500 employees to lose their jobs; will cause the shutdown of 21 desperately needed critical care hospitals; and will destroy the entire value of DSH receivables (lost when hospitals close) and vastly reduce the value of all other receivables that would otherwise benefit the FP investors. Entering the requested TRO will avoid this totally unnecessary societal harm. There is no harm to the public if

the TRO is granted.

CONCLUSION

For the foregoing reasons, Sun Capital respectfully asks this Court to enter a temporary restraining order and preliminary injunction (a) declaring the existing Transfer Notices to be null and void and requiring the FP Receiver to withdraw them, and (b) prohibiting the FP Receiver, the Lender, or their representatives from taking any further self-help steps or contractual remedies or otherwise altering the *status quo* until the contracting parties' rights and obligations have been adjudicated, or upon a court order following notice and an opportunity to be heard afforded to Sun Capital.[5]

Dated: July 22, 2009

Respectfully submitted,

By: /s/ Jonathan Galler

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[5] A proposed temporary restraining order is attached hereto as **Exhibit D**.

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties, if any, who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Jonathan Galler___
Jonathan Galler

SERVICE LIST

Securities and Exchange Commission v.
Founding Partners Capital Management Co. and William L. Gunlicks, et al.

Case Number: 2:09-CV-229-JES-SPC

UNITED STATES DISTRICT COURT,
MIDDLE DISTRICT OF FLORIDA – FORT MYERS DIVISION

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EXHIBIT A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs. Case No. 2:09-cv-229-JES-SPC

FOUNDING PARTNERS CAPITAL MANAGEMENT CO. and WILLIAM L. GUNLICKS,

Defendants,

SUN CAPITAL, INC., SUN CAPITAL HEALTHCARE, INC., FOUNDING PARTNERS STABLE-VALUE FUND, LP, FOUNDING PARTNERS STABLE-VALUE FUND II, LP, FOUNDING PARTNERS GLOBAL FUND, LTD., and FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

SUN CAPITAL, INC. AND SUN CAPITAL HEALTHCARE, INC.'S MOTION FOR MODIFICATION OF ORDER APPOINTING REPLACEMENT RECEIVER and INCORPORATED MEMORANDUM

Sun Capital, Inc. ("SCI") and Sun Capital Healthcare, Inc. ("SCHI") (together, "Sun Capital"), pursuant to Federal Rule of Civil Procedure 66 and the Court's suggestion in its April 20, 2009 Order (Doc. 70, p. 6), hereby move this Court for modification of its Order Appointing Replacement Receiver (Doc. 73) to permit Sun Capital and/or Promise Healthcare, Inc. or affiliated entities ("the Promise Entities") to prosecute their legal claims against certain of the Founding Partners entities ("the FP Entities") that have been

committed to the control of the Receiver ("the FP Receiver") appointed herein. The motion is based upon this incorporated memorandum of law and the Affidavit of Howard Koslow sworn to May 4, 2009 ("Koslow Aff.") (Doc. 40-2),[1] and all the prior proceedings in this case.

PRELIMINARY STATEMENT

Sun Capital respectfully seeks a modification of ¶ 5 of the Court's May 20, 2009 Order Appointing Replacement Receiver. By its terms, the Order enjoins Sun Capital and the Promise Entities (as persons with actual knowledge of that Order) from pursuing their rightful legal remedies against the FP Entities, including Founding Partners Stable-Value Fund, L.P. ("Stable-Value" or "Lender"), and/or the FP Receiver, without first obtaining permission from this Court.[2]

As the Court will recall, the Former FP Receiver threatened to employ certain alleged contractual remedies pursuant to purported Notices of Default under Sun Capital's credit and security agreements with the Lender – remedies which, if pursued, would effectively force Sun Capital to cease its financing operations, triggering the immediate closure of all of its 22 hospital clients (many of them Promise hospitals), with grave repercussions for the 1000 critically ill patients served by those hospitals and their 3500 employees. The current FP Receiver has continued the Notices of Default, and thereby left outstanding the threat of such remedies. Consequently, Sun Capital and the Promise

[1] The Koslow Affidavit was previously submitted on May 4, 2009, in opposition to the motion of the then-Receiver (the "Former FP Receiver") to expand her receivership to cover Sun Capital. That motion was denied on May 13, 2009.

[2] SCI and SCHI were named as purported relief defendants in this action, but were dismissed by Order dated June 8, 2009.

Entities need to be permitted to defend themselves and pursue their legal remedies against the Lender and/or the FP Receiver in a court with jurisdiction over the parties' contractual disputes and related common-law claims based upon representations during the parties' nine-year borrower-lender relationship.

ARGUMENT

THE ORDER SHOULD BE MODIFIED TO PERMIT SUN CAPITAL AND THE PROMISE ENTITIES TO PROSECUTE THEIR CLAIMS

1. SCHI and SCI each entered into a credit and security agreement ("CSA") as borrower with Founding Partners Multi-Strategy Fund L.P. (subsequently renamed Founding Partners Stable-Value Fund, L.P.) as lender in June 2000 and January 2002, respectively. (Koslow Aff. ¶ 2.) A copy of the SCHI CSA, without exhibits, is attached hereto as **Exhibit A**, and copies of certain amendments thereto are attached as **Exhibit B**. (The other CSA is materially identical.) The two CSAs provide that they are governed by New York law and that the parties consent to jurisdiction and venue in New York courts for any disputes arising out of their contractual relationship. (Exh. A ¶ 16.)

2. Since 2000, the Lender has made periodic loans to Sun Capital pursuant to Sun Capital's draw-down requests under the CSA, secured by all assets of Sun Capital, including all receivables; and Sun Capital has made monthly interest payments (at a high rate of interest) totaling $230 million. Until January 2009, when the Lender defaulted on its loan obligations, Sun Capital never failed to make a single interest payment. Stable-Value did not ever claim Sun Capital had defaulted, nor did it ever have any basis to do so. (Koslow Aff. ¶ 2.)

3. Over the years, starting in late 2002 or 2003, Stable-Value refused to allow repayments of principal under the CSA and instead, in order to achieve a stable return for Stable-Value's investors based upon Sun Capital's interest payments, repeatedly (a) approved various expansions of the financing activities for which Sun Capital used the funds loaned by Stable-Value, (b) increased the total available credit line to cover the expanded financing activities of Sun Capital, and (c) extended the loan maturity date so that it always remained a five-year term loan. Thus, as of January 2009, the SCHI CSA, as amended, provided for a total credit line of $550 million available to Sun Capital, and the maturity date was February 1, 2013. (SEC Cplt. ¶¶ 3, 30, 32; Koslow Aff. ¶¶ 5-8, 14; Exh. B hereto.)

4. On January 27, 2009, Sun Capital made a $5 million funding request pursuant to the CSA. Stable-Value failed to fund that request despite availability on the line of credit under the CSA. (The denied request is attached as **Exhibit C**.) Stable-Value thus defaulted on its obligations under the CSA, causing immediate injury to Sun Capital's financing operations and to the 22 hospitals dependent upon Sun Capital's continued financing. On January 29, 2009, Stable-Value's principal, Mr. Gunlicks, advised Sun Capital to stop making interest payments. (Koslow Aff. ¶ 3.) Stable-Value's default, as a material breach, excused Sun Capital's obligation to pay interest or otherwise perform under the CSA.

5. The FP Entities had also committed to providing additional funding to cover the acquisition, renovation and construction of certain additional hospitals to be financed by Sun Capital, including hospitals and properties that had been and would be acquired by the

Promise Entities. In reliance on those promises, Sun Capital and the Promise Entities made loan and mortgage commitments and undertook costly applications for Certificates of Need (CONs) to build hospitals in needy communities. However, those additional funding agreements had not been committed to writing by the time Stable-Value defaulted on the existing CSA in January 2009, and the promised funding has not been received. As a result, Sun Capital cannot meet its commitments to the Promise Entities, and they cannot meet their commitments to the hospitals and to the needy communities intended to be served by the hospitals. (Koslow Aff. ¶¶ 9, 15, 21.)

6. On April 20, 2009, this Court entered an Order Appointing Receiver over the property of Founding Partners Capital Management Co. and the affiliated FP Entities named as Relief Defendants herein, including Stable-Value. (Doc. 9.) A copy of the Order is attached hereto as **Exhibit D**. The Order gave the Former FP Receiver broad powers to pursue claims against third parties (¶ 2), but simultaneously enjoined all persons with actual notice of the Order from prosecuting actions or proceedings that would affect the FP Entities' property (¶ 15). Sun Capital and the Promise Entities, through their counsel, received actual notice of the Order.

7. On April 29, 2009, the Former FP Receiver sent letters to Sun Capital (i) purporting to serve as Notices of Default under the two CSAs, (ii) demanding payment in full, and (iii) reserving her rights to "take whatever actions [Lender] deems necessary." Copies of these letters are attached hereto as **Exhibit E**.

8. Sun Capital maintains that those purported Notices of Default are without merit and that Lender is the one that has defaulted on its contractual obligations. However,

so long as the Notices of Default remain outstanding, there is a risk that the FP Receiver could take actions the CSA permits upon an Event of Default, such as for the Lender to seize control over certain lockbox bank accounts in which payments of the receivables are automatically deposited. The money in the lockboxes is used by Sun Capital to purchase additional accounts receivable from its factoring clients, principally its 22 hospital clients, which provides them with the necessary financing to operate. (Koslow Aff. ¶¶ 22-23.)

9. Stable-Value's default has already caused great harm to Sun Capital's business and that of its hospital clients that are dependent upon its financing operations. That injury would be made irreparable if the outstanding Notices of Default were used to seize control of the lockbox funds – eliminating completely the remaining funds available to Sun Capital and destroying its business and that of the hospitals, with grave repercussions for the patients and employees of those hospitals. (Koslow Aff. ¶¶ 4, 21, 25.)

10. Given the existing and threatened harm to Sun Capital and its clients, Sun Capital knew that it needed to be able to take legal action to protect its assets from any wrongful seizure attempts by the FP Receiver under the Notices of Default. Since the Court's Order Appointing Receiver prevented Sun Capital from properly defending itself against the threatened harm, as well as from litigating its own claims against Stable-Value, on May 4, 2009 Sun Capital moved for relief from the injunction imposed in ¶ 15 of the Order.

11. On May 13, 2009, the Court entered an Opinion and Order addressing Sun Capital's motion for a modification of the Order Appointing Receiver and other motions. (Doc. 70, attached as **Exhibit F**.) While the Court did not see a need for an immediate

temporary restraining order preventing the Former FP Receiver from acting against Sun Capital,[3] the Court stated,

> The Court is inclined, however, to amend the Order Appointing Receiver to allow Sun Capital to bring a breach of contract suit against Founding Partners and/or the Receiver, based upon the loan agreements at issue. The Court will not make such an amendment, however, until after the substitute receiver is appointed and has had an opportunity to familiarize himself/herself with the case.

(Exh. F, p. 6; see also *id.* at pp. 8-9 ¶ 3 (granting motion in part).)

12. Thereafter, the current FP Receiver was appointed in this Court's Order Appointing Replacement Receiver dated May 20, 2009 (Doc. 73), which superseded the prior Order Appointing Receiver. A copy of the Order Appointing Replacement Receiver is attached hereto as **Exhibit G**. As with the previous order, the May 20 Order gives the Former FP Receiver broad powers to pursue claims against third parties (¶ 2(b)), but simultaneously enjoins all persons "with actual notice of this Order" from prosecuting actions or proceedings that would affect the FP Entities' property (¶ 5). Again, Sun Capital and the Promise Entities, having actual notice of the Order, are thus barred from prosecuting any claims against the FP Entities.

13. Following the FP Receiver's appointment, Sun Capital's counsel has had several conversations with the FP Receiver's counsel, explaining that the purported defaults claimed by the Former FP Receiver are meritless because, among other reasons, (a) the Lender consistently agreed to and authorized the conduct that is claimed to constitute breaches by Sun Capital, (b) the loan principal is not due until 2013, and (c) the Lender's

[3] Such a restraint was not needed because the Court had dismissed the Former FP Receiver and orally directed that the *status quo* be maintained until a new receiver was appointed. (See 5/11/09 Trscpt. of Hrg. at 76-78.)

own material breach of the CSA excuses Sun Capital's obligation to pay interest. However, the FP Receiver has refused to withdraw the Notices of Default, thus continuing the threat of taking adverse action, including seizure of the funds in the lockbox accounts, pursuant to those Notices. Indeed, the FP Receiver has taken the position that he cannot enter into any standstill agreement, as a traditional lender might do while efforts to resolve a dispute are ongoing, because he is a court-appointed receiver. Thus, Sun Capital is left with no other option than to pursue and protect its rights against the Lender even while engaging in efforts to resolve the matter.

14. Sun Capital remains in the same risky position as before, subject to the possibility that the FP Receiver may at any moment take tremendously harmful action, on top of the harm already visited by the Lender's continuing default under the CSA, while Sun Capital and the Promise Entities are unable to defend themselves properly or otherwise pursue their claims against the Lender. It may well be necessary for Sun Capital to seek immediate injunctive relief if the FP Receiver attempts to seize control of the lockbox accounts. For that reason, and to protect their interests, both Sun Capital and the Promise Entities need to have the ability to prosecute their contract and other claims against the Lender and/or the FP Receiver in a timely fashion.

15. In the meantime, it is respectfully submitted that the FP Receiver has had ample opportunity to familiarize himself with the case, as contemplated by the Court's May 13 Order. (Exh. F, p. 6.) It is thus fully appropriate at this time to implement the contemplated amendment to the May 20 Order as respects Sun Capital and the Promise Entities.

WHEREFORE, Sun Capital and the Promise Entities respectfully ask this Court to modify ¶ 5 of its May 20, 2009 Order Appointing Replacement Receiver to allow them to prosecute their claims (of any type they may have) against the FP Entities and/or the FP Receiver, and for such other and further relief as the Court deems just and proper.

Dated: June 26, 2009

Respectfully submitted,

By: /s/ Jonathan Galler

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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties, if any, who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Jonathan Galler
Jonathan Galler

SERVICE LIST

Securities and Exchange Commission v.
Founding Partners Capital Management Co. and William L. Gunlicks, et al.

Case Number: 2:09-CV-229-JES-SPC

UNITED STATES DISTRICT COURT,
MIDDLE DISTRICT OF FLORIDA – FORT MYERS DIVISION

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Exhibit A
to Motion for Modification

CREDIT AND SECURITY AGREEMENT

between

SUN CAPITAL HEALTHCARE, INC.,
as Borrower,

and

FOUNDING PARTNERS MULTI-STRATEGY FUND, L.P., as Lender

Dated as of June 6, 2000

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EXHIBITS

CREDIT AND SECURITY AGREEMENT

This CREDIT AND SECURITY AGREEMENT, dated as of June 6, 2000, is between SUN CAPITAL HEALTHCARE, INC., a Florida corporation (the "Borrower"), and FOUNDING PARTNERS MULTI-STRATEGY FUND, L.P. ("Founding Partners"), in its capacity as Lender hereunder.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions; Certain Rules of Construction. Certain capitalized terms are used in this Agreement with the specific meanings defined below in this Section 1. Except as otherwise explicitly specified to the contrary or unless the context clearly requires otherwise, (a) the capitalized term "Section" refers to sections of this Agreement, (b) the capitalized term "Exhibit" or "Schedule" refers to an exhibit or schedule to this Agreement, (c) references to a particular Section include all subsections thereof, (d) the word "including" shall be construed as "including without limitation" (without limiting the foregoing, the parties acknowledge that in some places in this Agreement the complete phrase "including without limitation" is already used) , (e) accounting terms not otherwise defined herein have the meaning provided under GAAP, (f) references to a particular statute or regulation include all rules and regulations thereunder and any successor statute, regulation or rules, in each case as from time to time in effect, (g) the meanings of defined terms are equally applicable to the singular and plural forms of such defined terms, (h) the words "hereof," "herein," "hereunder" and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement, (i) the word "or" is not exclusive, and (j) references to a particular Person include such Person's successors and assigns to the extent not prohibited by this Agreement. References to "the date hereof" mean the date first set forth above.

1.1. "Accounts" shall have the meaning set forth in the Form Purchase and Sale Agreement.

1.2. "Affiliate" shall mean, with respect to the Borrower (or any other specified Person), any other Person directly or indirectly controlling, controlled by or under direct or indirect common control with the Borrower (or such specified Person), and shall include (a) any officer or director of the Borrower (or such specified Person) and (b) any Person of which the Borrower (or such specified Person) shall, directly or indirectly, beneficially own either (i) at least five percent (5%) of the outstanding equity securities having the general power to vote or (ii) at least five percent (5%) of all equity interests; provided, however, that "Affiliate," with respect to the Borrower or its Affiliates, shall not include Founding Partners or any partner of Founding Partners.

1.3. "Agreement" shall mean this Credit and Security Agreement as it may be amended, amended and restated or otherwise modified from time to time.

1.4. "A.M. Best" shall mean A.M. Best Company, Inc. and any successor thereto which is a nationally recognized statistical rating organization.

1.5. "Amount Paid to Seller" means, with respect to a particular Account, the actual amount paid by the Borrower to the related Seller for such Account pursuant to the related Purchase and Sale Agreement.

1.6. "Applicable Rate" shall mean one and one-half percent (1.5%) per month.

1.7. "Assignee" is defined in Section 12.1.1.

1.8. "Availability Termination Date" shall mean the date that is the Business Day immediately preceding the Final Maturity Date.

1.9. "Bankruptcy Code" shall mean Title 11 of the United States Code.

1.10. "Bankruptcy Default" shall mean an Event of Default contemplated by Section 8.1.11.

1.11. "Borrower" has the meaning set forth in the first paragraph of this Agreement.

1.12. "Borrowing Base" shall mean, on any date, an amount equal to the lesser of (a) the Outstanding Amounts Paid to Sellers with respect to all Purchased Accounts which are Eligible Accounts as of such date, or (b) ninety-four percent (94%) of the result of (i) the Net Collectible Amounts of the Purchased Accounts which are then Eligible Accounts minus (ii) Collections on such Purchased Accounts, in each case as shown on the most recent Weekly Report furnished (or are required to have been furnished) to the Lender in accordance with Section 6.5; provided, however, that the Borrowing Base shall be reduced to zero dollars ($0) at any time the Borrower has failed to furnish the computation of the Borrowing Base in the Weekly Report within one day after such Weekly Report was originally due pursuant to Section 6.5 until such time as the Borrower has duly delivered the Borrowing Base computation with respect to such Weekly Report and Borrower has not omitted the Borrowing Base computation with respect to any succeeding Weekly Report.

1.13. "Borrowing Base Deficiency" shall mean that the Loan Availability does not exceed zero dollars ($0).

1.14. "Business Day" shall mean any day other than (i) Saturday, (ii) Sunday or (iii) a day on which banks in Chicago, Illinois or Naples, Florida are authorized or required by law or other governmental action to close.

1.15. "By-Laws" shall mean all written by-laws, rules, regulations and all other documents relating to the management, governance or internal regulation of any Person other than an individual, all as from time to time in effect.

1.16. "Capital Expenditures" shall mean, for any period, amounts added or required to be added to the property, plant and equipment or other fixed assets account on the balance sheet of the Borrower, prepared in accordance with GAAP, in respect of (a) the acquisition, construction, improvement or replacement of land, buildings, machinery, equipment, leaseholds and any other real or personal property, (b) to the extent not included in clause (a) above, materials, contract labor and direct labor relating thereto (excluding amounts properly expensed as repairs and maintenance in accordance with GAAP) and (c) software development costs to the extent not expensed.

1.17. "Capitalized Lease" shall mean any lease which is required to be capitalized on the balance sheet of the lessee in accordance with GAAP.

1.18. "Capitalized Lease Obligations" shall mean the amount of the liability reflecting the aggregate discounted amount of future payments under all Capitalized Leases calculated in accordance with GAAP.

1.19. "CHAMPUS" shall mean the United States Civilian Health and Medical Program of the Uniformed Services.

1.20. "Change of Ownership Event" shall mean any point in time in which the individuals referred to in Section 7.26 (excluding their respective successors and assigns) shall cease to collectively own directly one hundred percent (100%) of the issued and outstanding shares of voting stock of the Borrower, free and clear of all Liens.

1.21. "Closing Date" shall mean the Initial Lending Date and each other date on which any Loan is made pursuant to Section 2.1.

1.22. "Code" means the Internal Revenue Code of 1986, as amended.

1.23. "Collateral" shall mean all of the Property and interests in Property described in Section 10.1, and all other Property and interests in Property that now or hereafter secure the payment or performance of any of the Credit Obligations.

1.24. "Collection Account" means the "Purchaser Collection Account" referred to in the Form Lockbox Agreement.

1.25. "Collections" shall mean all funds (regardless of whether in the form of cash, checks, money orders, wire transfers, automatic clearinghouse transfers, money-grams or otherwise) paid by any Person in payment of or in respect of any Account or any fee or other amount paid to the Borrower under a Purchase and Sale Agreement.

1.26. "Constituent Documents" shall mean, with respect to any non-individual Person: if such Person is a corporation, its certificate of incorporation and By-Laws; if such Person is a limited partnership, its certificate of limited partnership and its limited partnership agreement; and if such

Person is a limited liability company, its certificate of formation and its limited liability company agreement.

1.27. "Credit Obligations" shall mean the Loans and all present and future liabilities, obligations and Indebtedness of the Borrower owing to the Lender (or any Affiliate of the Lender) under or in connection with this Agreement or any other Program Document, including obligations in respect of principal, interest, amounts provided for in Sections 3.2, 3.3 and 9 and other fees, charges, indemnities and expenses from time to time owing hereunder or under any other Program Document (whether accruing before or after a Bankruptcy Default).

1.28. "Credit Participant" is defined in Section 12.2.

1.29. "Date of Service" shall mean, with respect to medical services rendered or goods provided to an individual, the date on which such services or goods were provided to that individual.

1.30. "Debtor Relief Laws" shall mean the Bankruptcy Code and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, suspension of payments, readjustment of debt, marshaling of assets or similar debtor relief laws of the (a) United States, (b) any state or (c) any foreign country from time to time in effect.

1.31. "Default" shall mean (a) any Event of Default, or (b) any event, circumstance or condition which with the passage of time or giving of notice, or both, would become an Event of Default.

1.32. "Defaulted Account", on any date of determination, shall mean a Purchased Account (i) as to which (x) at least one hundred twenty (120) days have passed since the Date of Service for such Purchased Account and (y) the Third Party Obligor thereof has not paid to a Lockbox or a Lockbox Account an amount at least equal to the sum of the Amount Paid to Seller for such Purchased Account plus the Discount Fee for such Purchased Account, or (ii) the Third Party Obligor of which is a party to a proceeding provided under any Debtor Relief Law (other than solely as a creditor or a claimant).

1.33. "Discount Fee" shall mean, as of any date of determination, the aggregate "discount fee" accrued with respect to a particular Purchased Account determined in accordance with the related Purchase and Sale Agreement.

1.34. "Distribution" shall mean, with respect to the Borrower (or other specified Person):

(a) the declaration or payment of any dividend or distribution, including dividends payable in shares of capital stock of or other equity interests in the Borrower (or such specified Person), on or in respect of any shares of any class of capital stock of or other equity interests in the Borrower (or such specified Person);

(b) the purchase, redemption or other retirement of any shares of any class of capital stock of or other equity interest in the Borrower (or such specified Person) or of options, warrants or other rights for the purchase of such shares, directly, indirectly, through a Subsidiary or otherwise;

(c) any other distribution on or in respect of any shares of any class of capital stock of or equity or other beneficial interest in the Borrower (or such specified Person);

(d) any payment with respect to, or any purchase, redemption or defeasance of, any Indebtedness of the Borrower (or such specified Person);

(e) any payment, loan or advance by the Borrower (or such specified Person) to, or any other Investment by the Borrower (or such specified Person) in, the holder of any shares of any class of capital stock of or other equity interests in the Borrower (or such specified Person), or any Affiliate of such holder, including the payment of management and transaction fees; and

(f) any other cash payments by the Borrower to any Person (other than to the Lender or as permitted or directed by the Lender).

1.35. "Dollars" or "$" shall mean United States Funds.

1.36. "Effective Date" shall mean the first date upon which each of the conditions precedent set forth in Section 5.1 shall have been satisfied or waived to the satisfaction of the Lender.

1.37. "Eligible Account" shall mean an Account:

(a) that is payable in United States dollars, for health care services rendered or health care goods provided by a health care provider in the United States, by a Third Party Obligor satisfactory to the Lender;

(b) that is not a Defaulted Account;

(c) as to which the Purchase Date is not more than sixty (60) days after the applicable Date of Service;

(d) which was billed to the Third Party Obligor prior to its Purchase Date;

(e) as to which the Borrower has good and marketable title free and clear of all Liens (other than Liens in favor of the Lender);

(f) as to which the Lender has a fully perfected first priority security interest;

(g) as to which an Obligor Notice has been received by the Third Party Obligor thereof;

(h) which is not evidenced by "chattel paper" (as presently or hereafter defined in the UCC) or an "instrument" (as presently or hereafter defined in the UCC);

(i) if the Seller of such Account is not party to a proceeding under any Debtor Relief Law (other than solely as a creditor); and

(j) as to which all of the representations and warranties made by the applicable Seller in the applicable Purchase and Sale Agreement are true and correct.

1.38. "Eligible Investments" shall mean any one or more of the following types of investments (having original maturities or remaining maturities of no more than thirty (30) days):

(a) direct interest-bearing obligations of, and interest bearing obligations guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality of the United States the obligations of which are backed by the full faith and credit of the United States; and direct interest-bearing obligations of, and interest-bearing obligations guaranteed as to timely payment of principal and interest by, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation;

(b) demand or time deposits in, certificates of deposit of, or bankers' acceptances issued by any depository institution or trust company organized under the laws of the United States or any State and subject to supervision and examination by federal or state banking authorities; provided that the short-term unsecured debt obligations of such depository institution or trust company at the time of such investment, or contractual commitment providing for such investment, are rated in the highest short-term rating category by at least one Rating Agency;

(c) securities bearing interest or sold at a discount issued by any corporation incorporated under the laws of the United States or any State whose long-term unsecured debt obligations are rated in the highest rating category by at least one Rating Agency at the time of such investment or contractual commitment providing for such investment;

(d) commercial paper that is payable in United States dollars and is rated in the highest short-term rating category by at least one Rating Agency;

(e) investments in money market funds having a long term rating in the highest rating category by at least one Rating Agency; and

(f) any other investment approved in writing by the Lender.

1.39. "EOB" shall mean the explanation of benefits, remittance advice or other record that is provided by a Third Party Obligor setting forth the amount it shall or shall not pay with respect to a Receivable on which it is the Third Party Obligor.

1.40. "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated thereunder.

1.41. "ERISA Affiliate" shall mean with respect to any Person, at any time, each trade or business (whether or not incorporated) that would, at the time, be treated together with such Person as a single employer under Section 4001 of ERISA or Sections 414(b), (c), (m) or (o) of the Code.

1.42. "Event of Default" is defined in Section 8.1.

1.43. "Final Maturity Date" shall mean the first Business Day that is five years after the date hereof or such other date as may be agreed upon in writing by all of the parties hereto from time to time.

1.44. "Form Lockbox Agreement" shall mean the form of Wholesale Lockbox Deposit and Blocked Account Service Agreement with Provider attached as Exhibit A hereto.

1.45. "Form Purchase and Sale Agreement" shall mean the form of Master Purchase and Sale Agreement attached as Exhibit B hereto.

1.46. "Founding Partners" is defined in the preamble to this Agreement.

1.47. "GAAP" shall mean generally accepted accounting principles in the United States of America as from time to time in effect, including the statements and interpretations of the United States Financial Accounting Standards Board.

1.48. "General Intangibles" shall mean: (a) all general intangibles (as presently or hereafter defined in the UCC); (b) all choses in action, causes of action, corporate or other business books and records, deposit accounts, investments made with funds in deposit accounts (including without limitation Eligible Investments), inventions, designs, patents, patent applications, trademarks, trade names, trade secrets, goodwill, copyrights, registrations, licenses, franchises, rights to royalties, blueprints, drawings, confidential information, catalogs, sales literature, video tapes, consulting agreements, employment agreements, customer lists, tax refund claims, tax refund payments, computer programs, insurance policies, deposits with insurers, and all claims under guaranties; (c) all interests in or claims in or under any policy of insurance; (d) all security interests or other security held by any Person; (e) all rights to indemnification; and (f) all other intangible property of every kind and nature.

1.49. "Governmental Accounts" shall have the meaning set forth in the Form Purchase and Sale Agreement.

1.50. "Government Obligor" or "Governmental Obligor" shall mean a Governmental Entity that is obligated to make any payments with respect to Accounts representing amounts owing under Medicaid, Medicare or any other program established by federal or state law which provides for payments for health care goods or services to be made to the providers of such goods or services (including, without limitation, CHAMPUS and the program set forth in Title 38 U.S.C. Section 1713).

1.51. "Governmental Authority" shall mean the United States of America, any State thereof or the District of Columbia, any political subdivision of any of the foregoing, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

1.52. "Governmental Entity" shall mean the United States of America, any State thereof or the District of Columbia, any political subdivision of any of the foregoing and any department, agency or instrumentality of any of the foregoing (including, without limitation, HCFA) or any fiscal intermediary thereof.

1.53. "Gross Amount" shall mean, with respect to an Account, the gross amount billed to the applicable Third Party Obligor with respect to such Account.

1.54. "Guarantee" shall mean, with respect to the Borrower (or other specified Person):

(a) any guarantee by the Borrower (or such specified Person) of the payment or performance of, or any contingent obligation by the Borrower (or such specified Person) in respect of, any Indebtedness or other obligation of any primary obligor;

(b) any other arrangement whereby credit is extended to a primary obligor on the basis of any promise or undertaking of the Borrower (or such specified Person), including any "comfort letter" or "keep well agreement" written by the Borrower (or such specified Person), to a creditor or prospective creditor of such primary obligor, (i) to pay the Indebtedness of such primary obligor, (ii) to purchase an obligation owed by such primary obligor, (iii) to pay for the purchase or lease of assets or services regardless of the actual delivery thereof or (iv) to maintain the capital, working capital, solvency or general financial condition of such primary obligor;

(c) any liability of the Borrower (or such specified Person), as a general partner of a partnership in respect of Indebtedness or other obligations of such partnership;

(d) any liability of the Borrower (or such specified Person) as a joint venturer of a joint venture in respect of Indebtedness or other obligations of such joint venture;

(e) any liability of the Borrower (or such specified Person) with respect to the tax liability of others as a member of a group (other than a group consisting solely of the Borrower and its Subsidiaries) that is consolidated for tax purposes; and

(f) reimbursement obligations, whether contingent or matured, of the Borrower (or such specified Person) with respect to letters of credit, bankers acceptances, surety bonds, other financial guarantees and Interest Rate Protection Agreements,

whether or not any of the foregoing are reflected on the balance sheet of the Borrower (or such specified Person) or in a footnote thereto, provided , however, that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee and the amount of Indebtedness resulting from such Guarantee shall be the maximum amount that the guarantor may become obligated to pay in respect of the obligations (whether or not such obligations are outstanding at the time of computation) and, for purposes of covenant calculations, shall be without duplication of guaranteed Indebtedness that is already included in such calculations.

1.55. "HCFA" shall mean the Health Care Financing Administration of the United States Department of Health and Human Services.

1.56. "Holding Account" shall mean account number 0494002031891 in the name of the Borrower and held by SunTrust, or such other account as the Borrower and the Lender may mutually designate in writing from time time as the "Holding Account".

1.57. "Indebtedness" shall mean all obligations, contingent or otherwise, which in accordance with GAAP are required to be classified upon the face of the balance sheet of the Borrower (or other specified Person) as liabilities, but in any event including (without duplication):

(a) borrowed money;

(b) indebtedness evidenced by notes, debentures or similar instruments;

(c) Capitalized Lease Obligations;

(d) the deferred purchase price of assets or securities, including related noncompetition, consulting and stock repurchase obligations;

(e) mandatory redemption or dividend rights on capital stock (or other equity);

(f) reimbursement obligations, whether contingent or matured, with respect to letters of credit, bankers acceptances, surety bonds, other financial guarantees and Interest Rate Protection Agreements (without duplication of other Indebtedness supported or guaranteed thereby);

(g) liabilities secured by any Lien existing on property owned or acquired by the Borrower (or such specified Person), whether or not the liability secured thereby shall have been assumed;

(h) unfunded pension liabilities;

(i) obligations that are immediately and directly due and payable out of the proceeds of or production from property; and

(j) all Guarantees in respect of Indebtedness of others.

1.58. "Indemnified Amounts" shall mean any and all claims, damages, expenses, losses, liabilities, penalties, judgments, suits, actions, costs, charges, and disbursements, including without limitation fees and other charges of any law firm or other counsel.

1.59. "Indemnified Parties" shall mean the Lender, the partners of the Lender, and any officer, director, employee, agent, law firm or other counsel for any of the Lender or any partner of the Lender.

1.60. "Initial Lending Date" shall mean the date on which the first Loan is made by Lender to the Borrower pursuant to Section 2.1.

1.61. "Insolvency" shall mean, with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

1.62. "Interest Rate Protection Agreement" shall mean any interest rate swap, interest rate cap, interest rate hedge or other contractual arrangement that converts variable interest rates into fixed interest rates, fixed interest rates into variable interest rates or other similar arrangements.

1.63. "Investment" shall mean, with respect to the Borrower (or other specified Person):

(a) any share of capital stock, partnership or other equity interest, evidence of Indebtedness or other security issued to the Borrower (or other specified Person) by any other Person;

(b) any loan, advance or extension of credit by the Borrower (or other specified Person) to, or contribution to the capital of, any other Person;

(c) any Guarantee by the Borrower (or other specified Person) of the Indebtedness of any other Person;

(d) any acquisition by the Borrower (or other specified Person) of all, or any division or similar operating unit of, the business of any other Person or the assets comprising such business, division or unit; and

(e) any other similar investment.

The investments described in the foregoing clauses (a) through (e) shall be included in the term "Investment" whether they are made or acquired by purchase, exchange, issuance of stock or other securities, merger, reorganization or any other method.

1.64. "Judgment Measurement Amount" means the result of (a) the Borrowing Base, less (b) the sum of (i) the outstanding principal amount of the Loans plus (ii) accrued and unpaid interest on the Loans.

1.65. "Legal Requirement" shall mean any present or future requirement imposed upon the Lender or the Borrower by any law, statute, rule, regulation, directive, order, decree, guideline (or any interpretation thereof by courts or of administrative bodies) of the United States of America, or any state or political subdivision of any of the foregoing, or by any board, governmental or administrative agency, or any political subdivision of any of the foregoing.

1.66. "Lender" shall mean Founding Partners and its successors and assigns.

1.67. "Lien" shall mean, with respect to the Borrower (or any other specified Person):

(a) any lien, encumbrance, mortgage, pledge, charge or security interest of any kind upon any property or assets of the Borrower (or such specified Person), whether now owned or hereafter acquired, or upon the income or profits therefrom;

(b) the acquisition of, or the agreement to acquire, any property or asset upon conditional sale or subject to any other title retention agreement, device or arrangement (including a Capitalized Lease);

(c) the sale, assignment, pledge or transfer for security of any accounts, general intangibles or chattel paper of the Borrower (or such specified Person), with or without recourse;

(d) the transfer of any tangible property or assets for the purpose of subjecting such items to the payment of previously outstanding Indebtedness in priority to payment to the general creditors of the Borrower (or such specified Person);

(e) any lease in the nature of a security interest; and

(f) the filing of or agreement to file or deliver any financing statement under the UCC or comparable law of any jurisdiction,

1.68. "Loan" is defined in Section 2.1.4.

1.69. "Loan Availability" shall mean, as at any date, an amount equal to the result of:

(a) the lesser of (i) the Maximum Amount of Credit, and (ii) the sum of (x) the Borrowing Base after giving effect to any Eligible Accounts to be acquired on such date with the Loans plus (y) the amount on deposit in the Holding Amount; minus

(b) the sum of (i) the then aggregate outstanding principal amount of all Loans plus (ii) the accrued and unpaid interest on the Loans (provided that this clause (b)(ii) shall apply commencing on the one hundred twentieth (120th) day after the date of this Agreement, provided, further, that from and after such one hundred twentieth (120th) day, this clause (b)(ii) shall include accrued and unpaid interest on the Loans from and after the Initial Lending Date).

During the first one hundred twenty (120) days after the date of this Agreement, the amount of the initial Loan under this Agreement "netted" to pay legal fees of the Lender's counsel in accordance with Section 5.1(g) shall not be subtracted pursuant to clause (b) above for purposes of calculating Loan Availability.

1.70. "Lockbox" shall mean a Purchaser Lockbox or a Provider Lockbox.

1.71. "Lockbox Account" shall mean a Purchaser Lockbox Account or a Provider Lockbox Account.

1.72. "Lockbox Agreement" shall mean an agreement among the Borrower, a Seller and a Lockbox Bank, and such other Person or Persons as may be acceptable to the Lender, as such agreement may be amended, amended and restated or otherwise modified from time to time.

1.73. "Lockbox Bank" shall mean any bank approved in writing by the Lender to maintain a Lockbox and Lockbox Account pursuant to a Lockbox Agreement. As of the date of this Agreement, the only bank approved by the Lender for purposes of the preceding sentence is SunTrust.

1.74. "Material Adverse Effect" shall mean a material adverse effect on: (a) the condition (financial or otherwise), business, performance, operations, properties, profits or prospects of the Borrower; (b) the Purchased Accounts or the legality, validity, transferability or enforceability of the Purchased Accounts; (c) the rights and remedies of the Lender under or in connection with any Program Document; (d) the ability of the Borrower to perform its obligations under any Program Document to which it is a party or enforce its rights under any Program Document to which it is a party; or (e) the overall reliability of the Borrower's reporting and control procedures under any Program Document.

1.75. "Maximum Amount of Credit" shall mean a dollar amount mutually agreed upon in writing by the Borrower and the Lender. Unless and until the Borrower and the Lender otherwise mutually agree in writing upon a different dollar amount pursuant to an agreement substantially in the form of Exhibit C hereto, the Maximum Amount of Credit shall be two million dollars ($2,000,000).

1.76. "Medicaid" shall mean the government program established by Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 et seq.

1.77. "Medicare" shall mean the government program established by Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395 et seq.

1.78. "Moody's" shall mean Moody's Investors Service, Inc. and any successor thereto which is a nationally recognized statistical rating organization.

1.79. "Multiemployer Plan" shall mean a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which contributions are or have been made during the preceding five (5) years by any Person or any ERISA Affiliate of such Person.

1.80. "Net Collectible Amount" shall mean, with respect to any Account, the amount determined as such in accordance with the related Purchase and Sale Agreement.

1.81. "Non-Government Obligor" shall mean a Third Party Obligor which is not a Government Obligor.

1.82. "Non-Government Obligor Reserve Account" shall mean a deposit account held by a bank that is acceptable at all times to the Lender.

1.83. "Obligor Notice" means. (a) with respect to a Third Party Obligor which is a Non-Government Obligor, a notice in the form of Exhibit C to the Form Purchase and Sale Agreement, and (b) with respect to a Third Party Obligor which is a Government Obligor, a notice in the form of Exhibit D to the Form Purchase and Sale Agreement.

1.84. "Officer's Certificate" shall mean a certificate signed by an officer of the Borrower.

1.85. "Operating Account" shall mean account number 0494002031902 in the name of the Borrower and held by SunTrust, or such other account as the Borrower and the Lender may mutually designate in writing from time to time as the "Operating Account".

1.86. "Outstanding Amount Paid to Seller", with respect to a Purchased Account, shall mean the greater of (i) the Amount Paid to Seller for such Purchased Account minus Collections with respect to such Purchased Account and (ii) zero, and "Outstanding Amounts Paid to Sellers" means the sum of the Outstanding Amount Paid to Seller for each Purchased Account.

1.87. "Overdue Reimbursement Rate" shall mean, at any date, a per annum rate equal to the sum of (a) two percent (2%) plus (b) the annualized Applicable Rate then in effect.

1.88. "PBGC" shall mean the Pension Benefit Guaranty Corporation or any successor entity.

1.89. "Person" shall mean any present or future natural person or any corporation, association, partnership, joint venture, limited liability company, joint stock company or other company, business trust, trust, organization, business or government or any governmental agency or political subdivision thereof.

1.90. "Plan" shall mean, with respect to any Person, any employee pension benefit plan that (a) is maintained by such Person or any ERISA Affiliate of such Person, or to which contributions by any such Person are required to be made or under which such Person has or could have any liability, (b) is subject to the provisions of Title IV of ERISA and (c) is not a Multiemployer Plan.

1.91. "Plan Event" shall mean, with respect to any Person, (a) the provision of a notice of intent to terminate any Plan under Section 4041 of ERISA other than in a "standard termination", (b) the receipt of any notice by any Plan to the effect that the PBGC intends to apply for the appointment of a trustee to administer any Plan, (c) the termination of any Plan which results in any material liability of such Person, (d) the withdrawal of such Person or any ERISA Affiliate of such Person from any Plan described in Section 4063 of ERISA which could be reasonably expected to result in a material liability of such Person, (e) the complete or partial withdrawal of such Person or any ERISA Affiliate of such Person from any Multiemployer Plan which can be reasonably anticipated to result in a material liability of such Person, (f) a Reportable Event or an event described in Section 4068(f) of ERISA which may result in a material liability of such Person, and (g) any other event or condition which under ERISA or the Code could be reasonably expected to constitute grounds for the imposition of a lien on the assets of such Person in respect of any Plan or Multiemployer Plan.

1.92. "Proceeding" shall mean any lawsuit, investigation, action, counterclaim, litigation or other judicial or administrative proceeding.

1.93. "Program Documents" shall mean this Agreement, each Purchase and Sale Agreement, each Lockbox Agreement, the SunTrust Master Agreement, any guaranty made by any Person in favor of the Lender with respect to the obligations of the Borrower, and any brokerage agreement, other agreement, certificate, promissory note, UCC financing statement, report, financial statement, instrument, insurance policy, surety bond, application for an insurance policy or surety bond, or other document delivered pursuant to or in connection with any of the foregoing.

1.94. "Property" shall mean any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

1.95. "Provider Lockbox" shall mean a post office box or lockbox maintained pursuant to a Lockbox Agreement for the purpose of receiving checks and other forms of Collections and EOBs from Governmental Obligors.

1.96. "Provider Lockbox Account" shall mean an account maintained at a Lockbox Bank for the purpose of depositing checks and other forms of Collections, and receiving wire transfers and other electronic funds transfers, in each case on account of Governmental Accounts.

1.97. "Purchase and Sale Agreement" shall mean a purchase and sale agreement between the Borrower and a Seller, as such Purchase and Sale Agreement may be amended, amended and restated or otherwise modified from time to time. Any reference to the "related" or the "applicable" Purchase and Sale Agreement shall be a reference to the Purchase and Sale Agreement under which a particular Account was purchased by the Borrower.

1.98. "Purchase Date" shall mean, with respect to any Account, the related Weekly Closing Date.

1.99. "Purchased Accounts" shall mean Accounts which are purchased by the Borrower from a Seller pursuant to a Purchase and Sale Agreement.

1.100. "Purchaser Lockbox" shall mean a post office box or lockbox maintained pursuant to a Lockbox Agreement for the purpose of receiving checks and other forms of Collections and EOBs from Third Party Obligors other than Governmental Obligors.

1.101. "Purchaser Lockbox Account" shall mean an account maintained by the Borrower at a Lockbox Bank for the purposes of depositing checks and other forms of Collections from Third Party Obligors, and receiving wire transfers and other electronic funds transfers from Third Party Obligors, in each case with respect to Accounts other than Governmental Accounts.

1.102. "Rating Agency" shall mean Moody's, S&P or A.M. Best.

1.103. "Receivables" shall mean: (a) all accounts (as presently or hereafter defined in the UCC); and (b) without limiting the foregoing, all Accounts (as defined in the Form Purchase and Sale Agreement).

1.104. "Regulations" shall mean the regulations promulgated under the Code.

1.105. "Related Property" shall mean, with respect to any Account, all of the Borrower's right, title and interest in, to and under (a) the related Purchase and Sale Agreement, including, without limitation, all amounts due and to become due to the Borrower under such Purchase and Sale Agreement, and all rights, remedies, powers, privileges and claims of the Borrower under such Purchase and Sale Agreement (whether arising pursuant to the terms of such Purchase and Sale Agreement or otherwise available to the Borrower at law or in equity), and (b) all related EOBs, records and all rights (but not obligations) relating to such Accounts.

1.106. "Reorganization" shall mean, with respect to any Multiemployer Plan, the condition that such Plan is in reorganization within the meaning of Section 4241 of ERISA.

1.107. "Reportable Event" shall mean any of the events set forth in Section 4043(c) of ERISA.

1.108. "Requirements of Law" for any Person shall mean any law, treaty, rule or regulation, or determination of an arbitrator or Governmental Authority, whether Federal, state or local, in each case applicable to or binding upon such Person or to which such Person is subject.

1.109. "Revocation Order" shall mean a request, direction or order by a Seller to a Lockbox Bank which is inconsistent with the terms of the applicable Lockbox Agreement.

1.110. "SCI" means Sun Capital Inc., a Florida corporation.

1.111. "Seller" shall mean a Person which sells or has sold Accounts to the Borrower pursuant to a Purchase and Sale Agreement.

1.112. "Senior Officer" shall mean the chief executive officer, chairman or president of the Borrower, all of whose incumbency and signatures have been certified to the Lender by the secretary or other appropriate attesting officer of the Borrower.

1.113. "Solvent" shall mean, with respect to any Person, that (i) fair value of the property of the Person is, on the date of determination, greater than the total amount of liabilities (including contingent liabilities) of the Person as of that date, (ii) as of that date, the Person is able to pay all liabilities of the Person as those liabilities mature, and (iii) the Person does not have unreasonably small capital for the business in which it is engaged or for any business or transaction in which it is about to engage. In computing the amount of contingent liabilities at any time, it is intended that they be computed at the amount that, in light of all the facts and circumstances existing at the time, represents the amount that can reasonably be expected to become an actual or matured liability.

1.114. "Standard & Poor's" or "S&P" shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto which is a nationally recognized statistical ratings organization.

1.115. "Subsidiary" shall mean any Person of which the Borrower (or other specified Person) shall at the time, directly or indirectly through one or more of its Subsidiaries, (a) own at least fifty percent (50%) of the outstanding capital stock (or other shares of beneficial interest) entitled to vote generally, (b) hold at least fifty percent (50%) of the partnership, joint venture or similar interests or (c) be a managing general partner or managing joint venturer.

1.116. "Sun Capital Entity" shall mean the Borrower, SCI, and any Affiliate of any of the foregoing.

1.117. "SunTrust" shall mean SunTrust Bank.

1.118. "SunTrust Master Agreement" shall mean the Master Wholesale Lockbox Deposit and Blocked Account Service Agreement among SunTrust, the Borrower and the Lender, as the same may be amended, amended and restated or otherwise modified from time to time.

1.119. "Tax" shall mean any present or future tax, levy, duty, impost, deduction, withholding or other charges of whatever nature at any time required by any Legal Requirement (a) to be paid by the Lender or (b) to be withheld or deducted from any payment otherwise required hereby to be made to the Lender, in each case on or with respect to any obligations hereunder, any Loan, or any payment in respect of the Credit Obligations not included in the foregoing; provided, however, that the term "Tax" shall not include taxes imposed upon or measured by the net income of the Lender (other than withholding) or franchise taxes.

1.120. "Termination Date" shall mean the date upon which all the commitments of the Lender to advance funds to the Borrower hereunder have been terminated, and all fees, expenses and Credit Obligations owing by the Borrower or any other Borrower to the Lender hereunder or under any other Program Document have been indefeasibly paid in full.

1.121. "Third Party Obligor" shall have the meaning specified in the Form Purchase and Sale Agreement.

1.122. "UCC" shall mean the Uniform Commercial Code, as amended from time to time, as in effect in any specified or applicable jurisdiction.

1.123. "United States Funds" shall mean such coin or currency of the United States of America as at the time shall be legal tender therein for the payment of public and private debts.

1.124. "Weekly Closing Date" shall have the meaning set forth in the Form Purchase and Sale Agreement.

1.125. "Weekly Report" shall mean a report prepared by the Borrower in form and substance reasonably satisfactory to the Lender.

1.126. "Written" or "in writing" shall mean any form of written communication, including by means of facsimile transmission.

2. Credit; Application of Proceeds.

2.1. The Credit.

2.1.1. Loans. Subject to all the terms and conditions of this Agreement, including the conditions set forth in Section 5.1 and Section 5.2, and so long as no Default exists, either immediately before or after giving effect to such Loan, from time to time on and after the Effective Date and prior to the earlier of (a) the termination of this Agreement in accordance with the terms hereof and (b) the Availability Termination Date, the Lender shall

make Loans to the Borrower; provided that the aggregate outstanding principal amount of the Loans shall not exceed the Maximum Amount of Credit. Loans shall be made in accordance with the procedures set forth in Section 2.1.3.

2.1.2. Borrowing Requests. The Borrower may from time to time request a Loan under Section 2.1.1 by providing to the Lender a notice in writing. Such notice must be received by the Lender not later than noon (Chicago time) three Business Days prior to the requested Closing Date for such Loan (or, in the case of the first Loan under this Agreement, at least one Business Day prior to the Initial Lending Date). The notice must specify (a) the amount of the requested Loan (which shall be not less than one hundred thousand dollars ($100,000)) and (b) the requested Closing Date therefor (which shall be a Business Day).

2.1.3. Making of Loans. Subject to Section 2.1.1 and subject to the other terms and conditions of this Agreement, on each Closing Date requested by the Borrower pursuant to Section 2.1.2, the Lender shall deposit the amount of the requested Loan in the Holding Account. The Borrower may withdraw funds (or cause funds to be withdrawn) from the Holding Account without the signature of the Lender; provided, that funds shall be withdrawn from the Holding Account only (a) to purchase Accounts directly from a Seller pursuant to a Purchase and Sale Agreement or to (b) to make payments directly to the Lender for application in accordance with Section 4.5.2; provided, further, that no funds shall be withdrawn from the Holding Account to purchase Accounts from a Seller if any Default exists on the date of such withdrawal or would exist after giving effect to such withdrawal; provided, further, however, that upon the occurrence of an Event of Default, all amounts on deposit in the Holding Account shall be paid to the Lender for application in accordance with Section 4.5.2.

2.1.4. Loans; No Note. The aggregate principal amount of the extensions of credit under this Agreement outstanding from time to time may be referred to herein as the "Loan" or the "Loans". The Borrower's obligations to repay the Loans to the Lender shall not be evidenced by a promissory note of the Borrower unless the Lender consents in writing thereto.

2.2. Application of Proceeds. The Borrower shall apply the proceeds of the Loans to pay the purchase price of Accounts to a Seller pursuant to a Purchase and Sale Agreement. The Borrower shall not borrow any funds from the Lender unless such funds are applied for the foregoing purpose or unless such funds are used to make payments to the Lender in accordance with Section 2.1.3.

3. Interest.

3.1. Interest. The Loans shall accrue and bear interest at the Applicable Rate (or the Overdue Reimbursement Rate, if applicable). Prior to any accelerated maturity of the Loans, the Borrower shall pay accrued and unpaid interest on the Loans to the Lender on the first day of each calendar month and on the Final Maturity Date. Upon any accelerated maturity of any of the Credit

Obligations pursuant to Section 8.2.3, the Borrower shall pay the Lender immediately all accrued and unpaid interest on the Loans. Upon the occurrence and during the continuance of an Event of Default, the Borrower shall pay interest on the Loans and any other amounts payable by the Borrower hereunder (including overdue interest, to the extent permitted by law) at the Overdue Reimbursement Rate for the period commencing on the date of such Event of Default until such Event of Default is cured or waived, as acknowledged in writing by Lender.

3.2. Computations of Interest. For purposes of this Agreement, interest (and any other amount expressed as interest) shall be computed for actual days elapsed on the basis of a year of twelve (12) months having thirty (30) days each, provided that this shall not be construed to limit the per month interest calculation contemplated by the definition of Applicable Rate. If any payment required by this Agreement becomes due on any day that is not a Business Day, such payment shall be made on the next succeeding Business Day. If the due date for any payment of interest or principal is extended as a result of the immediately preceding sentence, interest shall be payable for the time during which payment is extended at the Applicable Rate (or the Overdue Reimbursement Rate, if applicable).

3.3. Taxes, Etc.

3.3.1. Taxes. All payments of the Credit Obligations shall be made without set-off or counterclaim and free and clear of any deductions, including deductions for Taxes, unless the Borrower is required by law to make such deductions. If after the date hereof (a) the Lender shall be subject to any Tax with respect to any payment of the Credit Obligations or its obligations hereunder or (b) the Borrower shall be required to withhold or deduct any Tax on any payment on the Credit Obligations, then the Lender may claim compensation from the Borrower under Section 3.3.2. Whenever Taxes must be withheld by the Borrower with respect to any payments of the Credit Obligations, the Borrower shall promptly pay such Taxes and shall promptly furnish to the Lender the official receipts (to the extent that the relevant governmental authority delivers such receipts) evidencing payment of any such Taxes so withheld or deducted. If the Borrower fails to pay any such Taxes when due or fails to remit to the Lender the required receipts evidencing payment of any such Taxes so withheld or deducted, the Borrower shall indemnify the Lender for any incremental Taxes and interest or penalties that may become payable by the Lender as a result of any such failure.

3.3.2. Compensation Claims. Within ten (10) days after the receipt by the Borrower of a certificate from the Lender setting forth why it is claiming compensation under this Section 3.3 and computations (in reasonable detail) of the amount thereof, the Borrower shall pay to the Lender such additional amounts as the Lender sets forth in such certificate as sufficient fully to compensate it on account of the foregoing provisions of this Section 3.3, together with interest on such amount from the tenth (10th) day after receipt of such certificate until payment in full thereof at the Overdue Reimbursement Rate. The determination by the Lender of the amount to be paid to it and the basis for computation

thereof hereunder shall, in the absence of manifest error, be conclusive. In determining such amount, the Lender may use any reasonable averaging and attribution methods.

4. Payment.

4.1. Debiting of Interest Payments. The Borrower shall cause the bank holding the Operating Account to remit by wire transfer on the first day of each calendar month, from the Operating Account to a bank account designated by the Lender from time to time, all accrued and unpaid interest on the Loans as of such day. This Section 4.1 shall apply from and after the one hundred twentieth (120th) day following the date of this Agreement. Notwithstanding any other term or provision of this Agreement, interest shall accrue on the Loans commencing on the Initial Lending Date.

4.2. Payment Upon Maturity. On the Final Maturity Date, the Borrower shall pay to the Lender an amount equal to the outstanding principal amount of the Loans, together with all accrued and unpaid interest and fees with respect thereto. On the accelerated maturity of the Loans in accordance with Section 8.2.3, the Borrower shall pay to the Lender all Credit Obligations then outstanding.

4.3. Excess Credit Exposure. If at any time a Borrowing Base Deficiency exists for a period of two Business Days, the Borrower shall immediately, without demand or notice, pay the amount of such Borrowing Base Deficiency to the Lender.

4.4. Voluntary Prepayments. The Borrower may from time to time prepay all or any portion of the Loans (in a minimum amount of fifty thousand dollars ($50,000) and an integral multiple of ten thousand dollars ($10,000), or such lesser amount as is then outstanding, without premium or penalty of any type. The Borrower shall give the Lender at least one Business Day's prior written notice of its intention to prepay, specifying the date of payment, the total amount and portion of the Loans to be paid on such date and the amount of interest to be paid with such prepayment.

4.5. Application of Payments, etc.

4.5.1. [Reserved.]

4.5.2. Order of Application. All payments to the Lender pursuant to this Agreement shall be applied, without duplication, in the following order:

(i) first, to the Lender for application to overdue interest on the Credit Obligations;

(ii) second, to the Lender for application to accrued and unpaid interest on the Credit Obligations;

(iii) third, to the Lender for application to outstanding principal of the Loans;

(iv) fourth, to the Lender for (x) any and all sums advanced by the Lender in order to preserve the Collateral or the Lender's security interest in the Collateral (if the Borrower shall not have taken such actions as the Lender shall have requested with respect to preserving the Collateral or the Lender's security interest in the Collateral within two Business Days after such request by the Lender), (y) all expenses of (A) taking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Collateral or (B) any exercise by the Lender of its rights under any of the Program Documents, and (z) any attorney fees, other attorney charges and court costs; and

(v) fifth, to the Lender for application to any other Credit Obligations (it being agreed and understood that the Lender may hold payments pursuant to this Section 4.5.2 for application to future Credit Obligations).

4.5.3. Payment with Accrued Interest, etc. Upon all prepayments of the Loans, the Borrower shall pay to the Lender the principal amount to be prepaid, together with unpaid interest in respect thereof accrued to the date of prepayment. Notice of prepayment having been given in accordance with Section 4.4, the amount specified to be prepaid shall become due and payable on the date specified for prepayment.

4.6. Payments in United States Funds. All payments to the Lender (or to an account for the benefit of the Lender) under or in connection with this Agreement shall be made by wire transfer in immediately available United States Funds to an account designated from time to time by the Lender.

4.7. Reborrowing. Subject to Section 2.1.1 and subject to the other terms and conditions of this Agreement, the Borrower may borrow additional Loans after repaying outstanding Loans.

5. Conditions to Loans.

5.1. Conditions of Effective Date. The occurrence of the Effective Date and the Lender's willingness to make the initial Loan pursuant to Section 2 on the Effective Date shall be subject to the receipt by the Lender of the following, each in form and substance (including the date thereof) satisfactory to the Lender:

(a) Counterparts of this Agreement, signed by the Borrower; and counterparts of the SunTrust Master Agreement, signed by the Borrower and SunTrust.

(b) Copies, certified by the Secretary of the Borrower, of (i) resolutions of its board of directors, (ii) its certificate of incorporation, certified by the Secretary of State of Florida, and (iii) its by-laws.

(c) A certificate of the Secretary or Assistant Secretary (or other appropriate office) of the Borrower certifying the names and true signatures of the officers of the Borrower authorized to sign the Program Documents to which it is a party. Until the Lender receives a subsequent incumbency certificate from the Borrower, in form and substance satisfactory to the Lender, the Lender shall be entitled to rely on the last such certificate delivered to it by the Borrower.

(d) Acknowledgment copies, or other evidence of filing acceptable to the Lender, of proper UCC financing statements, duly filed against the Borrower in Florida and any other jurisdictions that the Lender may deem necessary or desirable in order to perfect the interests of the Lender contemplated by this Agreement.

(e) Completed UCC search reports with respect to the Borrower and similar search reports in such jurisdictions as the Lender may request, in each case showing no liens on any of the Collateral.

(f) Favorable opinions of Greenberg Traurig, counsel for the Borrower.

(g) Evidence of payment by the Borrower of all accrued and unpaid fees, costs and expenses to the extent then due and payable, together with fees and other charges of Mayer, Brown & Platt, counsel to the Lender, arising prior to or on such date, plus such additional amounts of fees and charges of counsel to the Lender as shall constitute such counsel's estimate of fees and charges incurred or to be incurred through the closing proceedings (provided that such estimate shall not thereafter preclude final settling of accounts with respect thereto). The Lender shall have the right to "net" such fees, costs, expenses and amounts from the amount payable in respect of the first Loan under this Agreement.

(h) A good standing certificate issued by the Secretary of State of Florida with respect to the Borrower.

(i) Such other approvals, opinions, certificates, reports and documents as the Lender may request.

5.2. Conditions to Each Loan. It shall be a condition precedent to the making of each Loan (including without limitation the first Loan) by this Lender pursuant to this Agreement that all of the conditions set forth in this Section 5.2 shall have been satisfied on or before the Closing Date for such Loan:

5.2.1. General; Officer's Certificate.

(a) The Availability Termination Date shall not have occurred;

(b) the representations and warranties contained in Section 7 shall be true and correct on and as of such Closing Date (except as to any representation or warranty which refers only to a specific earlier date which representation and warranty shall be true and correct as of such earlier date);

(c) no Default shall exist on such Closing Date prior to or immediately after giving effect to the requested Loan;

(d) no Material Adverse Effect shall have occurred since the date of this Agreement;

(e) the funds received from such Loan shall be applied only for the purposes contemplated by Section 2.2;

(f) after giving effect to such Loan, no Borrowing Base Deficiency shall exist; and

(g) the Lender shall have received from the Borrower in connection with the requested Loan an Officer's Certificate to these effects (substantially in the form of Exhibit D hereto) and showing the amount of the Borrowing Base, signed by a Senior Officer.

5.2.2. Legality, Etc. The making of the requested Loan shall not (a) subject the Lender to any penalty or special tax or (b) be prohibited by any Legal Requirement.

5.2.3. Perfection of Security. The Borrower shall have duly authorized, executed, acknowledged, delivered, filed, registered and recorded such security agreements, notices, financing statements and other instruments as the Lender may have requested in order to perfect the Liens of the Lender in the Collateral. The Lender shall have received a copy of any search reports and legal opinions (in form and substance satisfactory to the Lender) with respect to security interests and other matters requested by the Lender.

5.2.4. Purchase and Sale Agreements. Other than as consented to by the Lender in writing:

(a) The Lender shall have received a copy of each applicable Purchase and Sale Agreement, duly executed by each of the parties thereto, pursuant to which the Borrower shall purchase Accounts with the proceeds of the requested Loan, certified as true, correct and complete by a Senior Officer. The provisions of each Purchase and Sale Agreement shall be in full force and effect and shall not have been amended, modified, waived or terminated.

(b) All of the representations and warranties of the Seller set forth in such Purchase and Sale Agreement shall be true, complete and correct in all material respects on

and as of such Closing Date with the same force and effect as though made on and as of such date.

(c) All of the conditions to the obligations of the Borrower and the Seller set forth in such Purchase and Sale Agreement shall have been satisfied.

(d) Such Purchase and Sale Agreement and the transactions contemplated thereby shall have been authorized by all necessary corporate, partnership or other proceedings by the parties thereto. Any consent, authorization, order or approval of any governmental or administrative agency or any other Person required in connection with the transactions contemplated by such Purchase and Sale Agreement shall have been obtained and shall be in full force and effect.

(e) All of the items required to be delivered under such Purchase and Sale Agreement shall have been so delivered, and the Lender shall have received copies thereof, certified as true, correct and complete by a Senior Officer.

(f) The Borrower shall have followed its usual and customary guidelines in evaluating the Seller and in determining whether to enter into a Purchase and Sale Agreement with such Seller.

5.2.5. Weekly Report. The Lender shall have received a copy of the most recent Weekly Report required to be delivered pursuant to Section 6.5(e).

5.2.6. Lockbox Agreements. The Lender shall have received a copy of the applicable Lockbox Agreements, duly executed by each of the parties thereto. The provisions of each Lockbox Agreement shall be in full force and effect and shall not have been amended, modified, waived or terminated without the prior written consent of the Lender.

5.2.7. Holding Account; Non-Government Obligor Reserve Account. The Lender shall have received evidence satisfactory to it with respect to the existence of the Holding Account and the Non-Government Obligor Reserve Account.

5.2.8. General. The Lender shall have received such information, approvals, opinions, resolutions, certificates, reports, and documents as reasonably requested by the Lender and the Borrower shall have satisfied such other conditions as the Lender may reasonably impose.

5.2.9. Effective Date. The Effective Date has occurred in accordance with the terms of this Agreement.

5.2.10. Cross Default, Etc.

(a) No Sun Capital Entity shall have failed to make any payment when due (after giving effect to any applicable grace periods) in respect of any Indebtedness having an aggregate amount of principal (whether or not due) and accrued interest, if applicable, exceeding one hundred thousand dollars ($100,000).

(b) No Sun Capital Entity shall have failed to perform or observe the terms of any agreement or instrument relating to any Indebtedness having an aggregate amount of principal (whether or not due) and accrued interest, if applicable, exceeding one hundred thousand dollars ($100,000).

(c) No Indebtedness of any Sun Capital Entity shall have been accelerated or shall have become due or payable prior to its stated maturity (except with respect to voluntary prepayments thereof) for any reason whatsoever.

(d) No Lien on any property of any Sun Capital Entity securing any Indebtedness shall have been enforced by foreclosure or similar action.

(e) No holder of any such Indebtedness shall have exercised any right of rescission with respect to the issuance thereof or any put or repurchase rights against any Sun Capital Entity with respect to such Indebtedness.

(f) No holder of any such Indebtedness shall have terminated any agreement or instrument in respect of such Indebtedness other than as a result of the occurrence of the scheduled termination date thereof.

5.2.11. Agreed Upon Procedures Report. Not later than December 31, 2000, the Lender and the accountants referred to in Section 6.33 shall have mutually agreed as to the "agreed-upon procedures" to be applied pursuant to Section 6.33.

6. General Covenants. The Borrower covenants that, until all of the Credit Obligations shall have been paid in full and until this Agreement and all other Program Documents shall have been irrevocably terminated, the Borrower shall comply with the following provisions:

6.1. Compliance with Laws, Etc. The Borrower shall: (i) duly satisfy all of its obligations in connection with the Accounts and the Related Property, (ii) maintain in effect all qualifications required under Requirements of Law in order to properly purchase and service the Accounts and other Related Property under the Purchase and Sale Agreements and (iii) comply with all Requirements of Law applicable to it in each case to the extent that failure to so maintain or comply, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

6.2. Preservation of Existence. The Borrower (i) shall preserve and maintain its corporate existence, rights, franchises and privileges in the jurisdiction of its incorporation, and (ii) shall

qualify and remain qualified in good standing as a foreign corporation in each jurisdiction where the failure to preserve and maintain such existence, rights, franchises, privileges and qualification could, if not remedied, reasonably be expected to have a Material Adverse Effect.

6.3. Audits. During normal business hours and with at least three Business Days' notice furnished by the Lender to the Borrower (provided that if a Default shall have occurred, only one Business Day's notice need be so furnished), the Borrower shall permit the Lender, or its agents or representatives, (i) to examine and make copies of and abstracts from all books, records and documents (including without limitation computer tapes and disks, provided that if copying of a software program used by the Borrower is prohibited by an enforceable agreement between the Borrower and the third party licensor of such software program (which licensor shall not be an Affiliate of the Borrower), then the Borrower shall print out all information contained in such software program instead of copying it)) in the possession or under the control of the Borrower relating to the Accounts and any other Property and (ii) to visit the offices and properties of the Borrower for the purpose of examining such materials and to discuss matters relating to the Accounts and any other Property or the Borrower's performance hereunder or under any other Program Document with any of the officers or employees of the Borrower having knowledge thereof. Any such examination, copying, printing or visit made pursuant to this Section 6.3 shall be at the cost and expense of the Borrower.

6.4. Continuous Perfection. The Borrower shall not change its name, identity or structure in any manner unless the Borrower shall have given the Lender at least ninety (90) days' prior written notice thereof and shall have taken all action sixty (60) days prior to making such change as is necessary or advisable in the judgment of the Lender to cause the security interest of the Lender in the Collateral to continue to be a first priority perfected security interest. The Borrower shall not change its principal place of business or its chief executive office or change the location of its principal records concerning the Collateral from the locations specified in Section 7.10 unless it has given the Lender at least sixty (60) days' prior written notice of its intention to do so and has taken such action as is necessary or advisable in the judgment of the Lender to cause the security interest of the Lender in the Collateral to continue to be a first priority perfected security interest. The Borrower shall at all times maintain its principal place of business and its chief executive office and any other office at which it maintains records relating to the Collateral within the United States of America.

6.5. Reporting Requirements of the Borrower. Unless the Lender consents in writing, the Borrower shall furnish to the Lender:

(a) Defaults. Except as otherwise provided herein, within two Business Days after any officer of the Borrower has knowledge of the occurrence of any Event of Default or other Default, a written statement describing the Event of Default or other Default and the action that the Borrower proposes to take with respect thereto, in each case in reasonable detail.

(b) Material Adverse Effect. Within two Business Days after any officer of the Borrower has knowledge thereof, written notice that describes in reasonable detail any Lien against any Collateral or any other event or occurrence that, individually or in the aggregate for all such Liens, events or occurrences, has had or could reasonably be expected to have a Material Adverse Effect. Without limiting the foregoing, the Borrower shall notify the Lender promptly of all disputes and claims in connection with any material portion of the Accounts.

(c) Proceedings. Within five Business Days after any officer of the Borrower has knowledge thereof, written notice of (i) any Proceeding of the type described in Section 7.7 not previously disclosed to the Lender and (ii) any adverse development that has occurred with respect to any such previously disclosed Proceeding.

(d) Financial Statements. The Borrower shall deliver to the Lender:

(i) As soon as available and in any event within ninety (90) days after the end of each fiscal year of the Borrower, audited statements of income, retained earnings and cash flow of the Borrower for such fiscal year and the related audited balance sheet as of the end of such fiscal year (collectively, the "Audited Financial Statements"), setting forth in comparative form the corresponding figures for the preceding fiscal year, and accompanied by (x) a report of the Borrower's independent certified public accountants (which shall be a "Big 5" firm and which may also render other services to the Borrower or any Affiliate thereof), which report shall state that such Audited Financial Statements fairly present the financial condition and results of operations of the Borrower in accordance with GAAP.

(ii) As soon as available and in any event within forty-five (45) days after the end of each quarterly fiscal period of each fiscal year of the Borrower, statements of income, retained earnings and cash flow of the Borrower for such period and for the period from the beginning of the current fiscal year to the end of such period, and the related balance sheet as of the end of such period, setting forth in each case in comparative form the corresponding figures for the corresponding period in the preceding fiscal year, and accompanied by a certificate of the chief financial officer of the Borrower, which certificate shall state that such financial statements fairly present the financial condition and results of operations of the Borrower in accordance with GAAP (subject to normal year-end adjustments and absence of footnote disclosures).

(iii) As soon as available and in any event within thirty (30) days after the end of each calendar month, statements of income, retained earnings and cash flow of the Borrower for such calendar month and the related balance sheet as of the end of such calendar month, setting forth in each case in comparative form the corresponding figures for the corresponding calendar month in the preceding fiscal year, and accompanied by a certificate of the chief financial officer of the Borrower,

which certificate shall state that such financial statements fairly present the financial condition and results of operations of the Borrower in accordance with GAAP (subject to normal year-end adjustments).

(iv) Promptly after the receipt thereof, copies of all "management letters" received by the Borrower from its independent accountants.

(e) Weekly Reports. On a weekly basis, not later than the third Business Day of each week, a Weekly Report with respect to the immediately preceding week.

(f) Cross-Defaults, Etc. Promptly after any failure or occurrence of the type contemplated by Section 5.2.10, notice as to such failure or occurrence.

(g) Other. Promptly, from time to time, any other information, notices or documents with respect to the Receivables, the Related Property, any other Collateral or any other Property or any Program Document, or any other information to which the Borrower reasonably has access with respect to the condition or operations, financial or otherwise, of the Borrower or any Seller, in each case as the Lender may from time to time request.

6.6. Assessments. The Borrower shall promptly pay and discharge all taxes, assessments, levies and other governmental charges imposed on it and with respect to its Properties.

6.7. Further Action; Non-Interference. The Borrower shall, from time to time, execute and deliver to the Lender any instruments, financing or continuation statements or other writings necessary or desirable in the judgment of the Lender (i) to maintain the perfection and priority of the Lender's interest in the Collateral under the UCC or other applicable Requirements of Law or (ii) to further the purposes or provisions of this Agreement. Without limiting the foregoing, the Borrower shall execute and deliver to the Lender any and all forms (including without limitation, Forms 8821 or 2848) that the Lender may request from time to time in order to enable the Lender to obtain and receive tax information with respect to the Borrower from the U.S. Department of the Treasury, U.S. Internal Revenue Service or any other federal, state or local taxing authority, or in order to obtain and receive tax refund checks or other payments. The Borrower shall not interfere with the Lender's exercise of its rights or remedies under the Lockbox Agreements, under any other Program Document, or under applicable law.

6.8. Additional Indebtedness. The Borrower shall not create, incur, assume or suffer to exist any Indebtedness (including any Guarantee) or expenses (whether or not accounted for as a liability) or cause to be issued for its account any letters of credit or bankers' acceptances, except (i) indebtedness contemplated by this Agreement; (ii) indebtedness or other expenses to its professional advisers and its counsel; and (iii) accounts payable in the ordinary course of business.

6.9. No Transfer. The Borrower agrees that, except as contemplated by this Agreement and any Purchase and Sale Agreement, it (i) shall not sell, assign, pledge, convey or otherwise transfer any of its Property or interest therein, (ii) shall not grant, create, incur, or suffer to exist any

Lien on any of its Property or any interest therein, (iii) shall notify the Lender upon becoming aware of any such Lien, and (iv) shall defend the interest of the Lender in the Collateral against all claims of other Persons claiming through the Borrower.

6.10. No Other Activities. The Borrower shall not engage in any activity other than those contemplated by this Agreement. The Borrower shall not make any Capital Expenditures, except for expenditures on office equipment and office supplies in the ordinary course of business. The Borrower shall not make any Investments other than (x) the purchase of Accounts pursuant to Purchase and Sale Agreements, and (y) Eligible Investments. Neither the Borrower nor any Person on behalf of the Borrower shall maintain any lockboxes, deposit accounts or other similar accounts, except the Lockboxes, the Lockbox Accounts, the Collection Account, the Holding Account, the Non-Government Obligor Reserve Account and bank accounts maintained for the payment of reasonable expenses incurred in the ordinary course of business and the deposit of amounts which are not otherwise required to be paid to the Lender in accordance with this Agreement.

6.11. Enforcement. The Borrower shall take all action necessary and appropriate to enforce its rights and claims under each Purchase and Sale Agreement and each Lockbox Agreement. If, upon notice from the Lender, the Borrower does not take such necessary and appropriate action, then, the Lender may, but shall not be obligated to, take such action, provided that the Lender's taking or refraining from taking such action shall not constitute a waiver of the Borrower's failure to take such action.

6.12. Separateness. The Borrower shall not permit its assets to be commingled with those of any other Sun Capital Entity, the Borrower shall maintain separate corporate records and books of account from those of each other Sun Capital Entity, and the Borrower shall conduct its business from an office separate from that of each other Sun Capital Entity with a telephone number and stationery which are separate from the telephone number and stationery of each other Sun Capital Entity (it being understood that, subject to the foregoing, the office of the Borrower may be at the same location as the office of any other Sun Capital Entity). The Borrower shall conduct its business solely in its own name and shall cause each other Sun Capital Entity to conduct its respective business solely in that respective Sun Capital Entity's own name so as not to mislead others as to the identity of the entity with which those others are concerned. The Borrower shall not incur any direct, indirect or overhead expenses that are material for any items shared between the Borrower and any other Sun Capital Entity, other than shared expenses that shall be allocated on a basis reasonably related to the value of services rendered or property used. The Borrower shall not hold itself out, or permit itself to be held out, as having agreed to pay, or as being liable for, the debts of any other Sun Capital Entity, and the Borrower shall cause each other Sun Capital Entity not to hold itself out, or permit itself to be held out, as having agreed to pay, or as being liable for, the debts of the Borrower. The financial statements of the Borrower shall reflect that it is a corporation which is separate from each other Sun Capital Entity. The Borrower shall observe all formalities of an independent corporation.

6.13. Amendment to Documents; Assignments and Delegations. The Borrower shall not amend, grant any consent under, waive, terminate or otherwise modify any or all provisions of its

Constituent Documents, any Purchase and Sale Agreement, any Lockbox Agreement or any other Program Document without the prior written consent of the Lender. Without limiting the foregoing, the Borrower shall not assign any of its rights or delegate any of its obligations under or in connection with any Program Document without the prior written consent of the Lender.

6.14. ERISA. The Borrower shall promptly give the Lender notice of the following events, as soon as possible and in any event within ten (10) days after the Borrower or any of its ERISA Affiliates knows or has reason to know thereof: (i) the occurrence or expected occurrence of any Reportable Event with respect to any Plan to which the Borrower or any of its ERISA Affiliates contributed, or any withdrawal from, or the termination, reorganization or Insolvency of, any Multiemployer Plan to which the Borrower or any of its ERISA Affiliates contributes or to which contributions have been required to be made by the Borrower or such ERISA Affiliate during the preceding five years or (ii) the institution of proceedings or the taking of any other action by the PBGC or the Borrower or any of its ERISA Affiliates or any such Multiemployer Plan with respect to the withdrawal from, or the termination, Reorganization or Insolvency of, any such Plan or Multiemployer Plan.

6.15. Copies of Notices, Waivers, Etc. Upon the Lender's request, the Borrower shall promptly give the Lender copies of any notices, reports or certificates given or delivered to the Borrower under any Purchase and Sale Agreement or any other Program Document to which the Borrower is a party.

6.16. Subsidiaries, Distributions. The Borrower shall not create any Subsidiary. The Borrower shall not make any Distributions (i) more frequently than once each calendar quarter; (ii) if such payment would be prohibited under applicable law; and (iii) after the occurrence of a Default, without the prior written consent of the Lender.

6.17. Maximum Amount of Purchased Accounts. Except to the extent specifically approved in writing by the Lender, the Borrower shall not purchase under any Purchase and Sale Agreement any single Account having a Net Collectible Amount, or Related Accounts having an aggregate Net Collectible Amount, in excess of one million dollars ($1,000,000). For purposes of the immediately preceding sentence, "Related Accounts" means two or more Accounts relating to the same patient and payable by the same Third Party Obligor.

6.18. Maximum Amount of Accounts per Seller. Except to the extent specifically approved in writing by the Lender, the Borrower shall not purchase any Accounts from any single Seller to the extent that the portion of the outstanding Loans utilized to fund the purchase of Accounts from such Seller would exceed an amount equal to twenty-five percent (25%) of the Maximum Amount of Credit. This Section 6.18 shall apply commencing one year after the date of this Agreement.

6.19. Limitation on Amount Advanced. (a) The Borrower shall not purchase any Account unless the Amount Paid to Seller for such Account is less than or equal to ninety-four percent (94%) of the Net Collectible Amount of such Account.

(b) The Borrower agrees that (i) the amount payable to any broker with respect to any Accounts purchased pursuant to the applicable Purchase and Sale Agreement shall not exceed eight percent (8%) of the Discount Fees collected by the Borrower pursuant to such Purchase and Sale Agreement, and (ii) such brokerage fees shall be payable and paid only out of such Discount Fees.

6.20. Purchase and Sale Agreements; True Sale. The Borrower shall acquire Accounts solely pursuant to Purchase and Sale Agreements. The Borrower shall not sign a Purchase and Sale Agreement, and shall not cause a Purchase and Sale Agreement to be signed, unless such Purchase and Sale Agreement conforms in all material respects to the Form Purchase and Sale Agreement. The Borrower shall comply with the assumptions and factual descriptions set forth in the "true sale" opinion of Greenberg Traurig delivered pursuant to Section 5.1.

6.21. Lockbox Agreements. The Borrower shall not sign a Lockbox Agreement, and shall not cause a Lockbox Agreement to be signed, unless such Lockbox Agreement conforms in all material respects to the Form Lockbox Agreement.

6.22. Taxes. The Borrower shall file or cause to be filed all Federal, state, and local tax returns that it is required to file under applicable law, and pay or cause to be paid all taxes shown to be due and payable on such returns or on any assessments it receives, except any taxes or assessments the validity of which is being contested in good faith by appropriate proceedings and with respect to which the Borrower has set aside adequate reserves on its books in accordance with GAAP and which proceedings could not reasonably be expected to have a Material Adverse Effect (which reserves and unpaid taxes shall not, on an aggregate basis, exceed five percent (5%) of the Outstanding Amounts Paid to Sellers as of the time any such reserves are set aside).

6.23. Merger or Consolidation, Sales of Assets, Etc. The Borrower shall not consolidate with or merge into any other Person. The Borrower shall not convey or transfer any of its Properties to any Person except for (a) payments made pursuant to this Agreement, the Lockbox Agreements and the Purchase and Sale Agreements and (b) payments made by the Borrower in the ordinary course of its business which do not conflict with the terms of this Agreement.

6.24. Solvency. The Borrower shall continue to be Solvent.

6.25. Derivative Contracts. The Borrower shall not enter into any Interest Rate Protection Agreement, foreign currency exchange contract or other financial or commodity derivative contracts.

6.26. Negative Pledge Clauses; Subordination. The Borrower shall not enter into any agreement (other than this Agreement), instrument, deed or lease which prohibits or limits the ability of the Borrower to create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, or which requires the grant of any collateral for any obligation if collateral is granted for another obligation. The Borrower shall not (i) enter into any agreement to

subordinate its rights with respect to any Accounts or other Property without the prior written consent of the Lender, or (ii) amend any such agreement without the prior written consent of the Lender.

6.27. Transactions with Affiliates. The Borrower shall not effect any transaction with any Sun Capital Entity or any of the Borrower's or any Sun Capital Entity's Affiliates on a basis less favorable to the Borrower than would be the case if such transaction had been effected with a non-Affiliate.

6.28. Sellers Subject to Debtor Relief Laws. The Borrower shall not purchase any Accounts from a Seller that is a party to a proceeding under any Debtor Relief Law (other than solely as a creditor) without the prior written consent of the Lender.

6.29. Servicing of Accounts. If and to the extent that the Borrower services Accounts, the Borrower shall service and administer the Accounts and shall collect payments due under the Accounts in a prudent and lawful manner and with a standard of care that is not less than the standard of care that is customary in the industry.

6.30. Insurance Policies. The Borrower shall maintain, at its own expense, one or more fidelity bonds and errors and omissions insurance policies, with broad coverage with responsible companies, with respect to officers and employees (in the case of a fidelity bond) and all officers, directors and employees (in the case of an errors and omissions insurance policy) acting on behalf of the Borrower with regard to its responsibilities as Borrower, which bonds and policies shall name the Lender as the loss payee and as an additional insured. Such bonds and policies shall protect and insure the Borrower (and the Lender) against losses, including forgery, larceny, dishonest or fraudulent acts (in the case of a fidelity bond) and errors and omissions (in the case of an errors and omissions insurance policy) of such persons and shall be maintained in a form and amount approved by the Lender. No provision of this Section 6.30 requiring such bonds and policies shall diminish or relieve the Borrower from its duties and obligations as set forth in this Agreement. The proceeds from any such bond or policy shall be delivered to the Lender and deemed to be Collateral. Any such bond and policy shall not be canceled or modified without ten (10) days' prior written notice to the Lender.

6.31. Modification of Terms. The Borrower shall not permit any rescission or cancellation of a Purchased Account except as ordered by a court of competent jurisdiction or other Governmental Authority or as otherwise consented to by the Lender in writing. The Borrower shall not, except with the prior written consent of the Lender, extend, amend or otherwise modify the terms of any Purchased Account.

6.32. Methods of Collection; Obligor Notices; Collection Account. (a) In connection with each Lockbox Agreement, the Borrower shall cause the related Lockbox Bank to establish a Purchaser Lockbox, Purchaser Lockbox Account, Provider Lockbox and Provider Lockbox Account.

(b) The Borrower shall cause Obligor Notices to be mailed to the Third Party Obligor of each Account, by certified mail, return receipt requested, prior to the time that the Borrower purchases such Account. If a Seller or the Borrower shall neglect or refuse to send an Obligor Notice to a Third Party Obligor, then the Lender shall be entitled to send an Obligor Notice to such Third Party Obligor. All Collections on Accounts transmitted by Third Party Obligors to the Borrower (or by a Seller or other Person to the Borrower) rather than directly to a Lockbox or a Lockbox Account shall be held by the Borrower in trust for the benefit of the Lender and shall be delivered by the Borrower to a Lockbox or a Lockbox Account no later than the Business Day following receipt thereof by the Borrower. The Borrower agrees that it shall not commingle any Collections with any of the Borrower's other funds or property, but shall hold them separate and apart therefrom in trust for the Lender until such Collections are deposited into the relevant Lockbox or Lockbox Account.

(c) The Borrower shall not change the foregoing method of collection or the related instructions to Third Party Obligors except with the prior written consent of the Lender.

(d) The Borrower hereby authorizes the Lender, and grants to the Lender an irrevocable power of attorney, with full power of substitution and coupled with an interest, to take in the Borrower's name any and all steps as are necessary or advisable, in the determination of the Lender, in order to change, modify or rescind the direction set forth in any Obligor Notice sent pursuant to a Purchase and Sale Agreement.

(e) The Borrower shall instruct the Lockbox Bank to transfer items on deposit in the Lockboxes only to the Lockbox Accounts. The Borrower shall instruct the Lockbox Bank to transfer amounts on deposit in the Lockbox Accounts only (i) to the Collection Account or (ii) to or at the direction of the Lender. Notwithstanding the foregoing, if one or more Events of Default shall occur and be continuing, (i) the Borrower shall not give any instructions to any Lockbox Bank without the prior written consent of the Lender and (ii) the Borrower shall give instructions to each Lockbox Bank in accordance with the instructions of the Lender.

6.33. Independent Public Accountants' Borrower Report. The Borrower, at the expense of the Borrower, shall cause a firm of nationally recognized independent public accountants (which shall be a "Big 5" firm (or other firm satisfactory to the Lender) and which may also render other services to the Borrower or any Affiliate thereof) to furnish a report to the Lender on or before the 45th day following June 30 and December 31 of each year (each such report shall cover the six month period ending on such June 30 or December 31 (or, in the case of the first such report, the period since the date of the first Loan under this Agreement)), in each case to the effect that such accountants have applied certain agreed-upon procedures that the Lender and such accountants shall have agreed upon prior to December 31, 2000, which procedures may be modified from time to time by such accountants with the prior written consent of the Lender.

6.34. Covenant to Maintain Privileges. The Borrower shall maintain all of its rights, powers and privileges relevant to the collectibility of the Purchased Accounts.

6.35. Protection of the Lender's Rights. The Borrower shall take no action which, nor omit to take any action the omission of which, could impair the rights of the Lender in any Purchased Account, the Related Property or any other Collateral.

6.36. Modification of Systems. The Borrower agrees, promptly after the replacement or any material modification of any computer, automation or other operating systems (in respect of hardware or software) used in the conduct of the Borrower's business, including in connection with making any calculations or reports hereunder, to give notice of any such replacement or modification to the Lender.

6.37. Keeping of Records and Books of Account. The Borrower shall maintain and implement administrative and operating procedures (including the ability to recreate records evidencing the Receivables in the event of the destruction of the originals thereof), and keep and maintain all documents, books, computer records and other information, reasonably necessary or advisable for the collection of all the Purchased Accounts and the Related Property. Such documents, books and computer records shall reflect all facts giving rise to the Purchased Accounts and the Related Property, all payments and credits with respect thereto, and shall indicate the interests of the Lender in the Purchased Accounts, the Related Property and all other Collateral.

6.38. Non-Government Obligor Reserve Account; Holding Account.

(a) The Borrower shall cause the balance of the Non-Government Obligor Reserve Account to equal (a) at all times prior to July 31, 2000, at least ten thousand dollars ($10,000), (b) at all times during August 2000, at least twenty thousand dollars ($20,000), (c) at all times during September 2000, at least forty thousand dollars ($40,000), and (e) at all times after September 30, 2000, at least fifty thousand dollars ($50,000).

(b) After the end of each calendar quarter, but not later than the tenth (10th) day after the end of each calendar quarter, the Borrower shall deposit in the Non-Government Obligor Reserve Account an amount in dollars equal to the result of (i) seven-tenths of one percent (0.7%), multiplied by (ii) a fraction, the numerator of which is the sum, for each day of such calendar quarter, of the outstanding aggregate Net Collectible Amount of all Accounts on each such day, and the denominator of which equals the number of days in such calendar quarter.

(c) If an order of the type contemplated by Section 8.1.11(d) shall be entered against a Non-Government Obligor of a Purchased Account, or if any other event of the type contemplated by any other clause of Section 8.1.11 shall occur with respect to a Non-Government Obligor of a Purchased Account, the Borrower shall cause to be transferred from the Non-Government Obligor Reserve Account to the Lender, for application in accordance with Section 4.5.2, an amount equal to the aggregate Net Collectible Amount of all Purchased Accounts owed by such Non-Government Obligor.

(d) Upon the occurrence of an Event of Default, the Borrower shall cause all amounts on deposit in the Non-Government Obligor Reserve Account to be transferred to the Lender for application in accordance with Section 4.5.2.

(e) The Borrower shall not terminate the Holding Account or the Non-Government Obligor Reserve Account without the prior written consent of the Lender.

(f) Funds shall be deposited in and withdrawn from the Holding Account in accordance with Section 2.1.3.

(g) Until released from the Holding Account or the Non-Government Obligor Reserve Account, funds on deposit in the Holding Account or the Non-Government Obligor Reserve Account, as applicable, shall be invested only in Eligible Investments. Upon the request of the Lender from time to time, (x) the Borrower shall cease causing such funds to be invested, and (y) the Borrower shall cause all investments of such funds to be sold or otherwise liquidated, in each case in accordance with the instructions of the Lender.

(h) Interest and other investment earnings on amounts in the Non-Government Obligor Reserve Account and the Holding Account shall be retained in the Non-Government Obligor Reserve Account and the Holding Account, as the case may be, and shall be considered to be amounts on deposit therein until withdrawn therefrom in accordance with this Agreement. However, if on the fifteenth day of the first month following any calendar quarter, the balance of the Non-Government Obligor Reserve Account exceeds the amount required to be on deposit therein under clauses (a) and (b) of this Section 6.38, then the lesser of (i) such excess and (ii) such interest and other investment earnings may be withdrawn by the Borrower from the Non-Government Obligor Reserve Account.

7. Representations and Warranties. In order to induce the Lender to extend credit to the Borrower hereunder, the Borrower represents and warrants as follows on the date of this Agreement and on the Closing Date for each Loan:

7.1. Organization and Good Standing. The Borrower is a corporation duly organized and validly existing in good standing under the laws of the State of Florida, and has full corporate power, authority and legal right to execute, deliver and perform its obligations under each Program Document to which it is a party, and to own its properties and conduct its business as such properties are presently owned and as such business is presently conducted.

7.2. Due Qualification. The Borrower is duly qualified to do business and is in good standing as a foreign corporation (or is exempt from such requirements), and has obtained all necessary licenses and approvals with respect to the Borrower, in each jurisdiction in which the failure to be in good standing, to be so qualified or to obtain such licenses and approvals would reasonably be expected to have a Material Adverse Effect.

7.3. Due Authorization. The execution, delivery and performance of each Program Document to which the Borrower is a party have been duly authorized by the Borrower by all necessary corporate action on the part of the Borrower and each Program Document to which it is a party has been duly executed and delivered by the Borrower.

7.4. Binding Obligation. Each Program Document to which the Borrower is a party constitutes the legal, valid and binding obligation of the Borrower, enforceable against it in accordance with its terms; provided that (x) the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereinafter in effect relating to creditors' rights, and (y) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

7.5. No Conflicts. The execution, delivery and performance by the Borrower of each Program Document to which it is a party, including the performance by the Borrower of the transactions contemplated by each Program Document to which it is a party, and the fulfillment of the terms hereof and thereof by the Borrower, do not and shall not (i) contravene its Constituent Documents, (ii) conflict with or violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award having applicability to the Borrower, (iii) result in a breach of or constitute a default or require any consent under any agreement, lease or instrument to which the Borrower is a party or by which it or any of its properties may be bound or affected, or (iv) result in, or require, the creation or imposition of any Lien upon or with respect to any of the Properties owned by the Borrower other than in favor of the Lender pursuant to this Agreement.

7.6. Taxes. The Borrower has filed all tax returns (federal, state and local) required to be filed and has paid or made adequate provision for the payment of all taxes, assessments and other governmental charges due from the Borrower or is contesting any such tax, assessment or other governmental charge in good faith through appropriate proceedings and has set aside on its books adequate reserves in accordance with GAAP with respect thereto.

7.7. No Proceedings. There are no Proceedings pending or, to the best knowledge of the Borrower, threatened against the Borrower before any Governmental Authority or arbitrator, and no injunction, writ, restraining order or other order of any nature of any Governmental Authority is in effect with respect to the Borrower, (i) asserting the invalidity of any Program Document to which it is a party, (ii) seeking to prevent the consummation of any of the transactions contemplated by any Program Document to which it is a party, (iii) seeking any determination or ruling that could adversely affect the performance by the Borrower of its obligations under any Program Document to which it is a party, (iv) seeking any determination or ruling that could adversely affect the validity or enforceability of any Program Document to which it is a party, (v) seeking to assert any tax liability against the Borrower or with respect to any Collateral under the United States Federal or any state income tax systems, (vi) asserting that the Borrower (or any officer or director of the Borrower) has engaged or is engaging in any fraudulent or illegal actions or activities, or (vii) which,

individually or in the aggregate for all such Proceedings, could reasonably be expected to have a Material Adverse Effect.

7.8. All Filings and Consents Required. All notices to, filings with and approvals, authorizations, consents, orders or other actions of any Person or of any Governmental Authority required to be obtained by the Borrower in connection with the execution, delivery and performance by the Borrower of each Program Document to which it is a party have been obtained or have been completed and are in full force and effect, and the Borrower is in compliance with all applicable laws, rules, regulations and orders with respect to itself, its business, properties and assets and the Borrower maintains all necessary licenses and permits to conduct its business (except where the failure to so comply, or to so maintain licenses and permits, could not reasonably be expected to have a Material Adverse Effect).

7.9. Eligible Accounts. Each Account classified as part of the Borrowing Base (or otherwise classified an "Eligible Account") by the Borrower in any document or report delivered hereunder shall satisfy the requirements of eligibility contained in the definition of Eligible Account, except as otherwise consented to in writing by the Lender.

7.10. Place of Business. The principal place of business of the Borrower and its chief executive office (as that term is used in the UCC) is at 929 Clint Moore Road, Boca Raton, Florida 33487 and the offices where the Borrower keeps its records concerning the Accounts and all of its other Property (and has kept such records during the preceding four months) are at such location. Since the date of its incorporation, there is no other such location at which the Borrower has had such an office.

7.11. Use of Proceeds. All proceeds of the Loan have been used in accordance with Section 2.2.

7.12. Lockboxes; Lockbox Banks. Prior to the purchase of Accounts under the related Purchase and Sale Agreement, Obligor Notices have been mailed to all Third Party Obligors relating to such Accounts by certified mail, return receipt requested, except to the extent otherwise consented to in writing by the Lender. The Lockbox Agreements constitute the legal, valid and binding obligations of the parties thereto, enforceable against such parties in accordance with its terms, except the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereinafter in effect relating to creditors' rights. Neither the Borrower nor any other Person on behalf of the Borrower maintains or has maintained any lockbox, deposit account or similar account other than the Lockboxes, the Lockbox Accounts, the Holding Account, the Collection Account, the Non-Government Obligor Reserve Account and bank accounts maintained for the payment of reasonable expenses incurred in the ordinary course of business and the deposit of amounts which are not otherwise required to be paid to the Lender in accordance with this Agreement.

7.13. Default. No Default or Event or Default has occurred or is continuing.

7.14. ERISA. No Plan maintained by the Borrower or any of its ERISA Affiliates has any "accumulated funding deficiency" (within the meaning of Section 302 of ERISA or Section 412 of the Code), whether or not waived. Each of the Borrower and each ERISA Affiliate of the Borrower has timely made all contributions required to be made by it to any Plan and Multiemployer Plan to which contributions are or have been required to be made during the preceding five years by the Borrower or such ERISA Affiliate, and no event requiring notice to the PBGC under Section 302(f) of ERISA has occurred and is continuing or could reasonably be expected to occur with respect to any such Plan, in any case, that could reasonably be expected to result, directly or indirectly, in any Lien being imposed on the property of the Borrower or the payment of any amount to avoid such Lien. No Plan Event with respect to the Borrower or any of its ERISA Affiliates has occurred or could reasonably be expected to occur that could reasonably be expected to result, directly or indirectly, in any Lien being imposed on the property of the Borrower or the payment of any amount to avoid such Lien.

7.15. Legal Name. The legal name of the Borrower is set forth in the preamble to this Agreement, and the Borrower has never used and does not now use any "doing business" names, trade names or other fictitious names.

7.16. Subsidiaries. The Borrower has no Subsidiaries.

7.17. Activities. The Borrower engages in no activities other than those contemplated by this Agreement.

7.18. Sellers. None of the Sellers is (a) an Affiliate of the Borrower, (b) an Affiliate of any of the Borrower's Affiliates, or (c) subject to any proceeding (other than solely as a creditor) under any Debtor Relief Law.

7.19. Solvency. The Borrower is Solvent and shall not become insolvent after giving effect to any incurrence of Loans hereunder and the consummation of the other transactions contemplated herein; the Borrower is paying its debts as they come due; and the Borrower, after giving effect to such transactions, shall not have unreasonably small capital with which to conduct its business.

7.20. Title to Properties, Etc.

(a) The Borrower has good title to and is the legal and beneficial owner of all right, title and interest in and to all of the Purchased Accounts and all other Collateral, in each case at all times, free and clear of any Lien (other than in favor of the Lender). No Third Party Obligor of a Purchased Account has received any notice of any adverse claim against, interest in or lien on all or any part of such Purchased Account and any Related Property (other than (i) interests being acquired by the Borrower, (ii) any such claim, interest or lien that shall no longer exist after such acquisition by the Borrower and (iii) the Lien of the Lender). At the time the Borrower acquires its interest in any Account or Related Property, the Borrower, having reviewed a UCC search report against the applicable Seller in the state where such Seller is located for UCC purposes and in any other applicable

jurisdiction, is acquiring its interest in good faith and without knowledge of any adverse claim against, interest in, lien on, or defense to payment of, such Account or Related Property. The Liens granted to the Lender under Section 10 of this Agreement are first priority perfected Liens in all of the Purchased Accounts and in all of the other Collateral.

(b) The Borrower has indicated on its books and records (including any computer files) that the Lender has, and shall maintain such records in a manner such that the Lender shall continue to have, a first priority perfected security interest in all Purchased Accounts and all of the Borrower's other Property. Each Purchase and Sale Agreement constitutes a valid sale to the Borrower of all of the right, title and interest of the related Seller in and to the Accounts purported to be transferred thereunder now existing or hereafter created and all monies due or to become due with respect thereto and all other proceeds of such Accounts.

(c) No acquisition of any Account or Related Property by the Borrower constitutes a fraudulent transfer or fraudulent conveyance under any Debtor Relief Laws or is otherwise void or voidable or subject to subordination in favor of third party creditors under similar laws or principles or for any other reason.

(d) No effective UCC financing statement or other instrument similar in effect that covers all or part of any Property of the Borrower or any Seller, or any interest in any proceeds thereof, is on file in any recording office except financing statements as to which termination statements or releases are filed on or before the date of the initial purchase of Accounts under the related Purchase and Sale Agreement and except financing statements naming the Borrower or the Lender as secured party.

(e) The Non-Government Obligor Reserve Account is and shall be maintained in the name of the Borrower and the Lender.

7.21. No Brokerage Fee. No brokerage, finder's or similar fee or commission is due to any party by reason of the Borrower entering into this Agreement or any other Program Document or by reason of any of the transactions contemplated hereby or thereby, except for the brokerage fees contemplated by Section 6.19.

7.22. Representations and Warranties in Program Documents. All representations and warranties set forth in the Program Documents were true and correct in all material respects at the time as of which such representations and warranties were made or deemed made.

7.23. Seller Representations and Warranty. To the best of the Borrower's knowledge, (i) each of the representations and warranties relating to Accounts set forth in the Purchase and Sale Agreements are true and correct, and (ii) each of the other representations and warranties set forth in the Purchase and Sale Agreements are true and correct in all material respects.

7.24. Government Regulation. Neither the Borrower nor any Person controlling the Borrower or under common control with the Borrower is subject to regulation under the Public Utility Holding Company Act of 1935, as amended, the Federal Power Act, as amended, the Investment Company Act of 1940, as amended, the Interstate Commerce Act, as amended, or any similar statute or regulation which regulates the incurring by the Borrower of Indebtedness as contemplated by this Agreement.

7.25. Disclosure. Neither this Agreement nor any other document furnished or to be furnished from time to time to the Lender or any insurance company by or on behalf of the Borrower in connection with the transactions contemplated hereby or the other Program Documents contains or shall contain at the time such document is furnished any untrue statement of material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made. No fact is known to the Borrower which has resulted, or in the future (so far as the Borrower can reasonably foresee) shall result, or creates a material risk of resulting, in any Material Adverse Effect.

7.26. Issuance of Stock. The Borrower has not issued any shares of stock, whether voting or non-voting, to any Person other than Peter Baronoff, Malinda Baronoff, Howard Koslow, Jane Koslow, Larry Leder or Carole Leder. All of such shares of stock have been duly and validly issued and have been paid for in full.

7.27. Conditions Precedent. On the Closing Date for each Loan, all of the conditions precedent in Section 5.2 have been satisfied with respect thereto.

7.28. Fiscal Year. The Borrower's fiscal year is the calendar year.

7.29. Purchase and Sale Agreements; Lockbox Agreements. Each Purchase and Sale Agreement conforms in all material respects to the Form Purchase and Sale Agreement. The Borrower has entered into a Lockbox Agreement with each Seller, and each Lockbox Agreement conforms in all material respects to the Form Lockbox Agreement. Unless the Lender has consented otherwise in writing, SunTrust Bank is the only Lockbox Bank party to any Lockbox Agreement.

7.30. Tax Identification Number. The federal tax identification number of the Borrower is 65-0941604.

7.31. Insurance Policies. The Borrower has paid all premiums payable under each insurance policy contemplated by Section 6.30, has complied with all of its covenants under each such insurance policy, and has satisfied all conditions required to be satisfied under each such insurance policy. All of the representations of the Borrower in each such insurance policy (and in any application relating thereto) are true and correct.

Upon discovery by the Borrower of a breach of any of the foregoing representations and warranties, the Borrower shall give written notice thereof to the Lender within one Business Day of

such discovery, provided that failure to provide such notice within one Business Day shall neither toll any applicable cure period nor prevent a Default from occurring.

8. Defaults.

8.1. Events of Default. Each of the following shall constitute an "Event of Default":

8.1.1. Payment. (a) The Borrower shall fail to make any payment in respect of: (i) interest or any fee on or in respect of any of the Credit Obligations owed by it as the same shall become due and payable, or (ii) principal of any of the Credit Obligations owed by it as the same shall become due, whether at maturity or by acceleration or otherwise (including without limitation pursuant to Section 4.1 or Section 4.2).

(b) Without limiting the foregoing, the Lender shall fail to receive payment in full of all accrued and unpaid interest on the Loans by the second Business Day of each calendar month (provided that this sentence shall apply from and after the one hundred twentieth (120th) day following the date of this Agreement).

8.1.2. Specified Covenants. The Borrower shall fail to perform or observe any of the provisions of Section 4.3 or Sections 6.1 through 6.38.

8.1.3. Other Covenants. The Borrower or any other Borrower shall fail to perform or observe any other covenant, agreement or provision to be performed or observed by it under this Agreement or any other Program Document, and such failure shall not be rectified or cured to the written satisfaction of the Lender within ten (10) days after the earlier of (a) notice thereof by the Lender to the Borrower or (b) any officer of the Borrower having knowledge thereof.

8.1.4. Representations and Warranties. Any representation or warranty of or with respect to the Borrower made to the Lender in, pursuant to or in connection with this Agreement or any other Program Document shall be materially false on the date as of which it was made.

8.1.5. [Reserved].

8.1.6. Ownership. A Change of Ownership Event shall have occurred.

8.1.7. Enforceability, Etc. Any Program Document shall cease for any reason (other than the termination thereof in accordance with its terms) to be enforceable in accordance with its terms or in full force and effect; or any party to any Program Document shall so assert in a judicial or similar proceeding; or the security interests created by this Agreement or any other Program Document shall cease to be enforceable and of the same effect and priority purported to be created hereby or thereby.

8.1.8. Judgments. A judgment (a) which, with other outstanding judgments against the Borrower, exceeds the Judgment Measurement Amount shall be rendered against the Borrower or SCI, or (b) which grants injunctive relief that results, or creates a material risk of resulting, in a Material Adverse Effect and in either case if, (i) within thirty (30) days after entry thereof, such judgment shall not have been discharged or execution thereof stayed pending appeal or (ii) within thirty (30) days after the expiration of any such stay, such judgment shall not have been discharged.

8.1.9. ERISA. Any Plan Event shall occur.

8.1.10. Material Adverse Effect. Any event or circumstance since the Initial Lending Date shall occur or fail to occur which has had or could reasonably be expected to have a Material Adverse Effect.

8.1.11. Bankruptcy, Etc. The Borrower or any Sun Capital Entity shall:

(a) commence a voluntary case under the Bankruptcy Code or authorize, by proceedings of its board of directors or other governing body, the commencement of such a voluntary case;

(b) (i) have filed against it a petition commencing an involuntary case under the Bankruptcy Code that shall not have been dismissed within thirty (30) days after the date on which such petition is filed, or (ii) file an answer or other pleading within such thirty (30) day period admitting or failing to deny the material allegations of such a petition or seeking, consenting to or acquiescing in the relief therein provided, or (iii) have entered against it an order for relief in any involuntary case commenced under the Bankruptcy Code;

(c) seek relief as à debtor under any Debtor Relief Law, other than the Bankruptcy Code, or consent to or acquiesce in such relief;

(d) have entered against it an order by a court of competent jurisdiction (i) finding it to be bankrupt or insolvent, (ii) ordering or approving its liquidation or reorganization as a debtor or any modification or alteration of the rights of its creditors or (iii) assuming custody of, or appointing a receiver or other custodian for, all or a substantial portion of its property; or

(e) make an assignment for the benefit of, or enter into a composition with, its creditors, or appoint, or consent to the appointment of, or suffer to exist a receiver or other custodian for, all or a substantial portion of its property.

8.1.12. Seller Default. The occurrence of a default or event of default (regardless of how such default is described) under a Purchase and Sale Agreement, if (a) the Borrower is aware of such default or event of default and (b) such default or event of default has not been

cured or waived to the written satisfaction of the Lender within five Business Days after the occurrence thereof.

8.1.13. Lockbox Arrangements. (i) Any Lockbox Bank or any other Person shall fail to transfer any Collections in respect of Accounts in the manner contemplated by the related Lockbox Agreement or in a manner otherwise approved in writing by the Lender, (ii) the applicable Seller delivers a Revocation Order to a Lockbox Bank, (iii) the applicable Seller or the Borrower or any Person acting on behalf of any thereof instructs any Third Party Obligor to make payments other than to the applicable Lockbox or Lockbox Account, or (iv) without limiting the foregoing, SunTrust fails to comply with the SunTrust Master Agreement.

8.2. Certain Actions Following an Event of Default. If any one or more Events of Default shall occur and be continuing, then in each and every such case:

8.2.1. Terminate Agreement. The Lender may terminate this Agreement by furnishing notice of such termination to the Borrower.

8.2.2. Specific Performance: Exercise of Rights. The Lender may proceed to protect and enforce the Lender's rights by suit in equity, action at law or other appropriate Proceedings, either for specific performance of any covenant or condition contained in this Agreement or any other Program Document or in any instrument or assignment delivered to the Lender pursuant to this Agreement or any other Program Document, or in aid of the exercise of any power granted in this Agreement or any other Program Document or any such instrument or assignment. Without limiting the foregoing, the Lender may exercise any rights or remedies under applicable law or under any Program Document. None of the foregoing shall limit or be interpreted to limit in any way or by any means the Lender's right to vindicate or prosecute or otherwise protect or sue upon any right of any kind under this Agreement or any other Program Document, whether at law, in equity, or otherwise.

8.2.3. Acceleration. The Lender may by notice in writing to the Borrower declare all or any part of the unpaid balance of the Credit Obligations then outstanding to be immediately due and payable; provided, however, that if a Bankruptcy Default shall have occurred, the unpaid balance of the Credit Obligations shall automatically become immediately due and payable.

8.2.4. Enforcement of Payment; Collateral; Setoff.

(a) The Lender may send one or more notices to SunTrust or one or more Lockbox Banks in order to take control of one or more Lockboxes, one or more Lockbox Accounts, the Holding Account and the Collection Account.

(b) Without limiting the foregoing, the Lender may proceed to enforce payment of the Credit Obligations in such manner as it may elect, and to realize upon any and all rights

in the Collateral (including, without limitation, applying amounts on deposit in any account to the Credit Obligations in such manner as the Lender shall determine in its sole and absolute discretion). The Lender may offset and apply toward the payment of the Credit Obligations (or toward the curing of any Event of Default) any Indebtedness from the Lender to the Borrower, including any Indebtedness represented by deposits in any account maintained with the Lender, regardless of the adequacy of any security for the Credit Obligations. The Lender shall have no duty to determine the adequacy of any such security in connection with any such offset.

8.3. Annulment of Defaults. Once a Default or an Event of Default has occurred, such Default and Event of Default shall be deemed to exist and be continuing until cured by the Borrower to the reasonable satisfaction of the Lender (or until the Lender has waived such Default or Event of Default in writing, has stated in writing that the same has been cured to the Lender's satisfaction or has entered into an amendment to this Agreement which by its express terms cures such Default or Event of Default), at which time such Default or Event of Default shall no longer be deemed to exist or to have continued. The Lender shall not be obligated to make any such waiver, make any such statement or enter into any such amendment. No such action by the Lender shall extend to or affect any subsequent Default or Event of Default or impair any rights of the Lender upon the occurrence thereof. The making of any Loan during the existence of any Default or Event of Default shall not constitute a waiver of such Default or Event of Default.

8.4. Waivers. To the extent that such waiver is not prohibited by the provisions of applicable law that cannot be waived, the Borrower hereby waives:

(a) all presentments, demands for performance, notices of nonperformance (except to the extent required by this Agreement), protests, notices of protest and notices of dishonor;

(b) any requirement of diligence or promptness on the part of the Lender in the enforcement of its rights under this Agreement or any other Program Document;

(c) any and all notices of every kind and description which may be required to be given by any statute or rule of law; and

(d) any defense (other than payment in full) which it may now or hereafter have with respect to its liability under this Agreement or any other Program Document or with respect to the Credit Obligations.

8.5. No Effect on Security Interest. The occurrence of a Default shall not affect the security interest granted pursuant to this Agreement, including but not limited to the security interest in Property not yet owned by the Borrower (or not yet created) as of the date of the occurrence of such Default.

9. Expenses; Indemnity.

9.1. Expenses. In addition to the rights of indemnification under Section 9.2, and whether or not the transactions contemplated hereby shall be consummated, the Borrower shall pay on demand:

(a) all costs and expenses of the Lender (including, without limitation, the fees and other charges of counsel to the Lender): (i) in connection with the preparation, drafting, negotiation, execution, delivery, filing and administration (including, without limitation, periodic auditing) of (A) this Agreement and each other Program Document, and (B) any potential or actual amendment, amendment and restatement, modification or waiver of or consent in respect of this Agreement or any other Program Document (including without limitation in connection with any "workout" or any foreclosure or bankruptcy or insolvency proceeding or any litigation or other adversary proceeding); (ii) without limiting the foregoing, in connection with the Lender obtaining advice as to the rights and remedies of any Person or Persons under this Agreement and any other Program Document (including without limitation in connection with any "workout" or any foreclosure or bankruptcy or insolvency proceeding or any litigation or other adversary proceeding); and (iii) without limiting the foregoing, in connection with the enforcement of this Agreement or any other Program Document (including without limitation in connection with any "workout" or any foreclosure or bankruptcy or insolvency proceeding or any litigation or other adversary proceeding); and

(b) all recording and filing fees and transfer and documentary stamp and similar taxes at any time payable in respect of this Agreement, any other Program Document, any Collateral or the incurrence of the Credit Obligations.

9.2. General Indemnity.

(a) Indemnification by the Borrower. Whether or not the transactions contemplated hereby shall be consummated, and without limiting any other rights that the Indemnified Parties may have under this Agreement or any other Program Document or under applicable law, the Borrower hereby agrees to indemnify each Indemnified Party from and against any and all Indemnified Amounts of any kind or nature whatsoever arising out of, relating to or resulting from (whether directly or indirectly) this Agreement, any other Program Document or the transactions contemplated hereby or thereby, or with respect to the use of proceeds of Loans, or in respect of any Receivable or any other Collateral, excluding, however, Indemnified Amounts to the extent resulting from gross negligence or willful misconduct on the part of such Indemnified Party, or any overall net income taxes or franchise taxes imposed on such Indemnified Party by the jurisdiction under the laws of which such Indemnified Party is organized. Without limiting or being limited by the foregoing, but subject to the exclusions set forth in the preceding sentence, the Borrower shall pay on demand to each Indemnified Party any and all amounts necessary to indemnify such Indemnified Party from and against any and all Indemnified Amounts relating to or resulting from any of the following:

(i) the failure of any Account to be an Eligible Account, the failure of any information contained in any report delivered under this Agreement to be true and correct, or the failure of any other information provided to the Lender with respect to any Collateral or pursuant to or in connection with this Agreement or any other Program Document to be true and correct; or

(ii) the failure of any representation or warranty or statement or certification made or deemed made by the Borrower or any Seller or any Lockbox Bank (or any officer of any of the foregoing) under or in connection with this Agreement or any other Program Document to have been true and correct in all material respects when made; or

(iii) the failure by the Borrower or any Seller or any Lockbox Bank to comply with any applicable law, rule or regulation (including without limitation "bulk sales" or analogous laws of any jurisdiction) with respect to any Account or other Collateral or the transactions contemplated by this Agreement or any other Program Document; or the failure of any Account or other Collateral to conform to any such applicable law, rule or regulation; or

(iv) the failure to vest in the Lender, a valid and enforceable first priority perfected security interest in the Collateral, in each case free and clear of any Lien; or

(v) the failure to have filed, or any delay in filing, financing statements or other similar instruments or documents under the UCC of any applicable jurisdiction or other applicable laws with respect to any Accounts or other Collateral, whether at the time of any Loan or at any subsequent time; or

(vi) any dispute, claim, offset, billing adjustment or defense of any Third Party Obligor to the payment of any Account (including, without limitation, a defense based on such Account not being a legal, valid and binding obligation of such Third Party Obligor enforceable against it in accordance with its terms) and any other claim resulting from the sale of the goods or services related to any Account or the furnishing or failure to furnish such goods or services or relating to collection activities with respect to any Account; or

(vii) any failure of the Borrower or any Seller or SunTrust or any Lockbox Bank to perform or comply with its duties or obligations in accordance with the provisions of this Agreement or any other Program Document; or

(viii) the ownership, delivery, non-delivery, possession, design, construction, use, maintenance, transportation, performance (whether or not according to specifications), operation (including without limitation the failure to operate or faulty operation), condition, return, sale, repossession or disposition of any Collateral

(including, without limitation, claims for injury to persons or property, claims under other liability principles, and claims for breach of warranty, whether express or implied); or

(ix) any claim, investigation, litigation or proceeding (including without limitation any foreclosure or bankruptcy or insolvency proceeding or appellate proceeding) arising out of or in connection with the goods, insurance or services relating to any Account or any other Collateral; or

(x) the commingling of any portion of Collections at any time with other funds; or

(xi) any claim, investigation, litigation or proceeding (including without limitation any foreclosure or bankruptcy or insolvency proceeding or appellate proceeding) related to this Agreement or any other Program Document or the use of proceeds of any Loan or in respect of any Account or other Collateral, whether or not any Indemnified Party is a party to such claim, investigation, litigation or proceeding; or

(xii) the failure to notify any Third Party Obligor of the assignment of any Account from a Seller to the Borrower, or of the pledge of any Account to the Lender, or the failure to require that payments (including without limitation under insurance policies) be made directly to the Seller or to the Lender, as permitted by law; or

(xiii) any brokerage, finder's or other similar fee or commission; or

(xiv) any taxes asserted or imposed in respect of (A) the Accounts or other Collateral or (B) purchases and sales or pledges of Accounts or other Collateral or (C) the transactions contemplated by this Agreement or any other Program Document; or

(xv) any action or omission by the Borrower or any Seller or SunTrust or any Lockbox Bank or any Third Party Obligor which reduces or impairs the rights of the Lender with respect to any Account or other Collateral; or

(xvi) any payment made by the Lender to or for the benefit of SunTrust or any Lockbox Bank.

(b) General. For purposes of this Section 9.2, in determining whether any representation or warranty or information was true and correct, or whether any duty or obligation was performed or complied with, any qualification or limitation in such representation and warranty or information or duty or obligation as to materiality, Material Adverse Effect, knowledge, reasonableness, expectations, or limitation on enforcement shall be disregarded. Indemnification pursuant to this Section 9.2 shall not be limited by any due

diligence or other investigation made by or on behalf of the Lender or any other Indemnified Party.

10. Collateral; General Terms

10.1. Security Interest in Collateral. To secure the payment and performance to the Lender (and to all Indemnified Parties) of the Credit Obligations, the Borrower hereby grants to the Lender a continuing security interest of first priority in and Lien upon all of the Borrower's right, title and interest in, to and under the following (in each case, whether now owned or existing or hereafter created, acquired or arising and wherever located):

(a) all Receivables, including without limitation all Purchased Accounts;

(b) all Related Property;

(c) the Lockboxes and the Lockbox Accounts, the Collection Account, and all Items (as defined in the Form Lockbox Agreement) and funds on deposit from time to time in the Lockboxes, the Lockbox Accounts and the Collection Account;

(d) the Holding Account, the Non-Government Obligor Reserve Account, and all funds on deposit from time to time in the Holding Account and the Non-Government Obligor Reserve Account;

(e) all inventory (as presently or hereafter defined in the UCC), equipment (as presently or hereafter defined in the UCC) and any other tangible assets or Property;

(f) all General Intangibles;

(g) all monies and other Property of any kind, now or at any time or times hereafter owned, in the possession or under the control of the Borrower or a bailee of the Borrower or any Lockbox Bank;

(h) the Program Documents and all other contracts, contract rights, chattel paper (as presently or hereafter defined in the UCC), instruments (as presently or hereafter defined in the UCC) and documents of the Borrower;

(i) all other Property of the Borrower;

(j) all accessions to, substitutions for and all replacements, products and cash and cash proceeds and non-cash proceeds of the items referred to in clauses (a) through (i) above, including, without limitation, (x) all Collections and (y) all proceeds of and unearned premiums with respect to insurance policies insuring any of the Collateral; and

(k) all books and records (including, without limitation, customer lists, credit files, computer programs, print-outs, and other computer materials and records) of the Borrower pertaining to any of the items referred to in clauses (a) through (j) above.

10.2. Lien Perfection. The Borrower agrees to execute UCC financing statements and any and all other instruments, assignments or documents, and shall take such other action, as may be necessary or appropriate in the judgment of the Lender to perfect or to continue the perfection of the Lender's security interest in the Collateral. Unless prohibited by applicable law, the Borrower hereby authorizes the Lender to execute and file any such financing statement on the Borrower's behalf. The Lender hereby agrees to notify the Borrower of any such filing of a financing statement without the Borrower's signature; provided, however, that any failure to give such notice shall not affect in any respect whatsoever the validity or effectiveness of such financing statement or the perfection or continued perfection of the Lender's security interest in the Collateral. The parties agree that a carbon, photographic or other reproduction of this Agreement shall be sufficient as a financing statement and may be filed in any office by the Lender.

10.3. Location of Collateral. All tangible Collateral shall at all times be kept by the Borrower at the business location set forth in Section 7.10 and shall not, without the prior written approval of the Lender, be moved therefrom.

10.4. Protection of Collateral. All insurance expenses and all expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping the Collateral, any and all excise, property, sales, and use taxes imposed by any Governmental Authority on any of the Collateral or in respect of the sale thereof, shall be borne and paid by the Borrower. If the Borrower fails to promptly pay any portion thereof when due, the Lender may, at its option, but shall not be required to, pay the same and charge the Borrower therefor. The Borrower shall reimburse the Lender promptly therefor with interest accruing thereon daily at the Overdue Reimbursement Rate. All sums so paid or incurred by the Lender for any of the foregoing and all costs and expenses (including attorneys' fees, legal expenses, and court costs) which the Lender may incur in enforcing or protecting its Lien on or rights and interest in the Collateral or any of its rights or remedies under any Program Document or in respect of any of the transactions to be had hereunto, together with interest at the Overdue Reimbursement Rate, shall be considered Credit Obligations hereunder secured by all Collateral. The Lender shall not be liable or responsible in any way for the safekeeping of any of the Collateral or for any loss or damage thereto or for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency, or other Person whomsoever, but the same shall be at the Borrower's sole risk.

10.5. Certain Provisions Relating to Accounts.

10.5.1. Assignments, Records and Reports of Accounts. If so requested by the Lender, the Borrower shall execute and deliver to the Lender formal written assignments of all of its interests in Accounts weekly or, if requested by the Lender, daily, which shall include all Accounts in which the Borrower has acquired an interest since the date of the last assignment, together with copies of invoices or invoice registers related thereto. The

Borrower shall keep accurate and complete records of its interests in the Accounts and all payments and collections thereon and shall submit to the Lender such reports in form and substance satisfactory to the Lender as are required by the terms hereof. The Borrower shall deliver such other reports of its interest in the Accounts in form and substance satisfactory to the Lender, as requested by the Lender from time to time.

10.5.2. Administration of Accounts.

(a) Upon and after the occurrence of an Event of Default that has not been cured or waived in accordance with Section 8.3, the Lender shall have the right to settle or adjust all disputes and claims directly with the Third Party Obligors and to compromise the amount or extend the time for payment of the Accounts upon such terms and conditions as the Lender may deem advisable, and to charge the deficiencies, costs and expenses thereof, including attorney's fees, to the Borrower.

(b) If any Account includes a charge for any tax payable to any Governmental Authority, the Lender is authorized, after the occurrence of an Event of Default, to pay the amount thereof to the proper Governmental Authority for the Account and to charge the Borrower therefor. The Borrower shall notify the Lender if any Account includes any tax payable to any Governmental Authority and, in the absence of such a notice (i) with respect to any Account, the Borrower shall be deemed to have made a representation and warranty to the Lender that no portion of such Account is payable to any Governmental Authority and (ii) the Lender shall have the right to retain the full proceeds of the Account. In no event shall the Lender be liable for any taxes to any Governmental Authority that may be due by the Borrower by reason of the sale and delivery creating an Account.

(c) Upon and following the occurrence of a Default or an Event of Default and while such Default or Event of Default is continuing, any of the Lender's officers, employees or agents shall have the right in the name of the Lender, any designee of the Lender or the Borrower, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, telegraph or otherwise. The Borrower shall cooperate fully with the Lender in an effort to facilitate and promptly conclude any such verification process.

10.5.3. Costs of Collection. All costs of collection of the Accounts including attorney's fees, out-of-pocket expenses, administrative and record-keeping costs, and all service charges and costs related to the establishment and maintenance of each Lockbox and each Lockbox Account, shall be the responsibility of the Borrower, whether the same are incurred by the Lender or the Borrower, as the case may be, and the Lender, in its sole discretion, may charge the same against the Borrower or any account maintained by the Borrower and the same shall be deemed part of the Credit Obligations.

11. Netting. The Lender shall have the right from time to time without notice to net, recoup, set-off and deduct from any amount to be advanced by the Lender to the Borrower (or from any other amount that may be payable by the Lender to the Borrower) any and all fees, costs,

expenses and other amounts that are payable by the Borrower pursuant to this Agreement, including without limitation, amounts payable pursuant to Section 5.1(g), Section 9.1 and Section 9.2. In each case, the amount so netted, recouped, set-off, or deducted shall be deemed to have been advanced by the Lender as a Loan to the Borrower and shall constitute a Loan for all purposes of this Agreement. The Lender shall use reasonable efforts to give the Borrower notice of any such netting within five (5) Business Days after any such netting; provided that any failure or delay in giving any such notice (i) shall not limit or otherwise affect any rights or remedies of the Lender, and (ii) shall not impose any liability on the Lender.

12. Successors and Assigns; Lender Assignments and Participations. Any reference in this Agreement to any of the parties hereto shall be deemed to include the successors and permitted assigns of such party, and all covenants and agreements by or on behalf of the Borrower or the Lender that are contained in this Agreement shall bind and inure to the benefit of their respective successors and permitted assigns; provided, however, that the Borrower shall not assign or delegate any of its rights or obligations under this Agreement or any other Program Document (whether directly or indirectly, voluntarily or by operation of law) without prior written consent of the Lender.

12.1. Assignments by Lender.

12.1.1. Assignees.

(a) The Lender may without the consent of the Borrower assign to one or more Persons (each, an "Assignee") all or a portion of its interests, rights and obligations under this Agreement and the other Program Documents, including all or a portion of the Loans. From and after the effective date specified for such an assignment:

(i) the Assignee shall be a party hereto and, to the extent of such assignment, have the rights and obligations of the Lender under this Agreement; and

(ii) the assigning Lender shall, to the extent provided in such assignment, be released from its obligations under this Agreement (and, in the case of an assignment covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.3 and 9, as well as to any fees accrued for its account hereunder and not yet paid).

(b) The Lender shall give prompt notice of such an assignment to the Borrower.

12.1.2. Further Assurances. The Borrower shall sign such documents and take such other actions from time to time reasonably requested by an Assignee to enable it to share in the benefits of the rights created by the Program Documents.

12.2. Credit Participants. The Lender may, without the consent of the Borrower, sell to one or more Persons (each a "Credit Participant") participations in all or a portion of its interests, rights and obligations under this Agreement and the other Program Documents (including all or a portion of the Loans); provided, however, that:

(a) the Lender's obligations under this Agreement shall remain unchanged;

(b) the Lender shall remain solely responsible to the Borrower for the performance of such obligations; and

(c) the Credit Participant shall be entitled to the benefit of the provisions contained in Sections 3.3, 9.1 and 9.2, but shall not be entitled to receive any greater payment thereunder than the Lender would have been entitled to receive with respect to the interest so sold if such interest had not been sold.

The Borrower agrees, to the fullest extent permitted by applicable law, that any Credit Participant and any Lender purchasing a participation from another Lender may exercise all rights of payment (including the right of set-off), with respect to its participation as fully as if such Credit Participant or such Lender were the direct creditor of the Borrower and a Lender hereunder in the amount of such participation.

13. Notices. Except as otherwise specified in this Agreement, any notice, consent, approval, demand or other communication in connection with this Agreement shall be given in writing. Any notice, consent, approval, demand or other communication in connection with this Agreement shall be deemed to be given if given in writing (including telecopy) addressed as provided in Schedule 13 hereto (or to the addressee at such other address as the addressee shall have specified by notice actually received by the addressor), and if either (a) actually delivered in fully legible form to such address or (b) in the case of a letter, unless actual receipt of the notice is required by this Agreement, five days shall have elapsed after the same shall have been deposited in the United States mails, with first-class postage prepaid and registered or certified.

14. Course of Dealing; Amendments and Waivers. No course of dealing between the Lender, on one hand, and the Borrower or any other Person, on the other hand, shall operate as a waiver of the Lender's rights under this Agreement or any other Program Document or with respect to the Credit Obligations. The Borrower acknowledges that if the Lender gives any notice or information to, or obtains any consent from any other Person, the Lender shall not by implication have amended, waived or modified any provision of this Agreement or any other Program Document, or created any duty to give any such notice or information or to obtain any such consent on any future occasion. No delay or omission on the part of the Lender in exercising any right under this Agreement or any other Program Document or with respect to the Credit Obligations shall operate as a waiver of such right or any other right hereunder or thereunder. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. This Agreement may be amended only by a

writing signed by both of the parties hereto. No waiver or consent with respect to this Agreement shall be effective unless it is in writing and is signed by the waiving party or consenting party, as the case may be.

15. Survival. Sections 3.3, 9.1, 9.2, 11, 14-21 and any indemnities set forth herein shall survive the execution and delivery of this Agreement, the making and repayment of the Loans, the satisfaction of all other Credit Obligations and termination of this Agreement.

16. **GOVERNING LAW AND JURISDICTION, ETC. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY LAWSUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER PROGRAM DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH LAWSUIT, ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH LAWSUIT, ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER PROGRAM DOCUMENT SHALL AFFECT ANY RIGHT THAT THE LENDER MAY OTHERWISE HAVE TO BRING ANY LAWSUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER PROGRAM DOCUMENT AGAINST ANY PERSON OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY LAWSUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER PROGRAM DOCUMENT IN ANY COURT REFERRED TO IN THIS SECTION 16. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH LAWSUIT, ACTION OR PROCEEDING IN ANY SUCH COURT. EACH PARTY TO THIS AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 13. NOTHING IN THIS AGREEMENT SHALL AFFECT THE RIGHT OF ANY PARTY TO THIS**

AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW. TO THE EXTENT THAT THE BORROWER HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, THE BORROWER HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND UNDER ANY OTHER PROGRAM DOCUMENT.

17. WAIVER OF JURY TRIAL. **EACH PARTY HERETO HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OTHER PROGRAM DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES HERETO AGAINST ANY OTHER PARTY, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH PARTY HERETO HEREBY AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, EACH OF THE PARTIES HERETO FURTHER AGREES THAT ITS RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY LAWSUIT, ACTION, OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR ANY OTHER PROGRAM DOCUMENT OR ANY PROVISION HEREOF OF THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, AMENDMENTS AND RESTATEMENTS, OR MODIFICATIONS TO THIS AGREEMENT OR ANY OTHER PROGRAM DOCUMENT.**

18. Headings. The headings and captions of sections and subsections in this Agreement, of the exhibits to this Agreement, and the table of contents of this Agreement, are for purposes of reference only and shall not limit or otherwise affect the meaning or interpretation of any provision of this Agreement.

19. Interest Rates.

(a) It is the intention of the parties hereto that the Loans made hereunder shall conform strictly to applicable usury laws. Accordingly, none of the terms and provisions contained in this Agreement or any of the other Program Documents shall ever be construed to create a contract to pay interest to the Lender for the use, forbearance or detention of money at a rate in excess of the highest lawful rate applicable (the "Maximum Lawful Rate"); for purposes of this Section 19, "interest" shall include the aggregate of all charges or other consideration which constitute interest under applicable laws (whether or not denominated

as interest) and are contracted for, taken, reserved, charged or received under any of this Agreement or the other Program Documents or otherwise in connection with the transactions contemplated by this Agreement and the other Program Documents. If as a result of prepayment, acceleration of maturity or otherwise, the effective rate of interest which would otherwise be payable to the Lender under this Agreement or any other Program Document would exceed the Maximum Lawful Rate for the period during which the principal amount of the Loans was outstanding, or if the Lender shall receive moneys or other consideration that are deemed to constitute interest that would increase the effective rate of interest payable by the Borrower to the Lender under this Agreement or any other Program Document to a rate in excess of the Maximum Lawful Rate for the period during which the principal amount of the Loans was outstanding, then (i) the amount of interest that would otherwise be payable by the Borrower to the Lender under this Agreement and the other Program Documents shall be reduced to the Maximum Lawful Rate, and (ii) any interest paid by the Borrower to the Lender in excess of the Maximum Lawful Rate shall be credited by the Lender as an optional prepayment of the Loans (to be applied, to the extent lawful, to interest, principal and other Credit Obligations in the order specified in Section 4.5.2) and, thereafter, shall be returned to the Borrower. All calculations of the rate or amount of interest contracted for, taken, reserved, charged or received by the Lender under any of this Agreement and the other Program Documents that are made for the purpose of determining whether such rate or amount exceeds the Maximum Lawful Rate shall be made, to the extent permitted by applicable law, by amortizing, prorating, allocating and spreading during the full stated term of all of the Loans owed to the Lender.

(b) If at any time and from time to time (i) the amount of interest payable to the Lender on any date would otherwise exceed the Maximum Lawful Rate, the amount of interest payable to the Lender shall be limited to the Maximum Lawful Rate pursuant to paragraph (a) above and (ii) in respect of any subsequent interest computation period, the amount of interest otherwise payable to the Lender would be less than the amount of interest payable to the Lender computed at the Maximum Lawful Rate, then the amount of interest payable in respect of such subsequent computation period shall be computed at the Maximum Lawful Rate until the earlier to occur of (x) the date upon which the total amount of interest payable to the Lender shall equal the total amount of interest that would have been payable to the Lender if the total amount of interest had been computed without giving effect to paragraph (a) above, or (y) payment in full of the Loans.

20. No Strict Construction. The parties have participated jointly in the negotiation and drafting of this Agreement and the other Program Documents with counsel sophisticated in financing transactions. In the event an ambiguity or question of intent or interpretation arises, this Agreement and the other Program Documents shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement and the other Program Documents. Without limiting the generality of the foregoing, this Agreement may use more than one test, calculation, representation and warranty, covenant, Event of Default or measure to cover the same or similar matters, and all of such tests, calculations, representations and

warranties, covenants, Events of Default and measurements are cumulative in nature and each shall be tested, calculated, determined, performed or measured in accordance with its terms.

21. Miscellaneous.

(a) All covenants, agreements, and representations and warranties made in this Agreement or any other Program Document or in certificates delivered pursuant hereto or thereto shall be deemed to have been relied on by the Lender and shall survive the execution and delivery to the Lender hereof and thereof.

(b) The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision hereof.

(c) This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and supersede all prior and contemporaneous understandings and agreements, whether written or oral. In the event of any conflict or inconsistency between this Agreement and any other document or agreement to which the Borrower and the Lender are parties, this Agreement shall control.

(d) This Agreement may be executed in any number of counterparts and by the parties hereto on different and separate counterparts, each of which shall constitute and original and all of which together shall constitute one agreement.

(e) The Borrower acknowledges that there is no, and it shall not seek or attempt to establish any, fiduciary relationship between the Borrower and the Lender. The Borrower waives any right to assert, now or in the future, the existence or creation of any fiduciary relationship between the Borrower and the Lender in any Proceeding (whether by way of claim, counterclaim, crossclaim or otherwise) for damages or other relief.

(f) The Borrower acknowledges that this Agreement is one of financial accommodation and is not assumable by the Borrower (whether as debtor or debtor-in-possession), or by the bankruptcy trustee of the Borrower, in any bankruptcy proceeding without the Lender's express written consent.

(g) The Lender's books and records shall be admissible in evidence without objection as prima facie evidence of the status of the accounts between the Lender and the Borrower. Each statement, report or accounting, if any, provided by the Lender to the Borrower shall be deemed conclusively accurate and binding on the Borrower unless, within fifteen (15) days after the date such statement, report or accounting was given to the Borrower by the Lender, the Borrower notifies the Lender to the contrary by registered or certified mail, setting forth with reasonable specificity the reasons why the Borrower believes such statement, report or accounting is inaccurate, as well as what the Borrower believes to be correct amount(s) therefor. The Borrower's failure to receive any such statement shall not

relieve it of the responsibility to request such statement and the Borrower's failure to do so shall nonetheless bind the Borrower to whatever the Lender's records would have reported.

(h) Each of the Lender's rights and remedies under this Agreement and any other Program Document are cumulative, and such rights and remedies are in addition to and not by way of limitation of any other rights or remedies which the Lender may have under applicable law. The Lender shall have the right, in its sole discretion, to determine which rights and remedies, and in which order any of the same, are to be exercised. No act, failure or delay by the Lender shall constitute a waiver of any of the rights and remedies to which it would otherwise be entitled. In the event the Lender deems it necessary to seek equitable relief, including, but not limited to, injunctive or receivership remedies, as a result of a Default, the Borrower waives any requirement that the Lender post or otherwise obtain or procure any bond. In the event the Lender, in its sole and exclusive discretion, desires to procure and post a bond, the Lender may procure and file with the court a bond in an amount which the Lender selects (which amount may be fifty thousand dollars ($50,000) or such other amount as the Lender selects) in its sole and exclusive discretion. Upon the Lender's posting such a bond, the Lender shall be entitled to all benefits as if such bond was posted in compliance with applicable law. The Borrower also waives any right it may be entitled to, including an award of attorney's fees or costs, in the event any relief (whether equitable or otherwise) sought by and awarded to the Lender is thereafter, for whatever reason, vacated, dissolved or reversed. Notwithstanding the existence of any law, statute or rule in any jurisdiction which may provide the Borrower with a right to attorney's fees or costs, the Borrower hereby (x) waives any and all rights to hereafter seek attorney's fees or costs from the Lender and (y) agrees that the Lender exclusively shall be entitled to indemnification and recovery of any and all attorney's fees or costs in respect to any Proceeding based hereon, arising out of, or related hereto, whether under, or in connection with, this Agreement or any agreement executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of either party.

(i) In the event that a court of competent jurisdiction renders a final, non-appealable judgment that the Borrower suffered actual damages as the direct result of the Lender's willful misconduct, then the Lender shall be liable to the Borrower for such amount of actual damages (excluding any attorney's fees or costs which may be included in or which may relate to such actual damages). Notwithstanding the foregoing, and notwithstanding any other term or provision of this Agreement, under no circumstances shall the Lender be liable for any incidental, punitive, special or consequential damages, including, but not limited to, any costs associated therewith, whether the Lender did or did not have any reason to know of a loss that may result from any general or particular requirement of the Borrower.

(j) Notwithstanding any other term or provision of this Agreement, and notwithstanding the date of this Agreement, this Agreement shall become effective at the Designated Effective Time but not prior to the Designated Effective Time. The parties intend that the foregoing shall constitute an explicit agreement within the meaning of Section 9-203(2) of the UCC postponing the time of attachment of the security interest

created under this Agreement until the Designated Effective Time. "Designated Effective Time" shall mean 8:00 a.m. Florida time on the Initial Lending Date.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed and delivered as of the date first above written.

SUN CAPITAL HEALTHCARE, INC.

By: _____
Howard B. Koslow
President and Chief Operating Officer

FOUNDING PARTNERS MULTI-STRATEGY FUND, L. P.

By Founding Partners Capital Management Company, its general partner

By _____

William L. Gunlicks
President and Chief
Executive Officer

Exhibit B
to Motion for Modification

FOUNDING PARTNERS
CAPITAL MANAGEMENT COMPANY

5100 N. Tamiami Trail, Suite 110, Newgate Center, Naples, Florida 34103
Telephone: 239-514-2900 Facsimile: 239-514-2901

June 6, 2008

Sun Capital Healthcare, Inc.
Attn: Howard Koslow
999 Yamato Road, 3rd Floor
Boca Raton, Florida 33431

Re: Credit and Security Agreement

Dear Howard:

Please refer to the Credit and Security Agreement dated as of June 6, 2000 ("Credit and Security Agreement") between Sun Capital Healthcare, Inc. and Founding Partners Stable-Value Fund, L.P., formerly known as Founding Partners Multi-Strategy Fund, L.P. ("Founding Partners"). Founding Partners hereby agrees to amend the definition of Final Maturity Date in the Credit and Security Agreement to read as follows:

> "Final Maturity Date" shall mean February 1, 2013 or such other date as may be agreed upon in writing from time to time by the Borrower and Founding Partners.

Sincerely,

FOUNDING PARTNERS STABLE-VALUE FUND, L.P.

By Founding Partners Capital Management Company, its general partner

By: _____
William L. Gunlicks
President and Chief Executive Officer

Agreed as of the date first above written:

SUN CAPITAL HEALTHCARE, INC.

By: _____

Name: Howard Koslow

Title: President + Chief Operating Officer

Amendment NO.26 Exhibit C

AMENDMENT TO DEFINITION
OF MAXIMUM AMOUNT OF CREDIT

This AMENDMENT TO CREDIT AND SECURITY AGREEMENT, dated as of January 9, 2009 (this "Amendment"), is by and between SUN CAPITAL HEALTHCARE, INC., a Florida corporation (the "Borrower"), and FOUNDING PARTNERS STABLE-VALUE FUND, L.P. ("Founding Partners").

WITNESSETH

WHEREAS, the parties hereto are the parties to the Credit and Security agreement dated as of June 6, 2002 (as amended, amended and restated or otherwise modified from time to time, the ("Agreement").

WHEREAS, the parties hereto wish to amend the definition of "Maximum Amount of Credit" in the Credit and Security Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. Definitions. Capitalized terms defined in the Credit and Security agreement and used herein without definition shall have the meanings assigned thereto in the Credit and Security Agreement.

SECTION 2. Amendment to credit and Security Agreement.

The definition of Maximum Amount of Credit and Security Agreement is hereby amended and restated to read in its entirety as follows:

"Maximum Amount of Credit" shall mean a dollar amount mutually agreed upon in writing by the Borrower and the Lender. Unless and until the Borrower and the Lender otherwise mutually agree in writing upon a different dollar amount pursuant to an agreement substantially in the form of Exhibit C hereto, the Maximum Amount of Credit shall be Five Hundred Fifty Million Dollars ($550,000,000.00).

SECTION 3 Binding effect: Ratification

This Amendment shall become effective as of the date on which counterparts hereof executed by the parties hereto have been received by Founding Partners, and thereafter shall be binding on the parties hereto and their respective successors and assigns.

Except as expressly amended hereby, the Credit and Security Agreement shall remain in full force and effect and is hereby ratified and confirmed by the parties hereto.

SECTION 4 Miscellaneous

Sections 16, 17, 18 and 21 of the Credit and Security Agreement are hereby incorporated herein by this reference, and for this purpose all references in such Sections to the Credit and Security Agreement shall be deemed to be references to this Amendment and to the Credit and Security Agreement as amended hereby.

IN WITNESS WHEREOF, each of the parties hereto has caused this Amendment to be duly executed and delivered as of the date first above written

SUN CAPITAL HEALTHCARE, INC.

By: _____
Howard B. Koslow
President and Chief Operating Officer

FOUNDING PARTNERS STABLE-VALUE FUND, L.P.

By Founding Partners Capital Management Company, its General partner

By: _____
William L. Gunlicks
President and Chief Executive Officer

Exhibit C
to Motion for Modification

SUN CAPITAL HEALTHCARE, INC.

LOAN BORROWING AUTHORIZATION

DATE: 1/27/09

TO: FOUNDING PARTNERS STABLE-VALUE FUND, L.P.

Pursuant to our Credit and Security Agreement and the attached Certificate of the President and Chief Operating Officer, you are hereby authorized to transfer loan Proceeds to our SunTrust Bank Holding Account as indicated below:

BANK:	SunTrust Bank Holding Account
ABA#:	061000104
ACCOUNT#:	0494002031891
AMOUNT:	$ 5,000,000.00
CLOSING DATE:	1/27/09

AUTHORIZATION:

Howard Koslow
President & Chief Operating Officer

Request Denied

Certificate No. 198

SUN CAPITAL HEALTHCARE, INC
CERTIFICATE OF PRESIDENT & CHIEF OPERATING OFFICER

I, Howard Koslow, am the duly elected and acting President and Chief Operating Officer of Sun Capital Healthcare, Inc., a Florida corporation (the "Company"). In connection with Section 5.2.1 of the Credit and Security Agreement, dated as of June 6, 2000 (as amended, amended and restated or otherwise modified from time to time, the "Credit and Security Agreement"), between the Company and Founding Partners Stable-Value Fund, L.P., I hereby certify as follows:

1. I have carefully examined the Credit and Security Agreement and each of the other Program Documents to which the Company is a party.

2. As of the date hereof, the Availability Termination Date has not occurred.

3. The representations and warranties contained in Section 7 of the Credit and Security Agreement are true and correct on and as of the date hereof with the same force and effect as though made on and as of the date hereof (except as to any representation or warranty which refers to a specific earlier date, which representation and warranty was true and correct as of such earlier date).

4. No Default exists on the date hereof prior to or immediately after giving effect to the Loan to be made on the date of this certificate.

5. No material Adverse Effect has occurred since the date of the Credit and Security Agreement.

6. The funds received from such Loan shall be applied only for the purposed contemplated by Section 2.2 of the Credit and Security Agreement.

7. After giving effect to such Loan, no Borrowing Base Deficiency exists.

8. As of the date hereof 1/27/09, the Borrowing Base equals $ 530,969,670.57

Capitalized terms used but not defined herein shall have the meanings set forth in the Credit and Security Agreement.

IN WITNESS WHEREOF, I have hereunto signed my name as of the date first above written.

Name: Howard Koslow
Title: President & Chief Operating Officer

Exhibit D
to Motion for Modification

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

09 APR 20 PM 4:06

CASE NO.: 2:09-cv-229-FtM-29SPC

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

FOUNDING PARTNERS CAPITAL MANAGEMENT, CO. and WILLIAM L. GUNLICKS,

Defendants,

SUN CAPITAL, INC.,
SUN CAPITAL HEALTHCARE, INC.,
FOUNDING PARTNERS STABLE-VALUE FUND, LP,
FOUNDING PARTNERS STABLE-VALUE FUND II, LP,
FOUNDING PARNTERS GLOBAL FUND, LTD, and
FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

ORDER APPOINTING RECEIVER

WHEREAS, Plaintiff Securities and Exchange Commission has filed an emergency motion for the appointment of a Receiver over Defendant Founding Partners Capital Management, Co. ("Founding Partners") and Relief Defendants Founding Partners Stable-Value Fund, LP, Founding Partners Stable-Value Fund II, LP, Founding Partners Global Fund Ltd., and Founding Partners Hybrid-Value Fund, LP ("Relief Defendants") with full and exclusive power, duty and authority to: administer and manage the business affairs, funds, assets, choses in action and any other property of Founding Partners and the Relief Defendants; marshal and safeguard all of the assets of Founding Partners and the Relief Defendants; and take whatever actions are necessary for the protection of investors;

WHEREAS, the Commission has made a sufficient and proper showing in support of the relief requested by evidence demonstrating a *prima facie* case of violations of the federal securities laws by Founding Partners and Defendant William Gunlicks;

WHEREAS, the Commission has submitted the credentials of a candidate to be appointed as Receiver of all of the assets, properties, books and records, and other items of Founding Partners and the Relief Defendants, including any properties, assets and other items held in the name of Founding Partners and the Relief Defendants, and the Commission has advised the Court that this candidate is prepared to assume this responsibility if so ordered by the Court;

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that Leslie B. Lasser, Esq. is hereby appointed the Receiver over Founding Partners and each of the Relief Defendants, and each of their subsidiaries, successors and assigns, and is hereby authorized, empowered, and directed to:

1. Take immediate possession of all property, assets and estates of every kind of Founding Partners and each of the Relief Defendants, whatsoever and wheresoever located, including but not limited to all offices maintained by Founding Partners and the Relief Defendants, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of Founding Partners and the Relief Defendants wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court;

2. Investigate the manner in which the affairs of Founding Partners and the Relief Defendants were conducted and institute such actions and legal proceedings, for the benefit and on

behalf of Founding Partners or the Relief Defendants and their investors and other creditors as the Receiver deems necessary against those individuals, corporations partnerships, associations and/or unincorporated organizations which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred money or other proceeds directly or indirectly traceable from investors in Founding Partners and the Relief Defendants, including against Founding Partners and the Relief Defendants, their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in Founding Partners and the Relief Defendants; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, et. seq. or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order;

3. Present to this Court a report reflecting the existence and value of the assets of Founding Partners and the Relief Defendants and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of Founding Partners and the Relief Defendants;

4. Appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of the assets and business of Founding Partners and the Relief Defendants, and exercising the power granted by this Order, subject to approval by this Court at the time the Receiver accounts to the Court for such expenditures and compensation;

5. Engage persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities, including, but not limited to, the United States Marshal's Service or a private security firm;

6. Defend, compromise or settle legal actions, including the instant proceeding, in which Founding Partners, any of the Relief Defendants, or the Receiver are a party, commenced either prior to or subsequent to this Order, with authorization of this Court; except, however, in actions where Founding Partners or the Relief Defendants are a nominal party, as in certain foreclosure actions where the action does not effect a claim against or adversely affect the assets of Founding Partners or the Relief Defendants, the Receiver may file appropriate pleadings at the Receiver's discretion. The Receiver may waive any attorney-client or other privilege held by Founding Partners or the Relief Defendants;

7. Assume control of, and be named as authorized signatory for, all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds, wherever situated, of Founding Partners or the Relief Defendants and, upon, order of this Court, of any of their subsidiaries or affiliates, provided that the Receiver deems it necessary;

8. Make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver's duties;

9. Have access to and review all mail of Founding Partners and the Relief Defendants (except for mail that appears on its face to be purely personal or attorney-client privileged) received at any office or address of Founding Partners or any of the Relief Defendants.

IT IS FURTHER ORDERED AND ADJUDGED that in connection with the appointment of the Receiver provided for above:

10. Founding Partners and each of the Relief Defendants, and all of their directors, officers, agents, employees, attorneys, attorneys-in-fact, shareholders, and other persons who are in custody, possession, or control of any assets, books, records, or other property of Founding Partners or the Relief Defendants shall deliver forthwith upon demand such property, money, books and records to the Receiver, and shall forthwith grant to the Receiver authorization to be a signatory as to all accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of Founding Partners or the Relief Defendants;

11. All banks, brokerage firms, financial institutions, and other business entities which have possession, custody or control of any assets, funds or accounts in the name of, or for the benefit of, Founding Partners or the Relief Defendants shall cooperate expeditiously in the granting of control and authorization as a necessary signatory as to said assets and accounts to the Receiver;

12. Unless authorized by the Receiver, Founding Partners and the Relief Defendants, and their principals shall take no action, nor purport to take any action, in the name of or on behalf of Founding Partners or any of the Relief Defendants;

13. Founding Partners, the Relief Defendants, their principals, and their respective officers, agents, employees, attorneys, and attorneys-in-fact, shall cooperate with and assist the Receiver, including, if deemed necessary by the Receiver, appearing for deposition testimony upon two (2) business days notice (by facsimile), and producing documents upon two (2) business days notice, while the Commission's request for an asset freeze is pending. Founding Partners, the Relief Defendants, and their principals and respective officers, agents, employees, attorneys, and attorneys-

in-fact shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of the Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above;

14. The Receiver, and any counsel whom the Receiver may select, are entitled to reasonable compensation from the assets now held by or in the possession or control of or which may be received by Founding Partners or the Relief Defendants; said amount or amounts of compensation shall be commensurate with their duties and obligations under the circumstances, subject to approval of the Court;

15. During the period of this receivership, all persons, including creditors, banks, investors, or others, with actual notice of this Order, are enjoined from filing a petition for relief under the United States Bankruptcy Code without prior permission from this Court, or from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of Founding Partners or the Relief Defendants;

16. Title to all property, real or personal, all contracts, rights of action and all books and records of Founding Partners and the Relief Defendants and their principals, wherever located within or without this state, is vested by operation of law in the Receiver;

17. Upon request by the Receiver, any company providing telephone services to Founding Partners and any of the Relief Defendants shall provide a reference of calls from any number presently assigned to Founding Partners or any of the Relief Defendants to any such number designated by the Receiver or perform any other changes necessary to the conduct of the receivership;

18. Any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to Founding Partners or any of the Relief Defendants shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver;

19. The United States Postal Service is directed to provide any information requested by the Receiver regarding Founding Partners or any of the Relief Defendants, and to handle future deliveries of the mail of Founding Partners and the Relief Defendants as directed by the Receiver;

20. No bank, savings and loan association, other financial institution, or any other person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;

21. No bond shall be required in connection with the appointment of the Receiver. Except for an act of gross negligence or greater, the Receiver shall not be liable for any loss or damage incurred by Founding Partners and the Relief Defendants, or by the Receiver's officers, agents or employees, or any other person, by reason of any act performed or omitted to be performed by the Receiver in connection with the discharge of the Receiver's duties and responsibilities;

22. Service of this Order shall be sufficient if made upon Founding Partners or the Relief Defendants and their principals by facsimile or overnight courier;

23. In the event that the Receiver discovers that funds of persons who have invested in Founding Partners or the Relief Defendants have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, extending this receivership over any person or entity holding such investor funds;

24. Immediately upon entry of this Order, and while the Commission's motion for an asset freeze is pending, the Receiver may take depositions upon oral examination of parties and non-parties subject to two (2) business days notice. In addition, immediately upon entry of this Order, the Receiver shall be entitled to serve interrogatories requests for the production of documents and requests for admissions. The parties shall respond to such discovery requests within two (2) business days of service. Service of discovery requests shall be sufficient if made upon the parties by facsimile or overnight courier. Depositions may be taken by telephone or other remote electronic means; and

25. This Court shall retain jurisdiction of this matter for all purposes.

DONE AND ORDERED this 20th day of April, 2009, in Fort Myers, Florida.

UNITED STATES DISTRICT JUDGE

Copies to:

C. Ian Anderson, Esq.
Attorney for Plaintiff
Securities and Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6317
Facsimile: (305) 536-4154

Exhibit E
to Motion for Modification

GRAY|ROBINSON
ATTORNEYS AT LAW

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gray-robinson.com

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JACKSONVILLE
KEY WEST
LAKELAND
MELBOURNE
MIAMI
NAPLES
ORLANDO
TALLAHASSEE
TAMPA

April 29, 2009

VIA FEDERAL EXPRESS
OVERNIGHT MAIL

Sun Capital Healthcare, Inc.
Howard B. Koslow
As President and Chief Operating Officer
999 Yamato Road, 3rd Floor
Boca Raton, FL 33431

Robert Dodek, as Registered Agent
999 Yamato Road, 3rd Floor
Boca Raton, FL 33431

and

Sun Capital Healthcare, Inc.
929 Clint Moor Road
Boca Raton, FL 33487

VIA ELECTRONIC MAIL

Charles C. Harper, P.A.
c/o Charles C. Harper, Esq.
8520 SW 89 Avenue
Miami, FL 33173
Email: charlieharper@bellsouth.net

Gilbride Heller & Brown
c/o Lawrence Heller, Esq.
2 South Biscayne Boulevard, Suite 1500
Miami, Florida 33131
Email: lheller@ghblaw.com

Proskauer Rose, LLP
c/o Sarah Gold, Esq.
1585 Broadway
New York, NY 10036-8299
Email: sgold@proskauer.com

Proskauer Rose, LLP
c/o Vincenzo Paparo, Esq.
1585 Broadway
New York, NY 10036-8299
Email: vpaparo@proskauer.com

RE: Credit and Security Agreement dated June 6, 2000 ("Agreement") between Sun Capital Healthcare, Inc., a Florida corporation ("Borrower" or "you") and Founding Partners Stable-Value Fund, L.P. as successor of Founding Partners Multi-Strategy Fund, L.P., ("Lender") incorporated by reference herein.

Dear Mssrs Koslow and Dodek:

Please permit this correspondence to serve as the Lender's Notice of Default under the Agreement pursuant to Paragraph 8 "Defaults." You are advised that the Borrower has defaulted under the Agreement as detailed below. These defaults include, **without limitation**, the following:

i. Borrower default by failing to purchase accounts in contravention of paragraph 1.37 by: a) purchasing accounts that are Defaulted Accounts as more fully defined in Paragraph 1.32; b) purchasing accounts for services other than health care services as defined in paragraph 1.37(a); purchasing accounts contrary paragraph 1.37(c);
ii. Borrower defaulted under Paragraph 8.1.1 by failing to make the requisite payment;
iii. Borrower defaulted under Paragraph 8.1.3 by failing to perform and observe other covenants, agreements, and provisions of the Agreement, including, **without limitation**:
    a. Borrower violated Paragraph 2.2 of the Agreement by failing to apply the proceeds of the Loans (as defined in the Agreement) as set forth in Paragraph 2.2 of the Agreement;
    b. Borrower violated Paragraph 7.17 by engaging in activities other than those contemplated by the Agreement;
iv. Borrower defaulted under Paragraph 8.1.10 such that it is operating at a negative cash deficit as represented by Borrower.
v. Borrower defaulted under Paragraph 8.1.4 by making a materially false representation or warranty to the Lender in connection with the Agreement
vi. Borrower is in violation of Paragraph 5.2.10 to the extent Sun Capital, Inc. has received a notice of default contemporaneous to the instant Notice in respect to the Credit and Security Agreement between Lender and Sun Capital Inc, dated January 24, 2002.
vii. Borrower is in violation of Paragraph 6.5 with respect to reporting requirements set forth in Paragraph 6.5(a) and (f).

(collectively, the "Defaults"[1]).

This Notice of Default is consistent with the terms of the Agreement, specifically under Paragraph 8 and all other specified sections, wherein the Lender reserved its rights to call a default by the Borrower subsequent to the execution of the Agreement.

NOTICE OF DEFAULT

The Lender and the Borrower entered into the Agreement on June 6, 2000, with respect to loans, of which the Lender is the owner and holder. As of the date of this Notice of Default, the Borrower has defaulted under the Agreement and thus the loans made thereunder. Accordingly, notice is hereby given to the Borrower that the Lender is exercising its options pursuant to the Agreement and loans, and thus declares the entire

[1] It is reiterated that the defaults listed herein are not exclusive, and the Lender does not waive its rights as to any defaults not enumerated herein.

balance outstanding under the Agreement and loans immediately due and payable, plus interest accruing at the default rate of interest and all attorneys' fees and costs incurred by the Lender. The Lender shall avail itself of all its legal rights and remedies.

The Lender demands immediate payment in full under the Agreement and loans and failure to do so shall leave the Lender with no alternative but to take whatever actions it deems necessary, to which it is entitled, to protect its interests.

This correspondence shall not by implication or otherwise limit the rights and remedies of the Lender under the Agreement or the loans thereunder, and shall in no way alter, modify, amend or affect the terms, conditions, obligations, covenants or agreements contained therein. Moreover, this correspondence shall not be deemed or construed as a waiver of any existing defaults, including the Defaults listed hereinabove, under the Agreement and loans that may exist but which are not enumerated herein, nor create any obligations on the part of the Lender not otherwise existing under the Agreement and loans. Finally, this correspondence shall not be deemed or construed as a waiver of any rights and remedies available to the Lender, and its assignees, under any documents and agreement executed by you for any obligation of the Borrower to Lender.

Very truly yours,

Leyza F. Blanco, ***as Receiver of Founding Partners Stable-Value Fund, L.P., successor of Founding Partners Multi-Strategy Fund, L.P.,***

GRAY|ROBINSON
ATTORNEYS AT LAW

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FORT LAUDERDALE
JACKSONVILLE
KEY WEST
LAKELAND
MELBOURNE
MIAMI
NAPLES
ORLANDO
TALLAHASSEE
TAMPA

April 29, 2009

VIA FEDERAL EXPRESS
OVERNIGHT MAIL

Sun Capital, Inc.
Howard B. Koslow
As President and Chief Operating Officer
999 Yamato Road, 3rd Floor
Boca Raton, FL 33431

David J. Armstrong
As Executive Vice President and Registered Agent
999 Yamato Road, 3rd Floor
Boca Raton, FL 33431

VIA ELECTRONIC MAIL

Charles C. Harper, P.A.
c/o Charles C. Harper, Esq.
8520 SW 89 Avenue
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Gilbride Heller & Brown
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Proskauer Rose, LLP
c/o Sarah Gold, Esq.
1585 Broadway
New York, NY 10036-8299
Email: sgold@proskauer.com

Proskauer Rose, LLP
c/o Vincenzo Paparo, Esq.
1585 Broadway
New York, NY 10036-8299
Email: vpaparo@proskauer.com

RE: Credit and Security Agreement dated January 24, 2002 ("Agreement") between Sun Capital, Inc., a Florida corporation ("Borrower" or "you") and Founding Partners Stable-Value Fund, L.P. ("Lender") incorporated by reference herein.

Dear Mssrs:

Please permit this correspondence to serve as the Lender's Notice of Default under the Agreement pursuant to Paragraph 8 "Defaults." You are advised that the Borrower has defaulted under the Agreement as detailed below. These defaults include, **without limitation**, the following:

i. Borrower defaulted under Paragraph 8.1.1 by failing to make the requisite payment;

ii. Borrower defaulted under Paragraph 8.1.3 by failing to perform and observe other covenants, agreements, and provisions of the Agreement, including, **without limitation**:
   a. Borrower violated Paragraph 2.2 of the Agreement by failing to apply the proceeds of the Loans (as defined in the Agreement) as set forth in Paragraph 2.2 of the Agreement;
   b. Borrower violated Paragraph 6.35 of the Agreement by taking action(s) that impaired or could impair the rights of the Lender in any Purchased Account, the Related Property or any other Collateral (as defined in the Agreement); and
   c. Borrower violated Paragraph 7.17 by engaging in activities other than those contemplated by the Agreement;
   d. Borrower violated Paragraph 5.2.10 by having failed to direct Sun Capital Healthcare, Inc. to make payments due

iii. Borrower defaulted under Paragraph 8.1.10 such that it is operating at a negative cash deficit as represented by Borrower.

iv. Borrower is in violation of Paragraph 5.2.10 to the extent Sun Capital Healthcare, Inc. has received a notice of default contemporaneous to the instant Notice in respect to the Credit and Security Agreement between Lender and Sun Capital Inc, dated June 6, 2000.

v. Borrower violated Paragraph 6.8 by incurring additional Indebtedness with its affiliate, Sun Capital Healthcare, Inc.

(collectively, the "Defaults"[1]).

This Notice of Default is consistent with the terms of the Agreement, specifically under Paragraph 8 and all other specified sections, wherein the Lender reserved its rights to call a default by the Borrower subsequent to the execution of the Agreement.

NOTICE OF DEFAULT

The Lender and the Borrower entered into the Agreement on January 24, 2002, with respect to loans, of which the Lender is the owner and holder. As of the date of this Notice of Default, the Borrower has defaulted under the Agreement and thus the loans made thereunder. Accordingly, notice is hereby given to the Borrower that the Lender is exercising its options pursuant to the Agreement and loans and declares the entire balance outstanding under the Agreement and loans immediately due and payable, plus interest accruing at the default rate of interest and all attorneys' fees and costs incurred by the Lender. The Lender shall avail itself of all its legal rights and remedies.

The Lender demands immediate payment in full under the Agreement and loans and failure to do so shall leave the Lender with no alternative but to take whatever actions it deems necessary, to which it is entitled, to protect its interests.

This correspondence shall not by implication or otherwise limit the rights and remedies of the Lender under the Agreement or the loans thereunder, and shall in no way alter, modify, amend or

[1] It is reiterated that the defaults listed herein are not exclusive, and the Lender does not waive its rights as to any defaults not enumerated herein.

affect the terms, conditions, obligations, covenants or agreements contained therein. Moreover, this correspondence shall not be deemed or construed as a waiver of any existing defaults, including the Defaults, under the Agreement and loans that may exist but which are not enumerated herein, nor create any obligations on the part of the Lender not otherwise existing under the Agreement and loans. Finally, this correspondence shall not be deemed or construed as a waiver of any rights and remedies available to the Lender, and its assignees, under any documents and agreement executed by you for any obligation of the Borrower to Lender.

Very truly yours,
GRAYROBINSON

Leyza F. Blanco, ***as Receiver of***
Founding Partners Stable-Value Fund, L.P., the Lender

Exhibit F
to Motion for Modification

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs. Case No. 2:09-cv-229-FtM-29SPC

FOUNDING PARTNERS CAPITAL MANAGEMENT, and WILLIAM L. GUNLICKS,

Defendants,

SUN CAPITAL, INC., SUN CAPITAL HEALTHCARE, INC., FOUNDING PARTNERS STABLE-VALUE FUND, LP, FOUNDING PARTNERS STABLE-VALUE FUND II, LP, FOUNDING PARTNERS GLOBAL FUND, LTD., and FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

OPINION AND ORDER

This matter comes before the Court on the following motions: (1) Plaintiff's Emergency Motion for Asset Freeze Order and Other Relief as to Sun Capital, Inc. and Sun Capital Healthcare, Inc. (Doc. #14) filed on April 22, 2009; (2) Receiver's Emergency Motion to Expand Powers of Receiver Over Relief Defendants Sun Capital, Inc. and Sun Capital Healthcare, Inc. (Doc. #36), filed on April 29, 2009; and (3) Sun Capital, Inc. and Sun Capital Healthcare, Inc.'s Motion for Modification of Order Appointing Receiver with Temporary Restraining Order (Doc. #42), filed on May 4, 2009. Various responses and replies have been filed (Docs. ##40, 57, 58, 59, 63). The Court had also notified the parties that it would

consider whether Leyza F. Blanco should be disqualified as the Receiver. (Doc. #46.) The Receiver filed a Response (Doc. #61) to this issue. The Court heard oral argument on all of the above issues on May 11, 2009.

(1) Asset Freeze Order for Sun Capital Relief Defendants:

Plaintiff, the Securities and Exchange Commission (SEC), seeks imposition of an "asset freeze" order as to Sun Capital, Inc. and Sun Capital Healthcare, Inc. (collectively, "Sun Capital"). The SEC asserts that Sun Capital has received $550 million, which was fraudulently raised by the defendants, and that a freeze order is necessary to prevent further dissipation of investors' funds and to preserve assets that could be used to pay disgorgement. Sun Capital responds that it is not a proper relief defendant and that even if it were, the SEC has failed to meet its burden to obtain a freeze upon Sun Capital's assets.

The Court has previously summarized the allegations of the Complaint (Doc. #1) in its Opinion and Order (Doc. #56) entered on May 7, 2009. This summary will be adopted but not repeated here. In sum, it is undisputed that Founding Partners Stable-Value Fund, LP ("Stable-Value") made loans to Sun Capital pursuant to written loan agreements, which allowed Sun Capital to use the loan proceeds to purchase healthcare and commercial receivables. The permitted uses of the loan proceeds were expanded by Stable-Value beginning in 2004, and the SEC alleges that the newly-allowed permitted uses increased the risks to Stable-Value's investors.

The resolution of the SEC's motion depends in large part on the nature of a "relief defendant." A relief defendant, sometimes referred to as a "nominal defendant," has no ownership interest in the property that is the subject of litigation but may be joined in the lawsuit to aid the recovery of relief. SEC v. Cavanagh, 445 F.3d 105, 109 n.7 (2d Cir. 2006). A relief defendant is not accused of wrongdoing, but a federal court may order equitable relief against such a person where that person (1) has received ill-gotten funds, and (2) does not have a legitimate claim to those funds. SEC v. George, 426 F.3d 786, 798 (6th Cir. 2005) (citations omitted). The court in Commodity Future Trading Comm'n v. Kimberlynn Creek Ranch, Inc., 276 F.3d 187 (4th Cir. 2002), discussed the theory behind this "obscure common law concept":

> A 'nominal defendant' is a person who can be joined to aid the recovery of relief without an [additional] assertion of subject matter jurisdiction only because he has no ownership interest in the property which is the subject of litigation. Because a nominal defendant has no ownership interest in the funds at issue, once the district court has acquired subject matter jurisdiction over the litigation regarding the conduct that produced the funds, it is not necessary for the court to separately obtain subject matter jurisdiction over the claim to the funds held by the nominal defendant; rather, the nominal defendant is joined purely as a means of facilitating collection. In short, a nominal defendant is part of a suit only as the holder of assets that must be recovered in order to afford complete relief; no cause of action is asserted against a nominal defendant.

Kimberlynn Ranch Creek, 276 F.3d at 191-92 (internal citations and quotations omitted).

Crediting the allegations in the Complaint and its supporting documents concerning the alleged false representations and omissions by defendants, the Court finds that the SEC has satisfied the first requirement - that the loan proceeds Sun Capital received from Stable-Value were ill-gotten funds. Sun Capital argues, however, that the SEC has failed to establish that Sun Capital lacks an ownership interest and legitimate claim in the loan proceeds it received from Stable-Value, and that therefore Sun Capital is not a proper relief defendant. The Court agrees.

While the SEC argues that an absolute ownership is required to preclude status as a relief defendant, the case law only requires an "ownership interest" in the funds to preclude an entity from being a proper relief defendant. SEC v. Cherif, 933 F.2d 403, 414 (7th Cir. 1991); Kimberlynn Ranch Creek, 276 F.3d at 191; George, 426 F.3d at 798. It is undisputed that Sun Capital received the loan proceeds pursuant to written loan agreements with Stable-Value, which gives Sun Capital certain rights and obligations with regard to the loan proceeds. There has been such a debtor-creditor relationship between Sun Capital and Stable-Value based on written agreements since 2001. This constitutes a sufficient legitimate ownership interest to preclude treating Sun Capital as a relief defendant. See, e.g., Kimberlynn Ranch Creek, 276 F.3d at 192 (receipt of funds as payment for services rendered to an employer constitutes one type of ownership interest and would preclude proceeding against the holder of the funds as a nominal defendant).

Sun Capital is a far cry from the "paradigmatic" nominal defendant - a trustee, agent or depository. See SEC v. Colello, 139 F.3d 674, 676 (9th Cir. 1998). The Court is satisfied that the evidence establishes that Sun Capital has a legitimate ownership interest in the loan proceeds, and therefore cannot be a proper relief defendant. As such, the court lacks authority to freeze Sun Capital's assets. Therefore, the SEC's motion will be denied.

(2) Expansion of Receiver's Powers:

The Receiver has filed a motion to expand its powers over the Sun Capital relief defendants by seeking the appointment of a receiver or at least, a monitor. For the reasons stated above, the Sun Capital entities are not proper relief defendants and the court therefore has no authority to appoint either a receiver or a monitor. The motion will be denied.

(3) Modification of Order Appointing Receiver:

Sun Capital also requests that the Court modify its Order Appointing Receiver (Doc. #9) to permit Sun Capital to pursue its legal remedies against Founding Partners and/or the Receiver without first obtaining permission from the Court. Specifically, Sun Capital asserts that the Receiver has filed Notices of Default with regard to written loan agreements, and Sun Capital needs to pursue claims for contractual relief based upon the breaches of the written loan agreements. Sun Capital correctly points out that paragraph 15 of the Order Appointing Receiver precludes it "from

prosecuting any actions or proceedings which involve the Receiver or which affect the property of Founding Partners or the Relief Defendants." (Doc. #9, ¶15.) Additionally, Sun Capital requests a temporary restraining order preventing the Receiver from taking any action against, or making any demands of, Sun Capital based upon the recent Notice of Default issued by the Receiver.

As discussed below, the Court has removed the current Receiver other than is necessary to maintain the *status quo* until appointment of a substitute receiver. The Court finds that Sun Capital has not satisfied any of the elements that would be necessary for a temporary restraining order. The Court is inclined, however, to amend the Order Appointing Receiver to allow Sun Capital to bring a breach of contract suit against Founding Partners and/or the Receiver, based upon the loan agreements at issue. The Court will not make such an amendment, however, until after the substitute receiver is appointed and has had an opportunity to familiarize himself/herself with the case.

(4) Disqualification of Receiver and Receiver's Counsel:

In its motion for appointment of a Receiver, the SEC identified three qualified receivers and recommended Leyza F. Blanco, an attorney with the law firm of GrayRobinson, PA. In its Order Appointing Receiver (Doc. #9), the Court appointed Ms. Blanco as the Receiver; Ms. Blanco has retained GrayRobinson as the attorney for the Receiver. It has now been suggested by the Sun

Capital defendants that there may be a conflict that requires the disqualification of Ms. Blanco as Receiver.

Ms. Blanco is a shareholder in GrayRobinson. On June 28, 2007, GrayRobinson entered into a retainer agreement with Promise Healthcare, Inc. providing for both lobbying services and legal services regarding passage of a bill providing an extension of the deadline to obtain Certificates of Need on hospital facilities under construction. Although presumably drafted by GrayRobinson, the firm now takes the position that their retainer agreement is "somewhat misleading" because, while legal services were contemplated, the firm has only provided lobbying services to Promise Healthcare in Florida and Louisiana. GrayRobinson's relationship with Promise Healthcare is "ongoing." (Doc. #61, p. 3.) GrayRobinson has been paid a little over $100,000 in fees by Promise Healthcare. Promise Healthcare was not on the list of names or entities provided to Ms. Blanco for a firm "conflicts check," and she did not learn of her firm's connection with Promise Healthcare until after her appointment as Receiver. Promise Healthcare is an affiliate and factoring client of Sun Capital.

Whatever the nuances may be between acting as a lobbyist and acting as a lawyer, the short answer is that the Court would not have appointed Ms. Blanco as Receiver if the connection with Promise Healthcare had been revealed. Distinguishing legal advice from lobbying services is not always an easy task, particularly from a client's perspective. What Promise Healthcare knew was that

it hired GrayRobinson to provide legal and lobbying services. Promise Healthcare is sufficiently intertwined with the issues in the case so that its presence is not marginal. The Court sees no reason to begin a $550 million case with a Receiver who has potential conflict issues that may undermine confidence in her actions or lead to unproductive, collateral litigation, which can be avoided altogether by the appointment of a substitute receiver. The Court finds that it is not in the best interest of the investors to have Ms. Blanco serve as the Receiver in this case. Therefore, the Court will remove Ms. Blanco as Receiver in this case, not as a sanction for non-disclosure as suggested by defendant Gunlicks, but in the best interest of the investors and parties now that accurate information has been disclosed.

Accordingly, it is now

ORDERED:

1. Plaintiff's Emergency Motion for Asset Freeze Order and Other Relief as to Sun Capital, Inc. and Sun Capital Healthcare, Inc. (Doc. #14) is **DENIED.**

2. Receiver's Emergency Motion to Expand Powers of Receiver Over Relief Defendants Sun Capital, Inc. and Sun Capital Healthcare, Inc. (Doc. #36) is **DENIED.**

3. Sun Capital, Inc. and Sun Capital Healthcare, Inc.'s Motion for Modification of Order Appointing Receiver with Temporary Restraining Order (Doc. #42) is **GRANTED in part** to the extent that

the Court will in due course enter an order allowing Sun Capital to litigate any breach of contract claims it has in regard to the underlying loan agreements. The Court will not enter such an order until after the appointment of a substitute receiver.

4. Leyza F. Blanco is **REMOVED** as the Receiver in this case, and may hereafter take only those actions necessary to maintain the *status quo* until a new receiver is appointed. The firm of GrayRobinson, PA is **REMOVED** as counsel for the Receiver, and may hereafter take only those actions necessary to maintain the *status quo* until a new receiver is appointed.

5. The SEC shall forthwith cause a full conflicts check to be made by the two other suggested receivers, and such other potential receivers as it deems appropriate, and notify the Court of the results and its recommendation for a substitute receiver.

DONE AND ORDERED at Fort Myers, Florida, this 13th day of May, 2009.

JOHN E. STEELE
United States District Judge

Copies:
Counsel of record

Exhibit G
to Motion for Modification

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs. Case No. 2:09-cv-229-FtM-29SPC

FOUNDING PARTNERS CAPITAL MANAGEMENT, and WILLIAM L. GUNLICKS,

Defendants,

SUN CAPITAL, INC., SUN CAPITAL HEALTHCARE, INC., FOUNDING PARTNERS STABLE-VALUE FUND, LP, FOUNDING PARTNERS STABLE-VALUE FUND II, LP, FOUNDING PARTNERS GLOBAL FUND, LTD., and FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

ORDER APPOINTING REPLACEMENT RECEIVER

This matter comes before the Court on Plaintiff's Motion for Appointment of a Replacement Receiver (Doc. #71) filed on May 13, 2009. In this motion, plaintiff Securities and Exchange Commission (SEC) requests the appointment of a new Receiver over defendant Founding Partners Capital Management, Co. ("Founding Partners") and relief defendants Founding Partners Stable-Value Fund, LP, Founding Partners Stable-Value Fund II LP, Founding Partners Global Fund Ltd., and Founding Partners Hybrid-Value Fund LP ("Founding Partner Relief Defendants"), "with full and exclusive power, duty, and authority to: administer and manage the business affairs, funds, assets, choses in action and any other property of Founding

Partners and the Founding Partners Relief Defendants; marshal and safeguard all of the assets of Founding Partners and the Founding Partners Relief Defendants; and take whatever actions are necessary for the protection of investors." (Doc. #71, pp. 1-2.) The Court finds that the SEC has shown a *prima facie* case of violations of the federal securities laws by Founding Partners.

In an Opinion and Order (Doc. #70) entered on May 13, 2009, the Court removed the previously-appointed Receiver and Receiver's counsel, Leyza F. Blanco and GrayRobinson, PA, respectively, from the case due to conflicts issues. The SEC has submitted the credentials of a candidate to be appointed as the replacement Receiver of all of the assets, properties, books and records, and other items of Founding Partners and the Founding Partners Relief Defendants, including any properties, assets and other items held in the name of Founding Partners and the Founding Partners Relief Defendants, and the SEC has advised the Court that this candidate is prepared to assume this responsibility if so ordered by the Court.

Accordingly, it is now

ORDERED:

1. Plaintiff SEC's Motion for Appointment of a Replacement Receiver (Doc. #71) is **GRANTED.**

2. Daniel S. Newman is appointed as replacement Receiver over Founding Partners and each of the Founding Partners Relief

Defendants, and each of their subsidiaries, successors and assigns, and is hereby authorized, empowered, and directed to do the following:

(a) Take immediate possession of all property, assets and estates of every kind of Founding Partners and each of the Founding Partners Relief Defendants, whatsoever and wheresoever located, including but not limited to all offices maintained by Founding Partners and the Founding Partners Relief Defendants, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of Founding Partners and the Founding Partners Relief Defendants wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court.

(b) Investigate the manner in which the affairs of Founding Partners and the Founding Partners Relief Defendants were conducted and institute such actions and legal proceedings, for the benefit and on behalf of Founding Partners or the Founding Partners Relief Defendants and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations which the Receiver may claim have wrongfully, illegally or

otherwise improperly misappropriated or transferred money or other proceeds directly or indirectly traceable from investors in Founding Partners and the Founding Partners Relief Defendants, including against Founding Partners and the Founding Partners Relief Defendants, their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in Founding Partners and the Founding Partners Relief Defendants; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, et. seq. or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order.

(c) Present to this Court a report reflecting the existence and value of the assets of Founding Partners and the Founding Partners Relief Defendants and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of Founding Partners and the Founding Partners Relief Defendants.

(d) Appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable

expenses of taking possession of the assets and business of Founding Partners and the Founding Partners Relief Defendants, and exercising the power granted by this Order, subject to approval by this Court at the time the Receiver accounts to the Court for such expenditures and compensation.

(e) Engage persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities, including, but not limited to, the United States Marshal's Service or a private security firm.

(f) Defend, compromise or settle legal actions, including the instant proceeding, in which Founding Partners, any of the Founding Partners Relief Defendants, or the Receiver are a party, commenced either prior to or subsequent to this Order, with authorization of this Court; except, however, in actions where Founding Partners or the Founding Partners Relief Defendants are a nominal party, as in certain foreclosure actions where the action does not effect a claim against or adversely affect the assets of Founding Partners or the Founding Partners Relief Defendants, the Receiver may file appropriate pleadings at the Receiver's discretion. The Receiver may waive any attorney-client or other privilege held by Founding Partners or the Founding Partners Relief Defendants.

(g) Assume control of, and be named as authorized signatory for, all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of

any assets or funds, wherever situated, of Founding Partners or the Founding Partners Relief Defendants and, upon, order of this Court, of any of their subsidiaries or affiliates, provided that the Receiver deems it necessary.

(h) Make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver's duties.

(i) Have access to and review all mail of Founding Partners and the Founding Partners Relief Defendants (except for mail that appears on its face to be purely personal or attorney-client privileged) received at any office or address of Founding Partners or any of the Founding Partners Relief Defendants.

3. In connection with the appointment of the Receiver provided for above:

(a) Founding Partners and each of the Founding Partners Relief Defendants, and all of their directors, officers, agents, employees, attorneys, attorneys-in-fact, shareholders, and other persons who are in custody, possession, or control of any assets, books, records, or other property of Founding Partners or the Founding Partners Relief Defendants shall deliver forthwith upon demand such property, money, books and records to the Receiver, and shall forthwith grant to the Receiver authorization to be a

signatory as to all accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of Founding Partners or the Founding Partners Relief Defendants.

(b) All banks, brokerage firms, financial institutions, and other business entities which have possession, custody or control of any assets, funds or accounts in the name of, or for the benefit of, Founding Partners or the Founding Partners Relief Defendants shall cooperate expeditiously in the granting of control and authorization as a necessary signatory as to said assets and accounts to the Receiver.

(c) Unless authorized by the Receiver, Founding Partners and the Founding Partners Relief Defendants, and their principals shall take no action, nor purport to take any action, in the name of or on behalf of Founding Partners or any of the Founding Partners Relief Defendants.

(d) Founding Partners, the Founding Partners Relief Defendants, and their principals and respective officers, agents, employees, attorneys, and attorneys-in-fact shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of the Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above.

4. The Receiver, and any counsel whom the Receiver may select, are entitled to reasonable compensation from the assets now held by or in the possession or control of or which may be received by Founding Partners or the Founding Partners Relief Defendants; said amount or amounts of compensation shall be commensurate with their duties and obligations under the circumstances, subject to approval of the Court.

5. During the period of this receivership, all persons, including creditors, banks, investors, or others, with actual notice of this Order, are enjoined from filing a petition for relief under the United States Bankruptcy Code without prior permission from this Court, or from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of Founding Partners or the Founding Partners Relief Defendants.[1]

6. Title to all property, real or personal, all contracts, rights of action and all books and records of Founding Partners and the Founding Partners Relief Defendants and their principals,

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[1]In a prior Opinion and Order (Doc. #70), the Court indicated as follows: "The Court is inclined, however, to amend [this Order Appointing Replacement Receiver] to allow Sun Capital to bring a breach of contract suit against Founding Partners and/or the Receiver, based upon the loan agreements at issue. The Court will not make such an amendment, however, until after the substitute receiver is appointed and has had an opportunity to familiarize himself/herself with the case." (Doc. #70, p. 6.)

wherever located within or without this state, is vested by operation of law in the Receiver.

7. Upon request by the Receiver, any company providing telephone services to Founding Partners and any of the Founding Partners Relief Defendants shall provide a reference of calls from any number presently assigned to Founding Partners or any of the Founding Partners Relief Defendants to any such number designated by the Receiver or perform any other changes necessary to the conduct of the receivership.

8. Any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to Founding Partners or any of the Founding Partners Relief Defendants shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver.

9. The United States Postal Service is directed to provide any information requested by the Receiver regarding Founding Partners or any of the Founding Partners Relief Defendants, and to handle future deliveries of the mail of Founding Partners and the Founding Partners Relief Defendants as directed by the Receiver.

10. No bank, savings and loan association, other financial institution, or any other person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court.

11. No bond shall be required in connection with the appointment of the Receiver. Except for an act of gross negligence or greater, the Receiver shall not be liable for any loss or damage incurred by Founding Partners and the Founding Partners Relief Defendants, or by the Receiver's officers, agents or employees, or any other person, by reason of any act performed or omitted to be performed by the Receiver in connection with the discharge of the Receiver's duties and responsibilities.

12. Service of this Order shall be sufficient if made upon Founding Partners or the Founding Partners Relief Defendants and their principals by facsimile or overnight courier.

13. In the event that the Receiver discovers that funds of persons who have invested in Founding Partners or the Founding Partners Relief Defendants have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, extending this receivership over any person or entity holding such investor funds.

14. This Court shall retain jurisdiction of this matter for all purposes.

DONE AND ORDERED at Fort Myers, Florida, this 20th day of May, 2009.

JOHN E. STEELE
United States District Judge

Copies:
Counsel of record
Daniel S. Newman, Esq.

EXHIBIT B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs. Case No. 2:09-cv-229-JES-SPC

FOUNDING PARTNERS CAPITAL MANAGEMENT CO. and WILLIAM L. GUNLICKS,

Defendants,

FOUNDING PARTNERS STABLE-VALUE FUND, LP, FOUNDING PARTNERS STABLE-VALUE FUND II, LP, FOUNDING PARTNERS GLOBAL FUND, LTD., and FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

AFFIDAVIT OF HOWARD KOSLOW

STATE OF FLORIDA)
: ss.:
COUNTY OF PALM BEACH)

HOWARD KOSLOW, being duly sworn, deposes and says:

1. I am President and COO of Sun Capital Healthcare, Inc. ("SCHI") and Sun Capital Inc. ("SCI") (together, "Sun Capital"). I make this affidavit in support of Sun Capital's request for injunctive relief preventing the FP Receiver from implementing harsh self-help remedies, in order to maintain the *status quo* until there can be an appropriate determination of the rights and obligations of Sun Capital and its Lender, Founding Partners Stable-Value Fund, L.P. ("Stable-Value" or "Lender") (on whose behalf the FP Receiver

now purports to be acting).

2. As the Court knows, Sun Capital made a motion, first on May 4, 2009 and then again on June 26, 2009, seeking modification of each of the Court's orders appointing receivers to permit Sun Capital to prosecute its legal claims against Stable-Value and/or the FP Receiver. (Docs. 42, 98). We did so primarily because we needed to be able to defend ourselves if the FP Receiver chose to begin exercising harsh contractual self-help remedies following the issuance of certain purported (but unjustified) Notices of Default seeking to accelerate repayment of Sun Capital's five-year term loans presently due in February 2013. As we explained, the exercise of those remedies would effectively force Sun Capital to cease its financing operations, triggering the immediate closure of all of its 22 hospital clients, with grave repercussions for the more than 1000 critically ill patients served by those hospitals and their 3500 employees. (Doc. 98 at 2-3).

3. Before the Court even had a chance to rule on Sun Capital's June 26 motion, the FP Receiver took the very steps that we feared. Purporting to exercise a contractual remedy of the Lender upon a default, the FP Receiver has seized Sun Capital's "lockbox" accounts, which hold the recycled receivables repayment proceeds that are essential to the continued survival of Sun Capital and its 22 hospital clients, posing an immediate and very severe threat to both Sun Capital and the hospitals that depend upon our financing. The FP Receiver gave notices to the bank holding the lockbox accounts, SunTrust Bank, which caused it to freeze our funds last Thursday and to accept no further instructions from Sun Capital. Originally, SunTrust was required to commence delivering all the funds to the FP Receiver on Monday, July 20, 2009. As set forth in greater detail below, to avoid risking

patient safety and avert a catastrophe, we spent all day Sunday with the FP Receiver, his counsel and accountants, finally reaching a temporary five-day agreement to permit SunTrust Bank to release some funds so the hospitals did not have to evacuate patients at that moment (the "Temporary Agreement") (attached as Ex. 1), but the agreement ends this Friday, July 24. Also, as explained below, this arrangement is not a workable solution going forward, because it is a manual process and checks are bouncing, and the situation is extremely urgent as Sun Capital and the hospitals will have to again begin to shut down by this Friday, unless we obtain an order from this Court nullifying the FP Receiver's notice to the Bank and restoring the *status quo*.

4. In essence, through the exercise of self-help, the Receiver (and the SEC) have obtained the relief denied them by this Court: the freezing of Sun Capital's assets and the equivalent of a Receivership over Sun Capital's business. All this without any Court order or even preliminary adjudication of the Receiver's (and the SEC's) view that a "default" can be retroactively declared based upon re-characterizing the Lender's prior agreements as "breaches".

Background

5. I previously submitted an affidavit, sworn to May 4, 2009, describing the history of the borrower-lender relationship between Sun Capital and Stable-Value, and the very difficult financial circumstances faced by Sun Capital, and the grave risks posed to the hospitals that receive financing from Sun Capital, as a consequence of the Lender's sudden

default on its loan obligations under our credit agreement in January 2009.[1] Because we are now faced with a grave emergency, I will not repeat the background previously described to the Court, but incorporate my prior affidavit and exhibits here.

6. As I previously explained, Sun Capital has recently been receiving up to $14 million a week in receivable repayments from its hospital clients, which are deposited into two lockbox accounts. Sun Capital then uses the returned receivable proceeds to purchase like receivables from the hospitals. (5/4/09 Koslow Aff. ¶ 22). In this manner, we have been managing to keep the hospitals operating, as their operation is entirely dependent upon the continuous financing they receive from Sun Capital. (However, we have not been able to honor some of the other commitments we had made based upon promises of future funding from the Lender.)

7. The lockbox accounts are governed by two Master Wholesale Lockbox Deposit and Blocked Account Service Agreements (the "Master Lockbox Agreements") among Sun Capital, SunTrust Bank, and the Lender. A copy of the SCHI Master Lockbox Agreement is attached hereto as Exhibit 2; the SCI Master Lockbox Agreement is substantially similar. Each of those Agreements, which were entered into as a condition of the Lender making the initial loans to SCHI and SCI under the Credit and Security Agreements (the "CSAs") in 2000 and 2002 respectively, provides that Sun Capital "irrevocably" directs and authorizes the Bank, upon delivery of a Transfer Notice in the form of Exhibit A by the Lender, to (i) transfer all funds in the lockbox account to the

[1] That affidavit (Doc. 40-2) was submitted in opposition to the motion of the then-Receiver (the "Former FP Receiver") to expand her receivership to cover Sun Capital. That motion was denied on May 13, 2009 (Doc. 70).

Lender's account at the end of each day, (ii) cease transferring funds to Sun Capital's collection account, and (iii) follow the directions of the Lender and not of Sun Capital concerning all matters related to the accounts and the Agreement. (Exh. 2, § 1 & Exh. A). There is no requirement of any advance notice to Sun Capital that the Lender will be issuing such Transfer Notice, or even that Sun Capital be given a copy of the Transfer Notice when it is delivered to the Bank, nor is there any ability by Sun Capital to issue a countermanding or disputing notice.

8. Never in the course of the over eight-year relationship between Sun Capital and the Lender did the Lender ever issue a default notice or a Transfer Notice to the Bank. There was never any cause to do so, as Sun Capital never defaulted on its obligations, even though they included paying interest at very high rates for many years on an increasingly high principal loan amount (as the Lender demanded so as to ensure a high rate of return for its investors).

9. However, as explained in Sun Capital's June 26 motion (and as had been explained in an earlier motion filed on May 4, 2009 [Doc. 42]), the Former FP Receiver had in late April sent letters to Sun Capital purporting to serve as Notices of Default under the two CSAs, and those Notices of Default allow for the possibility that the FP Receiver could take actions the CSAs permit upon an Event of Default, such as seizing control over the lockbox bank accounts. Indeed, the Former FP Receiver reserved her rights to "take whatever actions [the Receiver] deems necessary." (See Doc. 98-6, p. 3). After the new FP Receiver refused to withdraw the Notices of Default, in view of the implicit and explicit threats they posed, on June 26, 2009 Sun Capital filed a new motion requesting a

modification of the Court's May 20, 2009 Order Appointing Replacement Receiver to remove the bar against legal proceedings against the FP entities to enable Sun Capital and its affiliates to defend themselves against the Receiver's threatened conduct and otherwise pursue their claims against the Lender.

10. As noted in our June 26 motion (Doc. 98 at pp. 6-7 & n.3), the Court had previously indicated its inclination to permit the requested modification and had informally instructed the Former FP Receiver not to take any actions altering the *status quo*. Consequently, during the pendency of that motion, we believed that the current FP Receiver would honor the spirit of the Court's instruction by refraining from taking any dramatic steps to alter the *status quo*, such as delivering a Transfer Notice under the Master Lockbox Agreement, at least until the Court had issued a decision on that motion.

The Receiver's Rash and Destructive Actions

11. Apparently we were wrong. On July 15, not only did the FP Receiver file a memorandum in opposition to our motion for permission to pursue our claims against the Lender, but he also filed a new lawsuit against Sun Capital and an affiliate and apparently sent two Transfer Notices to SunTrust Bank. I learned on Thursday morning, July 16, 2009, from a SunTrust banker, that those Notices had been given the preceding evening. Attached as Exhibit 3 are copies of the Transfer Notices sent to SunTrust Bank by the FP Receiver. Thus, all funds in our operating and holding accounts have been frozen and all incoming funds were instructed to be directed to the FP Receiver's accounts.[2]

[2] Some of the seized funds do not even belong to Sun Capital. For each hospital, all its receivables, whether factored by Sun Capital or not, flow into the Sun Capital accounts.

12. These Transfer Notices, predicated upon a "default" declared by the FP Receiver, are completely unjustified. Since the loans have always been five-year term loans and are not currently due until February 1, 2013, the Notices depend upon the prior purported Notices of Default sent by the Former FP Receiver in late April, which were and are highly improper in light of the FP Receiver's recognition that no loan monies were ever spent without the Lender's authorization and approval.[3] (See the FP Receiver's Complaint, stating in ¶ 189 that Mr. Gunlicks allowed or acquiesced in Sun Capital's use of Stable-Value funds to purchase receivables beyond 120 days, to fund working capital needs of hospitals, and for related-party transactions.) The FP Receiver's whole claim of breach by Sun Capital is based upon the FP Receiver retroactively invalidating the contracting parties' over eight-year course of conduct, including Sun Capital's consistent performance in accordance with their agreed-upon modifications to the contracts, and re-characterizing that performance as years of "defaults" or "breaches" by Sun Capital. While I am not a lawyer, I do not see how the FP Receiver's position could be legally proper; but I can say with certainty as a matter of fact that the actual Lender during all those years, Stable-Value, did not ever claim that Sun Capital was acting in breach of our agreements and that Sun Capital in fact never acted contrary to any of its agreements with its Lender. After all, as

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This is because government agencies and others will not deposit payments into more than one account per hospital, so each hospital client had to allow all its receivable payments to be directed into the Sun Capital accounts, with the understanding that Sun Capital would distribute them appropriately. Since our access to account information has now been blocked, we cannot tell what portion of the amounts currently in the accounts belong to those hospitals.

[3] The CSA, the extension of the loan maturity date, and the Notices of Default are attached to Sun Capital's June 26 Motion as Exhibits A, B, and E.

the SEC has recognized, Stable-Value affirmatively encouraged Sun Capital to expand its uses of the loaned funds so that Sun Capital could provide steady, high interest payments that would in turn provide a steady return to Stable-Value's investors. (To the extent that the FP Receiver wants to reform the contracting parties' agreement back to the way it was in 2001, the FP Receiver should have to return or credit against the loan amount due the $230 million of interest payments that Sun Capital has paid as a result of the financing activities that he now wants to say were improper.)

13. Nor does the FP Receiver currently have any legitimate ground for insecurity concerning the loan proceeds or the collateral to justify the sudden issuance of these Transfer Notices. We had for weeks been openly communicating with the FP Receiver and voluntarily providing him and his lawyers and accountants with reams of current financial information about the status of the loan collateral and our financing operations, including giving him monitoring access to the lockbox accounts and access to our CFO and his staff at our office. The FP Receiver well knows that, despite the difficult financial circumstances engendered by the Lender's default in January, we are doing the best we can to collect and reloan receivables to keep the hospitals afloat and the collateral secure, and are not misusing, embezzling, or dissipating any of the funds. The FP Receiver makes no claims to the contrary in his new complaint, which is based on the concept of retroactively re-characterizing prior agreements with the Lender as contract "breaches."

14. However, as noted above, these Transfer Notices have automatic effect: when they are delivered in accordance with § 7 of the Master Lockbox Agreement, the Bank is obliged to follow the Lender's instruction regardless of what Sun Capital might

say. Thus, although the Bank had two business days to begin remitting the funds to the Lender's account, the Bank immediately froze the existing funds and Sun Capital had no access to any funds between last Thursday, July 16, and the afternoon of July 20.[4] Without steady and reliable access to funds, we cannot continue to recycle receivables from the hospitals that depend upon our financing program. Thus, beginning this Friday our hospital clients will be forced to begin moving patients pursuant to emergency evacuation procedures and wind up their operations, with the obvious severe effects on patients, staff and the communities served by these hospitals, as we have previously described. As explained below, neither Sun Capital nor its hospital clients can – or will – risk patient lives and safety to a daily or weekly threat of the cut-off of funds.

The Imminent and Irreparable Injury

15. We have previously explained, both to the Court and to the Receiver's counsel, how essential the continued funding (even in its diminished state, resulting from our essentially just recycling the receivables payments as they come in) is to the ongoing business of Sun Capital's many hospital clients. Since the loans under the CSAs were Sun Capital's sole source of funding, as required by the CSAs which prohibited Sun Capital

[4] As one illustration of the wholly unreasonable and irresponsible nature of the Receiver's actions: The Bank's counsel has informed us that the FP Receiver demanded freezing and seizure of the payroll account from which Sun Capital's employees are paid as well as all other accounts (including accounts not covered by the Lockbox Agreement). The Bank's lawyers advised the FP Receiver that SunTrust Bank did not generally freeze payroll accounts and did not want to do so here and leave employees unpaid. We were advised that the Receiver disagreed but finally acquiesced in the Bank's insistence that the employee payroll account not be frozen and turned over to the Receiver and the employees left unpaid for their work. However, those funds became part of the Receiver's subsequent demand for additional security in the Temporary Agreement.

from obtaining any funding elsewhere, and since the recycled operating account funds are the only remaining funds available to Sun Capital, depriving Sun Capital of those funds will have the immediate effect of forcing Sun Capital out of business. That will put our own employees out of jobs and destroy our hospital clients.

16. As previously explained, Sun Capital provides receivable financing to 22 long-term acute care hospitals across the country.[5] This financing provides the primary operating capital of these hospitals, and the hospitals require this financing on a reliable, ongoing basis. These clients' needs are the reason that from day one the loan agreements were always five-year term loans. The FP Receiver's seizure of the funds we have been using to finance these hospitals daily will cause immediate and irreparable harm to these hospitals, forcing them to begin emergency patient evacuation procedures and to shut down within a short period of time. All of the patients, including the 1,000 acute-care patients, will have to be relocated to other facilities, a process that poses significant risk to those patients. Indeed, it may take up to a week to relocate those patients to other hospitals and, in the meantime, without financing from Sun Capital, the hospitals will have no means to pay their operating expenses or the costs of the emergency evacuation plan or shutting down the hospitals – all of which it is estimated will cost $13 million to $15 million. In addition to the harm to the patients, the hospitals' 3500 professional staff and employees will lose their jobs. Thus, despite the highly improper nature of the April default notices

[5] Of the 22 hospitals we have been funding, one, Michael Reese, closed at the end of June pursuant to a longstanding plan because the landlord sold the property. However, Sun Capital continues to provide necessary funding to that hospital in return for assurances, including from the government, that receivables, including DSH receivables (which normally become uncollectible when a hospital closes), will be paid.

and the recent Transfer Notices, the result of the FP Receiver's unjustified seizure will be to imperil the lives of over 1000 critically ill patients, shut down 21 critical care hospitals around the country in areas desperately in need of that care, and put more than 3500 people out of work.

17. Furthermore, the FP Receiver's action and these results will not help the FP investors recover their investments. Indeed, it will result in the loss of much of the investors' money and collateral. As I previously explained, DSH receivables cannot be collected if a hospital closes. Thus, about $150 million worth of DSH receivables will be lost if the hospitals close. A substantial portion of all the remaining receivables would also be lost, because once a hospital closes it becomes much more difficult to recover any type of receivables, as hospital records and personnel are not available to answer government and insurer follow-up questions concerning claims. Therefore, other than possibly helping to finance the receivership itself (and its lawyers and accounting experts), the FP Receiver's seizing the accounts keeping the hospitals afloat makes no rational business sense at all.

18. Upon learning of the FP Receiver's seizure, we immediately started to mobilize to provide notice to the hospital clients and government and regulatory agencies and certain bankruptcy courts that we were forced to cease our financing arrangements. To protect the Promise and Success hospital patients, we would have begun moving patients to other hospital facilities on Monday, July 20, absent the Temporary Agreement pursuant to which the FP Receiver agreed to release up to $14 million to continue to operate for the

week.[6] As further explained below, the Temporary Agreement will end this Friday, July 24.

19. Evacuating hospitals and moving patients is a dangerous, complicated, and highly regulated process. Each hospital has an emergency procedure to evacuate all patients, and our regulatory counsel was brought in to supervise the process on a hospital-by-hospital basis. The process includes having to notify state regulators and, for three hospitals, to notify bankruptcy courts. There are criminal liabilities involved in hospital operations for failure to take these steps or failure to handle patient care appropriately during the process. The FP Receiver, unfortunately, has repeatedly demonstrated a lack of understanding of the realities of the hospital business, despite our efforts (described below) to explain to him the very serious ramifications of his conduct and the utterly unreasonable and unworkable nature of his demands.

20. I must emphasize that the injury that Sun Capital and our hospital clients are about to suffer is essentially irreversible. Once the process of moving patients and shutting down hospitals is begun, it cannot be stopped. The bulk of the collateral that becomes uncollectible when the hospitals close will be lost forever. Also, these disastrous events will become highly public and the previously excellent reputations of Sun Capital, its three principals (Mr. Baronoff, Mr. Leder, and myself), our employees, and the hospital clients will be ruined.

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[6] Although the Temporary Agreement provided for releasing up to $14 million through Friday, the actual instruction given to SunTrust Bank was apparently limited to the release of $13.1 million. I have no idea what accounts for the difference.

The FP Receiver's Improper Conduct

21. I must note that this extreme tactic by the FP Receiver has come suddenly, in the midst of efforts by Sun Capital and our counsel to provide information and work cooperatively toward a negotiated resolution of the difficult financial situation facing both Sun Capital and the FP investors. Sun Capital has been voluntarily providing the FP Receiver with all relevant current financial information, including working directly with the Receiver's accounting experts and giving the Receiver electronic access to the lockbox accounts in order to monitor the transactions. We tried to have meetings in order to begin working on a refinancing proposal, but the FP Receiver's counsel kept demanding more and more information as a precondition to even commencing such negotiations. As the Court is aware, this whole unfortunate financial situation came upon us without any improper actions on our part; it was sudden and unexpected, and we are doing the best we can to maintain the business and keep the hospitals afloat. We have been working on a restructure plan and looking for outside financing. We retained Cain Brothers, a highly regarded investment banking company focused exclusively on the healthcare industry. Cain Brothers has advised us (and the FP Receiver) that the prospects for raising very substantial funds are very good, but such things do not happen overnight. As Cain Brothers advised the FP Receiver, they believe a recapitalization can be achieved before year end. Of course, all this prospective money will be lost as well if the FP Receiver's rash actions are not reversed by this Court.

22. Meanwhile, after an initial introductory meeting with the FP Receiver and his counsel, the FP Receiver had repeatedly refused to meet with us to discuss various

options and to see what types of loan restructuring solutions might or might not be acceptable, and unreasonably demanded that we provide a fully-formed written repayment plan before any meeting could take place. Instead, he has repeatedly demanded more and more documents as a "precondition" to any discussion of a resolution, many such documents irrelevant to either the SEC action or the current work-out efforts – and despite the fact that the Receiver already has all current information because our CFO has been diligently meeting with the Receiver's accountants and providing current information to supplement the 30 boxes of information produced to Founding Partners just in January. But the demands keep growing, and meanwhile the FP Receiver refused any standstill agreement, but rather has issued subpoenas for testimony and more documents and sued Sun and would not even agree to a standard confidentiality agreement to cover the documents demanded that contain our confidential, proprietary, and trade secret information, which would harm Sun Capital, the hospital corporations and the restructure efforts if they should become public.

23. After we learned of the FP Receiver's Transfer Notices, Sun Capital made repeated and substantial efforts to speak and negotiate with the FP Receiver and his attorneys and accountants in hope of avoiding the disastrous and senseless injury that would result from his rash actions. Except for the Temporary Agreement, all this has been in vain, as the FP Receiver has made it explicitly clear that the harm he is causing is not his concern as his sole charge "from the Court" is simply to obtain funds for his receivership enterprise.

24. Thursday morning, after we learned about the Transfer Notice to the Bank, one of our Miami counsel, Lawrence Heller, met with the Receiver and his counsel to try to

make sure that he understood just how much harm they are causing, and how completely needless it is (because, as they know, we are not dissipating or misusing assets, but are simply operating a reduced version of the beneficial healthcare financing business that we had been successfully operating for years before the Lender defaulted in January), and to request that the Receiver withdraw the Transfer Notices to the Bank so that Sun Capital and the hospitals could continue to operate. The Receiver and his counsel were indifferent to the harm they were causing, and refused to work out any arrangement. The FP Receiver did not state any countervailing reason for shutting down either Sun Capital or the hospitals, but continued his demands for more and more historic documents (which could only be used in an effort to support his misguided litigation) and for a written repayment proposal.

25. The FP Receiver and his counsel appear to view this harsh account-freezing tactic as merely another bargaining chip or tool to force Sun Capital to cede control of its business to the FP Receiver. What makes this tactic incredibly counterproductive, though, is that as a direct result of the FP Receiver's misguided and overreaching conduct, very soon there will be no Sun Capital business at all, and no collateral, and consequently no possible way to preserve any beneficial return for the FP investors that the FP Receiver is supposedly protecting.

26. After we informed the FP Receiver that we would seek a temporary restraining order if he was unwilling to withdraw the Transfer Notices, the Receiver then sent a letter purporting to explain his actions and offered to meet with Sun Capital representatives while still seeking to impose onerous and totally unworkable preconditions

to a meeting or compromise. For example, the FP Receiver asserted that he needs to do a complete analysis of the hospitals' financial needs, on a hospital-by-hospital basis; that he does not have various types of information that he has in fact already been given; and that he would need a specific request and detailed written proposal before allowing any funds to be released for any purpose for any hospital. These demands were unworkable, and we explained that the emergency evacuation and hospital shut down would begin over the weekend.

27. Over the days leading up to Sunday, we repeatedly explained to the Receiver what the consequences have been and will be of his actions and why we and the hospital managers cannot agree to the FP Receiver's unreasonable demands, and requesting that he withdraw the Transfer Notices. Attached as Exhibit 4 is a copy of a letter our counsel sent the Receiver on Friday, July 17. Attached as Exhibit 5 is an e-mail our counsel sent on Saturday, July 18, 2009.

28. In a final effort to work out some emergency resolution with the FP Receiver and despite his irresponsible conduct, we agreed to and met with the FP Receiver, his counsel and his accountants on Sunday, July 19, 2009. Despite the dire emergency created by the FP Receiver, we met his pre-meeting demands to present a full workout proposal and even more financial information. We even flew in our investment banker to make a full presentation concerning our refinancing efforts and to present the workout proposal and answer all the FP Receiver's questions about it. Having thus met all "preconditions" demanded, we requested that the FP Receiver reverse the precipitous action he took in freezing the accounts without notice, a court order, or any consideration of the life and

safety issues involved in such a completely irresponsible action. We explained that the Transfer Notices had to be withdrawn immediately while there was still time before the hospitals start evacuating and closing.

29. The FP Receiver reiterated that his sole "court-appointed" duty is to the receivership estate and therefore he has no responsibility for and no liability for anything which occurs so long as he fulfills that function. We three principals, however, have life and safety issues as our number one most important concern guiding our decisions with respect to funding the hospitals. Consequently, to get funds released on Monday so that patients were not placed at risk in relocation, and so that hospitals had a chance to remain open, we agreed to several extreme demands of the FP Receiver in exchange for his agreement to give Sun Capital access to the funds currently in the lockbox accounts no later than 10:00 AM Monday, and to release up to $14 million this week to fund hospital receivables. To obtain this money immediately, we agreed to provide additional collateral for the money he agreed to release to Sun Capital, despite the fact that no collateral would be lost by the release of those funds since Sun is essentially just recycling receivables. However, the FP Receiver refused to make any commitments with respect to funding the hospitals beyond Friday, July 24, 2009. Thus, this Temporary Agreement expires as of that time. We cannot and will not continue to fund or operate hospitals on such a basis.

30. The Receiver seems unable to grasp that these hospitals need funding every day on an immediate, *continuing* and *reliable* basis in order to remain in operation.[7] As we

[7] While the amounts presently in the lockbox accounts have been relatively small, running about $2 million per day, they are essential to the hospitals' ability to continue operating. On the other side of the equation, if the hospitals are forced to shut down, then we will lose

advised the FP Receiver on Sunday, hospital managers were advised of, and rejected as a basis upon which to operate going forward, the FP Receiver's demand that every expense be detailed as a request for funds on a hospital-by-hospital basis to be considered by the FP Receiver and judged on the basis of "the best interests of the receivership" instead of the life and safety standards under which hospital administrative decisions operate. That was the FP Receiver's completely unrealistic view of how he would like to operate Sun Capital's financing business. The FP Receiver and his representatives are lawyers, not hospital operators, and neither I nor my partners nor the hospital managers are willing to place their own liabilities for the safety and lives of critically ill patients in the hands of that law firm. We and the hospitals cannot risk patient lives and safety to permit the FP Receiver to determine which individual hospital needs he would agree to fund as "beneficial to the receivership estate." Nor can we accept his new plan by which he is in control of all funds and decides on a weekly basis whether he will continue to fund or not as he sees fit. It is for this reason that, without Court relief, the emergency evacuation plans and hospital shutdowns must proceed immediately.

31. On Monday, as we had tried to forewarn the Receiver without success, the FP Receiver presented SunTrust Bank with its plan to release certain funds from certain accounts and to stop when the amounts totaled $13.1 million (not the $14 million agreed upon). SunTrust Bank told the FP Receiver his concept of holding the money and having the Bank release funds each day was unworkable. It took the whole day for the Bank to

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hundreds of millions in receivables, as well as the likelihood of a major recapitalization, all of which will be irretrievable for Sun Capital or the FP investors.

find a temporary means to do so, during which time Sun Capital still had no receivable financing funds to provide to the hospitals. Counsel for the Bank advised the FP Receiver: "You've created an impossible situation for the Bank." (E-mail attached as Exhibit 6). Even now, it is a cumbersome, manual, slow process which has resulted in checks bouncing and, as the FP Receiver has been advised by the Bank today, the arrangement is unworkable and unacceptable to SunTrust, which has proposed releasing the freeze on the funds or terminating the banking relationship.[8]

32. Moreover, based upon what my lawyer has advised is a very weak case, it is completely unreasonable and inappropriate for the FP Receiver to seize Sun Capital's bank accounts and try to take on a role of micromanaging Sun Capital's business. The FP Receiver is still trying to impose a receivership on Sun Capital, even though the Court already rejected that effort on May 13, 2009 because, whatever the two Founding Partners defendants may have done wrong as respects their investors, there is absolutely no legitimate basis for the FP Receiver to try to impose his receivership over Sun Capital as well. The FP Receiver has now sued on his alleged claim of historic breaches, and we will respond and counterclaim in due course. That litigation should run its course *before* Sun Capital must go out of business and before patient lives are placed at risk and critical care hospitals throughout the country are closed.

33. Furthermore, as a result of his bank account seizure, the FP Receiver will obtain immediate cash to operate the receivership but he will end up with a very small

[8] The Receiver has also purported to seize accounts not covered by the Lockbox Agreement and those account funds are frozen too.

percentage of the current collateral to the detriment of the FP investors as well as Sun Capital.

34. Most important, patient lives are at stake here. This is not a litigation game. As conceded by the FP Receiver's counsel on Monday, freezing these accounts and barring access to them has created life safety issues. In an email to SunTrust Bank, which reasonably did not want the liabilities involved in monitoring the Temporary Agreement, the FP Receiver's counsel sought to shift the FP Receiver's complete responsibility for this horrendous situation to the Bank for moving too slowly in putting in place an unworkable arrangement for the bank, stating "If patient or the Sun hospitals are harmed, [the Bank] will be responsible." (*See* July 20, 2009 8:21 AM email from FP Receiver's counsel, attached as Exhibit 7.) And, the FP Receiver conceded that "time is critical and the funds need to be released to ensure the continued operation of the hospitals." (*See* July 20, 2009 10:49 AM email from FP Receiver's counsel, attached as Exhibit 8.)

35. Since we cannot and are unwilling to run the funding and operation of acute care hospitals in this fashion, Sun Capital needs an order reversing this situation and restoring the *status quo ante* by nullifying the Transfer Notices until after a full hearing and decision by the Court. Absent a temporary restraining order, the hospitals will again be forced to begin to implement their required emergency patient evacuation procedures to avoid liabilities, including criminal liabilities. Thus, it is now extremely urgent that the existing Transfer Notices be nullified.

36. If a temporary restraint were put in place until a full hearing could be held, approximately $14 million a week would be used in the interim to purchase additional

receivables, and a like amount would flow back into the accounts during the same period, so that at the end of the restraint period approximately the same amount of receivables and cash would exist and the *status quo* maintained. Thus, there would be no net loss to the FP Receiver or to the FP investors (even if they were entitled to the Sun Capital funds at this time, which they are not). Since we had already *voluntarily provided* the FP Receiver with access to our accounts so that he could monitor them, which we did because we are *not* engaged in any improper conduct whatsoever, the FP Receiver knows the funds are not dissipating and has not alleged otherwise in his complaint.

WHEREFORE, I respectfully request that the Court issue a temporary restraining order and ultimately a preliminary injunction order (a) declaring the existing Transfer Notices null and void and requiring the FP Receiver to withdraw them, and (b) prohibiting the FP Receiver or his representatives from taking any further self-help steps or contractual remedies or otherwise altering the *status quo* until the contracting parties' rights and obligations have been adjudicated or upon further order of the Court.

HOWARD KOSLOW

Sworn to before me this
23 day of July, 2009.

Notary Public

LINDA EISENBERG
MY COMMISSION # DD 887716
EXPIRES: September 7, 2013
Bonded Thru Notary Public Underwriters

Koslow Affidavit Exhibit 1

AGREEMENT

The parties to this Agreement are Daniel S. Newman (the "Receiver"), solely in his capacity as Receiver for Founding Partners Capital Management Company and Related Entities (the "Receivership Entities"); Sun Capital, Inc., and Sun Capital Healthcare, Inc. (collectively "Borrowers"); and LH Acquisition, LLC ("LH").

In consideration of the Receiver's releasing up to $14 million of the Receivership Entities cash collateral (the "Cash Collateral") to the Borrowers as more fully set forth below, the Parties agree as follows:

1. LH shall grant a first mortgage on real property located at 1800 Irving Place, Shreveport, Louisiana (the "Shreveport Property"), on which Promise Hospital of Louisiana, Inc., is currently operating, as soon as practicable but no later than five days from the date of this Agreement, to provide additional security for the existing indebtedness of Borrowers to the Receivership Entities under the Loan and Security Agreements dated respectively 2000 and 2002.
2. The value of the Shreveport Property has an unencumbered value of at least $14,000,000; to the extent that the unencumbered value of the Shreveport Property is less than $14,000,000, Borrowers shall provide additional real property collateral equaling the value of the Cash Collateral released pursuant to this Agreement;
3. The Receiver shall instruct SunTrust Bank by no later than 10:00 AM on July 20, 2009, to release up to $14 million from Borrowers' lockbox collections (the "Lock Boxes")frozen by SunTrust and any additional Lock Boxes collections thereafter through July 26, 2009 (the "Released Funds"), which funds shall be used by Borrowers to purchase accounts receivable in the ordinary course of Borrowers' businesses and to release reserves associated with those accounts receivable in the ordinary course of Borrowers' businesses;
4. HLP shall not increase any lease obligations of Promise Hospital of Louisiana, Inc., or other occupants of the Shreveport Collateral during the term of the mortgage;
5. The Borrower shall permit the Receiver's accountants to monitor the use of the Released Funds at the Borrowers' place of business;
6. The parties agree to meet on Friday July 26, 2009, to review the collection and use of the $14,000,000 of the Cash Collateral and discuss further funding for the following weeks;
7. The Parties agree to meet no later than two weeks after the date of this Agreement to consider Borrowers' 13 week operating budget for Borrowers' related healthcare facilities;
8. Borrowers agree to provide full and complete disclosure to assist the Receiver and his professionals to analyze the current financial and related information of Borrowers and their related healthcare facilities;
9. This Agreement is limited to the express terms and events set forth herein and is in no way meant to effectuate any amendments to any existing agreements between the parties; and

10. The Parties do not hereby waive any claims, rights, or remedies they now have or may have in the future against each other.

Dated: July 19, 2009

Sun Capital, Inc.

By: _____

Sun Capital Healthcare, Inc.

By: _____

LH Acquisitions, Inc.

By: _____

Daniel S. Newman, Receiver for Founding Partners Capital Management Company and Related Entities,

_____

Koslow Affidavit Exhibit 2

MASTER WHOLESALE LOCKBOX DEPOSIT AND BLOCKED ACCOUNT SERVICE AGREEMENT AMONG SUNTRUST BANK, SUN CAPITAL HEALTHCARE, INC., AND FOUNDING PARTNERS MULTI-STRATEGY FUND, L.P.

This Agreement (hereinafter "Agreement"), setting forth the understanding of the parties hereto, is made and entered into as of the 6th day of July, 2000 by and among SunTrust Bank(hereinafter "Bank"), a Georgia banking corporation; Sun Capital Healthcare, Inc. (hereinafter "Purchaser") a Florida corporation with its principal office located at 929 Clint Moore Road, Boca Raton, Florida 33487, and Founding Partners Multi-Strategy Fund, L.P., in its capacity as a lender to Purchaser (hereinafter "Lender").

RECITALS

WHEREAS, Purchaser and Bank contemplate entering into one or more wholesale lockbox deposit and blocked account service agreements (as the same may be amended, amended and restated, or otherwise modified from time to time, being referred to herein individually as a "Lockbox Agreement" and collectively as the "Lockbox Agreements") with one or more "Providers" referred to in the applicable Lockbox Agreements, which collectively cover post office boxes (collectively, the "Lockboxes"), related deposit accounts (collectively, the "Lockbox Bank Accounts"), and certain accounts of Purchaser (collectively, the "Purchaser Collection Account");

WHEREAS, Purchaser contemplates entering into one or more master purchase and sale agreements with Providers (as the same may be amended, amended and restated, or otherwise modified from time to time, being referred to individually as a "Master Purchase and Sale Agreement" and collectively as the "Master Purchase and Sale Agreements"), providing for the unconditional sale, transfer, and assignment by Provider to Purchaser of accounts receivable due and owing to Providers from various third-party obligors (including without limitation both Governmental Accounts and Non-Governmental Accounts, each as defined in the applicable Master Purchase and Sale Agreement) (hereinafter "Purchased Accounts") and for the procedures governing the collection of both such Purchased Accounts and all other "Accounts" as hereinafter defined; and

WHEREAS, as an inducement to Purchaser to enter into a Master Purchase and Sale Agreement each applicable Provider will grant Purchaser a first priority security interest in all accounts receivable generated by such Provider (all such accounts receivable and Purchased Accounts hereinafter collectively referred to as "Accounts"), and all proceeds thereof (including without limitation the "Items" referred to in the applicable Lockbox Agreements); and

WHEREAS, Purchaser has established bank account number 0494002031891 (the "Holding Account") with Bank; and

WHEREAS, Purchaser and Lender have entered into a Credit and Security Agreement (as amended, amended and restated, or otherwise modified from time to time, the "Credit and Security Agreement"), pursuant to which Purchaser has granted to Lender a security interest in all of Purchaser's right, title, and interest in, to, and under the Master Purchase and Sale Agreements, the Lockbox Agreements, this Agreement, the Accounts, the Lockboxes, the Lockbox Bank Accounts, the Purchaser Collection Account, the Holding Account, all Items and funds on deposit from time to time in the Lockboxes and the Lockbox Bank Accounts, and a security interest in other assets of Purchaser; and

WHEREAS, it is a condition precedent to the making of the initial loan under the Credit and Security Agreement that Purchaser and Bank execute and deliver this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. TRANSFER TO FOUNDING PARTNERS MULTI-STRATEGY FUND, L.P.:

Purchaser hereby irrevocably directs and authorizes Bank, and Bank hereby agrees, on each business day commencing two days after delivery by Lender to Bank in accordance with Section 7 of a notice substantially in the form of Exhibit A attached hereto (a "Transfer Notice"): (i) to transfer all collected and available funds in the Lockbox Bank Accounts and in the Holding Account at the end of each business day by wire transfer to such bank account of Lender as Lender may direct in such Transfer Notice or as Lender may otherwise direct in writing from time to time, (ii) to cease transferring funds to the Purchaser Collection Account, and (iij) to follow the directions of Lender and not those of Purchaser with respect to all matters relating to the Lockboxes, the Lockbox Bank Accounts, the Holding Account, the Purchaser Collection Account, the Lockbox Agreements, and this Agreement.

2. RIGHT OF SETOFF

A. *Limited Waiver:*

Bank agrees that, solely as against the Holding Account, the Purchaser Collection Account, the Lockboxes, and the Lockbox Bank Accounts, it shall not exercise any security interest in or right of set-off or banker's lien against such post office boxes and such accounts or any funds on deposit therein, except to the extent permitted by Section 2.B.

Purchaser shall maintain a balance in the Purchaser Collection Account sufficient to offset any amounts charged against the account under this section and all costs and service fees provided under sections 10 and 11.

B. *Order of Setoff:*

If any Item deposited in any of the accounts designated above is returned unpaid or otherwise dishonored for any reason, including without limitation "insufficient funds," "uncollected funds," or is otherwise returned or claimed upon for reasons of alleged forgery, alteration, improper or unauthorized endorsement, lack of good title, or any other defect for which a Provider or Purchaser may be liable to Bank at law or in equity, or in the event any Item is credited to the account in error or creates an overdraft, Bank shall have the right to charge any and all such returned, dishonored, or claimed upon Items or any Items credited in error or creating an overdraft against, in accordance with the applicable Lockbox Agreement. If the balance of collected funds then on deposit in the related Lockboxes and Lockbox Bank Accounts, Purchaser Collection Account, and the Holding Account is insufficient for such purpose, then Bank will immediately notify the related Provider and Purchaser and Lender, if Lender has given a Transfer Notice, of such fact, and the Purchaser and Lender, if Lender has given a Transfer Notice, will immediately reimburse Bank for the amount of any sums due Bank, provided, however, that the Purchaser's or Lender's obligation shall be subject to the conditions that (i) Purchaser or Lender shall have previously received the proceeds of such Items pursuant to this Agreement (and the liability of Lender shall be limited to the amounts actually received by Lender from Bank from and after the time that Lender has given a Transfer Notice to Bank) and (ii) any such reimbursement shall be only to the extent that Bank is not reimbursed therefor by the related Provider after demand by Bank upon Provider. Upon written notice by Bank to Purchaser, Bank may also charge the Lockboxes, Lockbox Bank Accounts, and the Purchaser Collection Account for all service charges owing Bank with respect to the Lockboxes, Lockbox Bank Accounts, the Purchaser Collection Account, and any other account of Purchaser maintained at Bank, it being agreed between Lender and Purchaser that Purchaser shall immediately reimburse all such amounts to Lender. Purchaser shall maintain a balance in the Purchaser Collection Account sufficient to offset any amounts charged against the account under this section 2. B.

3. BINDING AGREEMENT; ASSIGNMENT

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Purchaser shall have the right upon prior written notice to Bank (and with the prior written consent of Lender) at any time and from time to time to assign and/or delegate any or all of its rights and obligations hereunder to any assignee of its rights and obligations under a Master Purchase and Sale Agreement and/or to its servicer appointed pursuant to such Master Purchase and Sale Agreement but, upon any actual or purported assignment or delegation by Purchaser, Bank may terminate this Agreement by notice as of the effective date of such assignment or delegation or upon thirty (30) business days prior

written notice delivered in accordance with paragraph 7 below, whichever is earlier. In no event shall any assignment or delegation impair, cancel, or affect any obligations to Bank due and owing from Lender or Purchaser and Bank's rights in connection therewith under this Agreement or otherwise.

Bank shall at its sole and exclusive discretion have the right, without any advance notice to either Lender or Purchaser, at any time and from time to time, to assign and/or delegate any or all of its rights and obligations under this Agreement to any Bank affiliate, parent, subsidiary, or successor in interest; provided that Bank shall cause any such assignee to be bound by the terms of this Agreement pursuant to a written agreement, in form and substance reasonably satisfactory to Purchaser and Lender, not later than three business days after such assignment or delegation.

4. COUNTERPART ORIGINALS; USE OF SINGULAR OR PLURAL

This Agreement may be executed in any number of counterparts, and by the parties hereto on different counterparts, each of which shall be deemed an original and which together shall be deemed a single document. Any singular terms used herein shall include the plural and vice versa.

5. RECORD RETENTION; STATEMENTS

Bank shall maintain a microfilm or other record of each Item included in each deposit to the Lockbox Bank Accounts. Said microfilm or other record shall be available to Purchaser and Lender, upon written request, for a period of not less than four (4) years from the date of deposit of the Item, in accordance with Bank's usual practice or procedure from time to time. On or about each Wednesday and Friday, the Bank shall deliver, by Federal Express or other recognized overnight courier, to each of Lender, Purchaser, and a "servicer" designated by Purchaser from time to time, with respect to the period since the close of business on the most recent day covered by a previous delivery, copies of (i) each Item and other documents or other communication received in any Lockbox, and (ii) advices of each wire transfer or other electronic transfer received in any Lockbox Bank Account. The Bank shall include any corrections or adjustments in respect of any such delivery promptly after discovery of the need therefor.

6. TERMS AND TERMINATION

This Agreement shall commence upon each party's execution of this Agreement and shall continue in full force and effect until terminated by Purchaser or Bank or Lender for any reason upon thirty (30) days prior written notice to each other and Lender. However, notwithstanding anything to the contrary in the foregoing, if in the reasonable opinion of Bank, Lender or Purchaser shall be in breach of any material provision contained herein, Bank may terminate this Agreement upon five (5) business days prior written notice to Purchaser and Lender, provided that if Bank for any reason at its sole discretion deems itself insecure or at risk at any time under this Agreement,

Bank may terminate this Agreement immediately upon written notice to Purchaser and Lender, said notice to be provided either prior to, simultaneously with, or within a reasonably prompt time following such termination. In the event of termination of this Agreement for any reason, as well as by Bank for reasons of either breach of any material provision under this Agreement or Bank deeming itself insecure or at risk as set forth above, Bank shall upon the effective date of termination, and subject to all rights of set-off and otherwise of Bank, return and forward (i) to Purchaser (but only if Lender has not given a Transfer Notice to Bank) and (ii) to Lender (if Lender has given a Transfer Notice to Bank), at Purchaser's sole cost and expense, any Items, funds, mail, or other contents of the Lockboxes, the Lockbox Bank Accounts, and the Holding Account that are held therein or that are held by Bank at the time of such termination or that may be held therein or that may be received by Bank after such termination for a period not to exceed 60 days after termination. Termination of this Agreement shall not impair, cancel or affect any obligation due and owing from Lender or Purchaser to Bank at the time of such termination.

7. NOTICES

Any notice to Bank by Lender or Purchasershall be effective only (i) if in writing and (ii) upon actual receipt by Bank, Attention: Lockbox Processing, at 800 South Federal Highway, Boca Raton, Florida 33432. If Lender or Purchaser is a partnership, corporation or limited liability company, such notice shall be accompanied by a resolution, signed by the general partner, the president, ormanaging member, as applicable. Any notice to Lender or Purchaser shall be deemed effective upon mailing or delivery via overnight courier to the last known address of Lender or Purchaser or upon facsimile to the last known telecopy number of Lender or Purchaser appearing in the records of Bank. Notwithstanding the foregoing provisions of this Section for a Transfer Notice given by Lender to Bank to be effective, Lender must first provide Bank with the notice via telephone at (561)243-3221, followed by written notice via facsimile at facsimile number (561)391-5374 and written notice via overnight courier for next day delivery.

8. RESOLUTIONS

Upon execution of this Agreement, Lender and Purchaser shall provide Bank with appropriate resolutions authorizing the execution, delivery and performance of this Agreement and the transactions contemplated hereby.

9. LIABILITY; INDEMNIFICATION

Purchaser and Lender agree that Bank shall have no liability to either of them for any loss or damage that any or all may claim to have suffered or incurred, either directly or indirectly, by reason of this Agreement or any transaction or service contemplated by the provisions hereof, unless occasioned by the gross negligence or willful misconduct of Bank. In no event shall Bank be liable for losses or delays resulting from computer

malfunction, interruption of communication facilities, labor difficulties or other causes beyond Bank's reasonable control or for indirect, special, consequential, punitive or exemplary damages. Lender and Purchaser, jointly and severally, shall defend, indemnify, and hold Bank harmless against any and all demands, losses, damages, liabilities, judgments, assessments, awards, costs, legal (including without limitation reasonable attorney's fees, court costs and other reasonable litigation expenses), and other reasonable expenses, and in each instance other than resulting from the gross negligence or willful misconduct on the part of Bank, arising from or in connection with Bank entering into this Agreement or the performance of its duties and obligations hereunder, including any claim, proceeding, action or suit, including any compromise or settlement thereof, which is either (i) brought against Bank in connection with the performance of Bank's obligations hereunder other than with respect to any claim brought against Bank by Purchaser or Lender, and (ii) brought by Bank to enforce any rights or obligations hereunder, including without limitation any rights to payment; provided that the liability of Lender shall be limited to the amounts actually received by Lender from and after the time that Lender has given a Transfer Notice to Bank. Lender and Purchaser agree that Bank's compliance with the terms hereof, including the transfer of amounts on deposit in the Lockbox Bank Accounts or Purchaser Collection Account, shall not constitute willful misconduct by the Bank whether or not the terms of this Agreement comply with applicable statutes, rules, regulations, orders, or decisions of any court or governmental body. Furthermore, notwithstanding anything in this Agreement to the contrary, (i) Bank shall not be concerned with the terms, provisions, or content of any agreement entered into by the other parties to this Agreement and to which Bank is not a party regarding or relating to the subject matter or purpose of this Agreement, including but not limited to any such agreement expressly referred to in this Agreement, (ii) Bank shall have no fiduciary duties under this Agreement or any transaction or service contemplated by the provisions hereof, to any party, and (iii) Bank shall have no liability as a result of acting or refraining from acting in good faith on any written notice, request, or withdrawal, payment, transfer, or other instruction (including but not limited to electronically confirmed facsimiles) purportedly furnished by Provider, Purchaser, or Lender in accordance with the terms hereof, in which case the parties agree that Bank has no duty to make any further inquiry whatsoever; provided that this sentence shall not limit the rights of Lender under Section 1. above.

10. COSTS

Bank shall upon notice have the right to debit the Lockboxes, Lockbox Bank Accounts, and Purchaser Collection Account for all expenses incurred by Bank in the performance of this Agreement, including but not limited to, post office box rental, telephone, mailing, messenger and postage costs. If sufficient collected funds shall not be present in such accounts to cover such costs, Bank shall have the right, without demand or notice of any kind, the receipt of which is hereby waived by Provider and Purchaser, to setoff any and all outstanding costs against any balances, credits, deposits, accounts or monies of Provider or Purchaser held by Bank.

11. SERVICE FEES

Purchaser shall pay Bank's service fees for its services under this Agreement as set forth in the attached Schedule 1. Bank shall have the right to increase said service fees once during each year, upon the Bank's annual review of such service fees, and shall provide Purchaser with written notice of same a minimum of forty-five (45) days prior to the effective date of such increase. Upon Purchaser's failure to pay the service fee, Bank shall have the right to debit the Lockboxes, Lockbox Bank Accounts, and Purchaser Collection Account, or any other account of Purchaser maintained at Bank for all such service fees. If sufficient collected funds shall not be present in such accounts to cover such fees, Bank shall have the right, without demand or notice of any kind, the receipt of which is hereby waived by Provider and Purchaser, to offset outstanding service fees against any balances, credits, deposits, accounts or monies of Provider or Purchaser held by Bank in the same order of priority as set forth in Section 2.B.

12. SEVERABILITY

In the event that any provision of this Agreement shall for any reason be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain unimpaired. The parties hereto agree that any such invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable valid, legal and enforceable provision which most closely approximates the economic intent and effect of the invalid, illegal or unenforceable provision.

13. NON-WAIVER

No obligation or duty of Bank, Lender, or Purchaser hereunder shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by an authorized representative of the party waiving such obligation or duty. Failure or delay by any party to exercise any right, power, privilege or remedy hereunder shall not operate as a waiver of any different or subsequent breach hereunder.

14. MODIFICATIONS

No change, addition, modification, or discharge, in whole or in part, of any of the terms and conditions contained herein, shall be effective unless it is in a separate writing and signed by all parties hereto.

15. FORCE MAJEURE

Bank shall not be liable or responsible for failure or delay in the performance of its duties or obligations under this Agreement if such failure or delay is due to causes beyond the reasonable control of Bank, including but not limited to, acts of civil or

banking authorities, national emergencies, labor difficulties, fire, flood, or other catastrophes, nuclear disaster, acts of God, insurrection, war, public utility failure, accident or malfunctions of the processing equipment involved.

16. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL; NO BANKRUPTCY PROCEEDINGS

This Agreement has been made, executed and shall be performed in the State of Florida, and shall be governed and construed for all purposes under and in accordance with the laws of the State of Florida, without regard to its conflict of laws principles. The parties hereto consent to the exclusive jurisdiction and venue of the state or federal courts located within the County of Palm Beach, State of Florida, for any action or proceeding arising out of or relating to this Agreement. Each party hereto hereby waives personal service of any summons, complaint, or other process in connection with any such action or proceeding and agree that the service thereof may be made by first class mail to the address determined in accordance with Section 7. The parties hereto waive, to the fullest extent permitted by law, all rights to trial by jury in any action, proceeding, or counterclaim brought by any party against the other, or in any matter whatsoever arising out of or in any manner related to this Agreement. Bank agrees that it shall not institute against, or solicit or encourage any person or entity to institute against, or join any person or entity in instituting against, Purchaser or any of its property any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or any similar proceeding under any federal, state, or other applicable law.

17. LEGAL PROCESS

To the extent it is in accordance with Bank's usual or customary practice, Bank agrees to use its best efforts to provide Purchaser with notice of the service of any levies, restraining notices, attachments, court orders, or other or similar legal process affecting any of the Lockboxes or the Lockbox Accounts or the Purchaser Collection Account so that Purchaser may have an opportunity within any required time in keeping with applicable law to apply for relief from such process to any appropriate court, agency, or other applicable party. Bank shall have no obligation to undertake any defense or challenge to such process or to retain counsel for that purpose. In the event Purchaser or Lender challenges the legal validity or effectiveness, in whole or in part, of such process the challenging party (or, if applicable, the challenging parties) at its or their sole cost and expense agrees to defend, indemnify, and hold Bank harmless from any judgment, loss, cost, expense, fees (including attorney's fees), penalties, sanctions and any other amounts that may be imposed or Bank may suffer of whatever type or nature as the result of such process.

21. TITLES OF CONVENIENCE

The Section titles in this Agreement are included as a matter of convenience, for reference purposes only, and in no way define, limit, expand or describe the scope or intent of any provision herein.

21. ACCEPTANCE

This Agreement shall not become effective until accepted by all parties hereto, such acceptance to be evidenced solely by each party's execution of this Agreement.

21. INTEGRATION

This Agreement is intended as the complete and exclusive statement of the Agreement among the parties hereto relating to the subject matter hereof, and supersedes all prior discussions, correspondence, negotiations, and agreements relating to the subject matter hereof.

21. AUTHORITY

Lender and Purchaser hereby represent and warrant that the individuals signing on their respective behalves have the power and authority to enter into this Agreement and that this Agreement constitutes their valid and binding obligation. If Lender or Purchaser is a partnership, Lender and Purchaser hereby represent and warrant that the signatures below are the authentic signatures of each and every one of their general partners.

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

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

SUNTRUST BANK

By: _____
Name: PAULA M PEARSON
Title: SENIOR VICE PRESIDENT

SUN CAPITAL HEALTHCARE, INC.

By: _____
Name: _____
Title: _____

FOUNDING PARTNERS MULTI-STRATEGY FUND, L.P.
as LENDER
By Founding Partners Capital Management Company,
Its General Partner

By: _____
Name: _____
Title: _____

SUNTRUST BANK

By: _____
Name: _____
Title: _____

SUN CAPITAL HEALTHCARE, INC.

By: _____
Name: Howard B. Kaplan
Title: President + Chief Operating Officer

FOUNDING PARTNERS MULTI-STRATEGY FUND, L.P.
as LENDER
By Founding Partners Capital Management Company,
its General Partner

By: _____
Name: _____
Title: _____

EXHIBIT A

[Date]

VIA TELECOPIER AND OVERNIGHT COURIER

SunTrust Bank
Attention: Lockbox Processing
800 South Federal Highway
Boca Raton, Florida 33432

Re: Master Wholesale Lockbox Deposit and Blocked Account Service Agreement dated as of July 6, 2000 (as amended, amended and restated or otherwise modified from time to time, the "Agreement"), among SunTrust Bank, Founding Partners Multi-Strategy Fund, L.P., and Sun Capital Healthcare, Inc.

Ladies and Gentlemen:

Please refer to the above-referenced Agreement. This letter is a "Transfer Notice" referred to in the Agreement. In accordance with the Agreement, we hereby instruct you to transfer all collected and available funds in the Lockbox Bank Accounts (as defined in the Agreement) and in the Holding Account (as defined in the Agreement) at the end of each business day by wire transfer in accordance with the following instructions (unless we instruct you otherwise from time to time after the date hereof): [insert instructions].

Very truly yours,

FOUNDING PARTNERS MULTI-STRATEGY FUND, L.P.

By Founding Partners Capital Management Company, its general partner

By:_____
Name:
Title:

Koslow Affidavit Exhibit 3

BROAD AND CASSEL
ATTORNEYS AT LAW

ONE BISCAYNE TOWER, 21ST FLOOR
2 SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131-1811
TELEPHONE: 305.373.9400
FACSIMILE: 305.373.9443
www.broadandcassel.com

DANIEL NEWMAN, ESQ.
DIRECT LINE: (305) 373-9467
DIRECT FACSIMILE: (305) 995-6387
EMAIL: dnewman@broadandcassel.com

July 15, 2009

VIA FACSIMILE (561.391.5374) AND OVERNIGHT COURIER

SunTrust Bank
Attention: Lockbox Processing
800 South Federal Highway
Boca Raton, Florida 33432

Re: Master Wholesale Lockbox Deposit and Blocked Account Service Agreement dated as of July 6, 2000 (as amended, amended and restated or otherwise modified from time to time, the "Agreement"), among SunTrust Bank, Founding Partners Stable-Value Fund, L.P. (f/k/a Founding Partners Multi-Strategy Fund, L.P.), and Sun Capital Healthcare, Inc.

Ladies and Gentlemen:

Please refer to the above-referenced Agreement. This letter is a "Transfer Notice" referred to in the Agreement. In accordance with the Agreement, we hereby instruct you to transfer all collected and available funds in the Lockbox Bank Accounts (as defined in the Agreement) and in the Holding Account (as defined in the Agreement) at the end of each business day by wire transfer in accordance with the following instructions (unless we instruct you otherwise from time to time after the date hereof):

Mellon United National Bank, Miami, Florida
ABA#: 067009646
Swift: MELNUS3PMUB
Account Name: Daniel S. Newman, As Receiver for Founding Partners Stable Value Fund, L.P.
Account #: 0066073134

Sincerely,

BROAD AND CASSEL

FOR

Daniel Newman, Esq.
Court-Appointed Receiver for Founding Partners Capital Management Co., Founding Partners Stable-Value Fund, L.P., Founding Partners Stable-Value Fund, II, L.P., Founding Partners Global Fund, Ltd., and Founding Partners Hybrid-Value Fund, L.P.

DN:mm

BROAD AND CASSEL
ATTORNEYS AT LAW

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DANIEL NEWMAN, ESQ.
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DIRECT FACSIMILE: (305) 995-6387
EMAIL: dnewman@broadandcassel.com

July 15, 2009

VIA FACSIMILE (561.391.5374) AND OVERNIGHT COURIER

SunTrust Bank
Attention: Lockbox Processing
800 South Federal Highway
Boca Raton, Florida 33432

Re: Master Wholesale Lockbox Deposit and Blocked Account Service Agreement dated as of July 19, 2002 (as amended, amended and restated or otherwise modified from time to time, the "Agreement"), among SunTrust Bank, Founding Partners Stable-Value Fund, L.P., and Sun Capital, Inc.

Ladies and Gentlemen:

Please refer to the above-referenced Agreement. This letter is a "Transfer Notice" referred to in the Agreement. In accordance with the Agreement, we hereby instruct you to transfer all collected and available funds in the Lockbox Bank Accounts (as defined in the Agreement) and in the Holding Account (as defined in the Agreement) at the end of each business day by wire transfer in accordance with the following instructions (unless we instruct you otherwise from time to time after the date hereof):

Mellon United National Bank, Miami, Florida
ABA#: 067009646
Swift: MELNUS3PMUB
Account Name: Daniel S. Newman, As Receiver for Founding Partners Stable Value Fund, L.P.
Account #: 0066073134

Sincerely,

BROAD AND CASSEL

FOR

Daniel Newman, Esq.
Court-Appointed Receiver for Founding Partners Capital Management Co., Founding Partners Stable-Value Fund, L.P., Founding Partners Stable-Value Fund, II, L.P., Founding Partners Global Fund, Ltd., and Founding Partners Hybrid-Value Fund, L.P.

DN:mm

Koslow Affidavit Exhibit 4

BOCA RATON
BOSTON
CHICAGO
LONDON
LOS ANGELES
NEW ORLEANS
NEWARK
PARIS
SÃO PAULO
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PROSKAUER ROSE LLP

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Telephone 212.969.3000
Fax 212.969.2900

Vincenzo Paparo
Member of the Firm

Direct Dial 212.969.3125
vpaparo@proskauer.com

July 17, 2009

Via E-mail (.pdf) and Federal Express

Daniel S. Newman, Esq.
Broad and Cassel
2 South Biscayne Blvd.
21st Floor
Miami, FL 33131

Re: (i) Credit and Security Agreement (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time, the "SCH Credit Agreement") dated as of June 6, 2000 between Sun Capital Healthcare, Inc., as borrower ("SCH"), and Founding Partners Stable-Value Fund, L.P. (the "Lender" or "Founding Partners") (as successor), as lender and (ii) Credit and Security Agreement (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time, the "SC Credit Agreement") dated as of January 24, 2002 between Sun Capital, Inc., as borrower ("SC", and together with SCH, the "Borrower"), and the Lender, as lender

Dear Mr. Newman:

This letter is in response to your actions as the Receiver (the "Receiver") of the Lender in reference to the SCH Credit Agreement and the SC Credit Agreement (collectively, the "Agreements"). Reference is also made to those certain blocked account agreements with SunTrust Bank.

We have repeatedly requested the opportunity to discuss a workout of the loan with you. These requests have been refused repeatedly pending satisfaction of your ever increasing litany of meeting pre-conditions notwithstanding delivery to you by the Borrower of volumes of

current financial information including, without limitation, (i) access to the accounts of the Borrower at SunTrust Bank (collectively, the "SunTrust Accounts"), (ii) a 13-week cash flow and (iii) other current financial information[1]. By your own admission you have not reviewed all the information in the files of the Lender yet you continue to press the Borrower for additional information representing historical, irrelevant and/or protected information. The Borrower delivered to Founding Partners in January, 2009 THIRTY boxes of documents containing a list of all customers together with applicable purchase agreements, security agreements, and U.C.C. filings for each customer. We have requested that you use these documents instead of requiring that the production be done all over again, particularly due to the urgency of the situation and the need to meet to begin to resolve the issues as soon as possible. Your counsel has refused stating that it was "more convenient" to have Sun give the Receiver everything and, just this week, stating that "no one knows what is in the files of the Lender". Apparently, rather than reviewing the records of your own receivership company, for your convenience, you want us to reproduce all these historic records, at a minimum, and to do so (1) before any discussion of resolution and (2) while you are sending default notices, filing lawsuits, sending subpoenas seeking depositions and innumerable documents (almost all of which you either have from the Borrower or from the files of Founding Partners), declining any standstill agreements, declining any confidentiality agreements (while demanding trade secrets of the Borrower), seizing the SunTrust accounts, and generally proceeding in full litigation mode. It goes without saying that this conduct is entirely

[1] Aging of factored or financed receivables by customer and payer class; audited, reviewed, compiled, and internally prepared financial statements for all periods from 12/31/07 to 5/31/09; detailed general ledgers, cash receipts journals, and cash disbursement journals; detailed factoring records by hospital and other customers; cash flow projections; a schedule detailing amounts receivable from related parties identifying the related parties; organization chart for the Borrower and affiliates; and sample purchase agreement, sample security agreement, and sample U.C.C.

unreasonable and wholly inconsistent with any desire to find a mutually agreeable solution here, despite that being in the best interests of our constituent investors.

You are hereby put on notice that, by blocking all the Borrower's SunTrust Accounts, massive damages and potential physical harm to patients will result, which will lead to liability for not just the Lender but also for you. Your actions in freezing the SunTrust Accounts, are now endangering the safety and lives of over a thousand patients who rely on SCH clients for their critical healthcare needs. These actions, in addition to the Lender's material breach of its obligations under the SCH Credit Agreement to fund the January 27, 2009 draw request, are only further irreparably damaging the business and operations of SC and SCH and that of its hospital clients and their patients. Your interference with the Borrower's utilization of all available capital to maintain collateral value will directly result in steps to move all patients out of the hospitals, and the destruction of the businesses of SCH and SC, Promise Healthcare, Inc. ("Promise"), Success Healthcare, LLC ("Success"), and the other client hospital businesses.

In addition, this letter shall serve to memorialize and respond to the salient points of your meeting yesterday with Lawrence Heller, Esq. on behalf of the Borrower. The above situation was generally explained by Mr. Heller to you and to your counsel. In response, you told Mr. Heller you feel the Borrower is not cooperating since: (1) no written financial restructuring proposal has yet been submitted and (2) the Borrower is protecting its rights by seeking court approval to institute suit against the Receiver (discussed *infra*). As you know, we have sought repeatedly to schedule a meeting with you to discuss a workout of the loan but each time numerous pre-conditions have been demanded, including in writing as recently as Wednesday

night. Of course, it would have been useful to first meet to discuss various alternatives which might be of interest to you *before* presenting a formal proposal, but apparently you do not actually wish to resolve this matter and instead put constant roadblocks in the way of settlement efforts.

You also advised Mr. Heller that your action in freezing the SunTrust accounts was also precipitated by SC and SCH's motion to modify the Receiver's appointment order to modify the prohibition on suits against the Receiver, because you were concerned SC and SCH would file a New York lawsuit. However, this is entirely untrue because: (1) SC and SCH were willing to enter into a standstill agreement where neither side would sue the other until settlement efforts were complete and (2) upon your rejection of such a standstill agreement, we specifically discussed with Mr. Etra that we would go forward with the motion but not sue until after settlement discussions.

You appear to believe the closure of hospitals does not matter because DSH receivables are "worthless". We put you on notice that this position will be unsustainable in court as we can demonstrate that the Borrower has to date collected all DSH receivables, totaling several hundred million dollars. Therefore, in addition to all other damages resulting directly from the Receiver's action, as a result of hospital closures you will be responsible for the loss of over $150 million in DSH receivables currently outstanding.

You also raised with Mr. Heller the closure of the Michael Reese hospital and the possibility that receivables relating to that hospital recorded in Sun's financial records may be

inaccurate. First, it has been known by Founding Partners for months that this hospital was closing on June 30, 2009, because the property was being sold by the landlord. In fact, Founding Partners met with professionals for the Michael Reese hospital. Indeed, you learned about this closure from the Borrower through the many conversations that have taken place between the Borrower's Chief Financial Officer and his staff and your accounting experts during their day long visits to the offices of the Borrower. In fact, all the information you have has come directly as the result of our clients' cooperating and providing you all current financial information so that you would be in a position to assess the assets and collateral for the loans. Second, any suggestion that the Borrower has improperly recorded amounts due from the Michael Reese hospital in its records is absolutely untrue. The closing of the hospital did NOT automatically result in the loss of ALL receivables. The Borrower is still collecting receivables and will continue to do so (including DSH receivables) for some period of time. Finally, we fail to see how the closing of one hospital would justify the seizing of the SunTrust Accounts, resulting in the closing of all the hospital clients of the Borrower.

The two other supposed bases for your action, set forth in your July 16 letter, the Borrower's "failure to deliver current information about Sun Entities" and the Borrower's obtaining court-ordered relief from the receiver's subpoenas, are wholly disingenuous and provide no justification for your action. You have been provided the current financial information for the Borrower, as you and your accounting experts know, and obtaining court-ordered relief from your legally defective and wholly unreasonable subpoenas (which you refused to modify) is not and cannot be characterized as a failure to cooperate.

Not one of your explanations for your action in freezing the SunTrust Accounts provides any justification for that action, particularly since the entire basis for the alleged "default" is without any legal merit and is without foundation in the face of the Receiver's own admission that SC and SCH obtained the Lender's authorization for its uses of funds. The eight year course of conduct between the Lender and the Borrower, and the Borrower's compliance with all the Lender's requirements, including payment of all interest due (over $230 million) stands in stark contrast to your improper and unlawful attempts to ignore the course of conduct and to re-characterize the Agreements, in order to declare a "default". Since your action in seizing the funds needed to continue refunding the hospital clients will destroy most of the collateral value at all hospitals and other clients of the Borrower, we have no alternative but to conclude with our clients that the blocking of the SunTrust Accounts is a result of bad faith actions by you. Of course, *all* your actual uses of the Borrower's frozen funds will be obtained in future discovery, by the Borrower and all other persons injured by your actions, including the use of any Borrower funds to pay the costs of receivership and related legal fees and expenses.

Among the likely claimants against you on account of the unwarranted freezing of the SunTrust Accounts (and the very likely improper subsequent use of those funds for receivership purposes instead of for collateral preservation purposes) are SC, SCH, Promise, Success, each of the 22 client hospitals, the investors (who will lose most of their investments as a direct result of your action), patients, families of patients, and estates of patients who may pass away on account of having to be moved unnecessarily while in grave physical condition, as a result of your actions.

Notwithstanding all the above events, the Borrower is still interested in the opportunity to discuss a fair and amicable settlement, subject to all the protections of the federal rules. With respect to your most recent letters, apparently, informed of our intent to file a TRO application with the Court, you are now ready to meet. We, too, wish to meet to reach a resolution that will both protect the collateral and protect lives, and have thus scheduled a meeting with you this Sunday and have even agreed to bring our investment banker from Cain Brothers. However, please be advised that if the matter is not resolved at that time, patients must be moved and hospitals closed. Furthermore, your offer (apparently intended to avoid a TRO) to fund critical needs on a hospital by hospital basis upon a written demonstration of need for each expense for each hospital is impractical and untenable given the number of hospitals and the urgency of the need. Therefore, we request that you immediately inform SunTrust that you are withdrawing your notice, until we have had an opportunity to explore fully a mutually satisfactory resolution. Your failure to do so will have the consequences set forth above and be entirely upon your head and that of the Securities and Exchange Commission.

Without limiting the foregoing, such settlement discussions will be without prejudice to any rights and remedies the Borrower has under the Agreements, or under applicable law or at equity. Furthermore, nothing herein (i) shall be considered an admission of liability or against the interest of Borrower or (ii) a waiver of any claims or counterclaims Borrower may have relating to the breach by the Lender under the Agreements. The Borrower hereby reserves the right to take such further action, at such times, as the Borrower, in its discretion, deems necessary or appropriate to protect its interests.

Very truly yours,

Vincenzo Paparo

cc: (Via E-mail (.pdf))
Susan Barnes De Resendiz, Esq.
Jonathan Etra, Esq.
Michael Magidson, Esq.
Sarah Gold, Esq.
C. Ian Anderson, Esq.

Koslow Affidavit Exhibit 5

From: Paparo, Vincenzo
Sent: Saturday, July 18, 2009 1:14 PM
To: Susan Barnes de Resendiz
Cc: Jonathan Etra; Michael Magidson; Gold, Sarah S.
Subject: Receiver
Importance: High

Susan, I am writing to notify you that Sun Capital has determined that it must immediately inform it's hospital clients that it can no longer provide financing for patient care. Hospital managers were briefed regarding the receivers actions earlier this morning. Not surprisingly, they have correctly determined they cannot risk patent safety due to the lack of financing or under the financing regime proposed by the receiver, namely, the availability of funds based solely upon "the best interests of the Receivership Estate". Accordingly, the orderly planning and emergency evacuation of patients is now underway.

I also wish to inform you that yesterday afternoon Sun received requests for funding from one hospital client. The funds were needed for the purchase of medical supplies for this weekend. Sun did not meet the funding request solely because of the receivers grossly negligent and self interested actions. We advised you again yesterday of the harm that would result from your failure to agree to release those funds immediately but we received no response. The receiver has therefore knowingly and needlessly placed patients lives at risk.

First and foremost, senior management owes its patients a duty to protect their safety and welfare. Accordingly, they are now working diligently on implementing and overseeing the emergency evacuations. The Sunday morning meeting now needs to occur at the offices of Sun because the principals must be available to coordinate with their staff to insure the proper timely implementation and oversight of the shut down of the hospitals.

I will keep you informed of further developments during the course of the day. If you feel the need to call me you can reach me on my cell phone.

Vince

Koslow Affidavit Exhibit 6

From: ed.foster@akerman.com [mailto:ed.foster@akerman.com]
Sent: Monday, July 20, 2009 1:42 PM
To: sderesendiz@broadandcassel.com; darmstrong@promisehealthcare.com
Cc: Paparo, Vincenzo; LHeller@ghblaw.com; Laura.Frick@SunTrust.com; Brian.Clay@SunTrust.com
Subject: RE: Sun Capital's counsel

We are discussing the implementation of the Receiver's instructions with Sun Capital (Don LaRossa) and are supposed to hear from them by 2 about our proposed solution to comply with the unfreezing of the accounts while at the same time complying with your instructions on the $14 Million cap. The problem is that we cannot unfreeze the accounts and still be sure of complying with your instructions re: the $14 Million cap. You've created an impossible situation for the Bank.

From: Susan Barnes de Resendiz [mailto:sderesendiz@broadandcassel.com]
Sent: Monday, July 20, 2009 1:39 PM
To: Foster, Joseph (Sh-Orl); darmstrong@promisehealthcare.com
Cc: vpaparo@proskauer.com; LHeller@ghblaw.com; Laura.Frick@SunTrust.com; Brian.Clay@SunTrust.com
Subject: RE: Sun Capital's counsel

Dear Ed,

Our client would like a status report on where we are on implementing the agreement between the Receiver and Sun. We seem to have been dropped from the communication loop. I'd like to respectfully remind you that it is the Receiver who is authorizing your client to make a limit release of the cash collateral securing the loans made by the receivership entities to the Sun entities.

Please communicate with us too when you are resolving whatever issues that seems to be blocking the release of funds. Our accountant on site with Larry Leder and the Sun executives has just reported to us that, as of 12:30 PM today, no funds had yet been released.

Susan

Susan Barnes de Resendiz
OF COUNSEL
2 SOUTH BISCAYNE BLVD.
21ST FLOOR
MIAMI, FL 33131

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DIRECT LINE: 305-373-9474
DIRECT FACSIMILE: 305-995-6425
E-MAIL: sderesendiz@broadandcassel.com

www.broadandcassel.com

From: ed.foster@akerman.com [mailto:ed.foster@akerman.com]
Sent: Monday, July 20, 2009 11:06 AM
To: darmstrong@promisehealthcare.com
Cc: Susan Barnes de Resendiz; vpaparo@proskauer.com; LHeller@ghblaw.com; Laura.Frick@SunTrust.com; Brian.Clay@SunTrust.com
Subject: Sun Capital's counsel

David:

Will do. Vince and / or Larry, are either of you available to talk right now? If so, how do we reach you?

From: David Armstrong [mailto:darmstrong@promisehealthcare.com]
Sent: Monday, July 20, 2009 11:02 AM
To: Foster, Joseph (Sh-Orl)
Cc: sderesendiz@broadandcassel.com; Paparo, Vincenzo; Lawrence R. Heller
Subject: RE: Instructions from Receiver to SunTrust

Thanks Ed but I am not Sun Capital or Sun Capital Healthcare counsel and have no knowledge of how the factoring/banking instructions might work. I am in-house counsel for a Sun client, Promise Healthcare. Please direct your communications regarding Sun to its Counsel Vince Paparo at vpaparo@proskauer.com and Larry Heller at lheller@ghblaw.com

David J. Armstrong, Esq.
EVP, General Counsel &
Chief Compliance Officer
Promise Healthcare, Inc.
999 Yamato Road
Third Floor
Boca Raton, FL 33431
Telephone: 561-869-3100
darmstrong@promisehealthcare.com

communication for the intended recipient, **you are hereby notified that you have received this communication in error and that any review, disclosure, dissemination, distribution, or copying of it or its contents is prohibited**. If you have received this communication in error, please destroy all copies of this communication and any attachments and contact the sender by reply email.

From: ed.foster@akerman.com [mailto:ed.foster@akerman.com]
Sent: Monday, July 20, 2009 10:36 AM
To: mmagidson@broadandcassel.com; Laura.Frick@SunTrust.com; Brian.Clay@SunTrust.com
Cc: vpaparo@proskauer.com; jetra@broadandcassel.com; sderesendiz@broadandcassel.com; dnewman@broadandcassel.com; DSIEGEL@bdpb.com; David Armstrong; saufiero@proskauer.com
Subject: RE: Instructions from Receiver to SunTrust

At Susan Barnes de Resendiz's suggestion, I have called and left a message for Sun Capital Healthcare's in-house counsel, David Armstrong, to talk about the logistics of how these instructions would work in actual practice.

www.akerman.com | Bio | V Card

From: Michael Magidson [mailto:mmagidson@broadandcassel.com]
Sent: Monday, July 20, 2009 10:24 AM
To: Foster, Joseph (Sh-Orl); Laura Langford Frick (Laura.Frick@SunTrust.com); 'Brian.Clay@SunTrust.com'
Cc: 'vpaparo@proskauer.com'; Jonathan Etra; Susan Barnes de Resendiz; Daniel Newman; 'David Siegel'; David J. Armstrong Esq (darmstrong@promisehealthcare.com)
Subject: Instructions from Receiver to SunTrust

Instructions regarding implementation of agreement between Receiver, Sun Capital, Inc., Sun Capital Healthcare, Inc., and LH Acquisitions, LLC:

1. The customer lockboxes (75 for Sun Capital Healthcare and 2 for Sun Capital) should be unfrozen/released so that funds can be received into them and then swept into the Master Accounts ending in 31847 ($220,570.92) and 31913 ($323,682.47) (both, for Sun Capital Healthcare clients) and the Factoring Account ending in 83842 ($146,533.65) (for Sun Capital).

2. The LH Acquisition account ending in 67033 should not be unfrozen/released ($120,570.04).

3. The other accounts used for operating the Sun Capital and Sun Capital Healthcare businesses should be unfrozen/released. For clarification, these are the Sun Capital Group account ending in 46582 ($25,078.61), the Sun Capital Healthcare Payroll Account ending in 31880 ($56,035.65 - this figure includes the amount cleared for payroll on Friday), the Sun Capital Healthcare Operating Account ending in 31902 ($51,116.98), the Sun Capital Healthcare Reserve Accounts ending in 32551 ($90.81) and 61258 ($500.00), and the Sun Capital accounts ending in 80300 ($100.00) and 83831 ($41,842.43) .

4. All of the amounts in every account (except the LH Acquisition account) should be aggregated and counted toward the total amount ($14 million) to be released to Sun Capital and Sun Capital Healthcare. This amount is $868,643.78, when the LA Acquisition Account amount is deducted and the amount cleared last Friday for payroll ($38,299.33) is added back in.

5. SunTrust should continue releasing money, until Friday, July 24, to Sun Capital and Sun Capital Healthcare until the total amount released from all accounts equals $14 million.

Michael D. Magidson, Esq.
100 North Tampa Street
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Telephone:
813.225.3020
Facsimile:
813.225.3039

BIO

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Direct Facsimile: 813.204.2137
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www.broadandcassel.com

Pursuant to federal regulations imposed on practitioners who render tax advice ("Circular 230"), we are required to advise you that any tax advice contained herein is not intended or written to be used for the purpose of avoiding tax penalties that may be imposed by the Internal Revenue Service. If this advice is or is intended to be used or referred to in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement, the regulations under Circular 230 require that we advise you as follows: (1) this writing is not intended or written to be used, and it cannot be used, for the purpose of avoiding tax penalties that may be imposed on a taxpayer; (2) the advice was written to support the promotion or marketing of the transaction(s) or matter(s) addressed by the written advice; and (3) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

THE INFORMATION CONTAINED IN THIS TRANSMISSION IS ATTORNEY PRIVILEGED AND CONFIDENTIAL. IT IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. ANY ATTACHMENTS TO THIS TRANSMISSION ARE FOR THE SOLE PURPOSE OF CONVEYING THE DIRECT WRITTEN AND COMMONLY VISIBLE COMMUNICATION CONTAINED THEREIN. NO TRANSMISSION OF UNDERLYING CODE OR METADATA IS INTENDED. USE OF ANY ATTACHMENT FOR ANY PURPOSE OTHER THAN RECEIPT OF THE DIRECT WRITTEN COMMUNICATION CONTAINED THEREIN IS STRICTLY PROHIBITED. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY AND RETURN THE ORIGINAL MESSAGE TO THE SENDER. THANK YOU.

Koslow Affidavit Exhibit 7

From: Susan Barnes de Resendiz [mailto:sderesendiz@broadandcassel.com]
Sent: Monday, July 20, 2009 8:21 AM
To: Foster, Joseph (Sh-Orl); Jonathan Etra; Michael Magidson
Cc: Daniel Newman
Subject: Re: SunTrust / Founding Partners / Sun Capital / scope of agreement for unfreezing of accounts

Why would you not send it to Receiver's counsel as well? Your withholding the information from a federal court receiver and giving the information on how much is in the accounts only to opposing counsel is unacceptable. If we don't get this information with sufficient time to instruct the bank on which accounts to release, you will have to answer to the court why you interfered with the execution of the federal receiver's agreement. If patients or the Sun hospitals are harmed, you will be responsible.
Susan Barnes de Resendiz

From: ed.foster@akerman.com
To: Susan Barnes de Resendiz
Cc: Daniel Newman; Jonathan Etra; Michael Magidson; vpaparo@proskauer.com ; Scott Flint
Sent: Mon Jul 20 08:04:37 2009
Subject: RE: SunTrust / Founding Partners / Sun Capital / scope of agreement for unfreezing of accounts

Susan:

I have provided this information to Vince Paparo and Susan Aufiero a few minutes ago via e-mail. I've asked them to send it along to you. Let me know if you don't receive it.

From: Susan Barnes de Resendiz [mailto:sderesendiz@broadandcassel.com]
Sent: Monday, July 20, 2009 1:20 AM
To: Foster, Joseph (Sh-Orl)
Cc: Daniel Newman; Jonathan Etra; Michael Magidson; 'vpaparo@proskauer.com'; Scott Flint
Subject: Re: SunTrust / Founding Partners / Sun Capital / scope of agreement for unfreezing of accounts

Ed, none of us knows what is in the various accounts. You promised to get us that info last week. Please email this info to all parties immediately.
Susan

From: ed.foster@akerman.com
To: Susan Barnes de Resendiz
Cc: Daniel Newman; Jonathan Etra; Michael Magidson; vpaparo@proskauer.com ; Scott Flint
Sent: Sun Jul 19 20:45:35 2009
Subject: SunTrust / Founding Partners / Sun Capital / scope of agreement for unfreezing of accounts

I note that there has been some disagreement between the Receiver and the Sun Capital entities regarding the issue of whether certain accounts, including the Sun Capital Healthcare Operating Account, the LH Acquisition Account, the Sun Capital Reserve Account, the Sun Capital Group, Inc. stand-alone account, the Reserve Account ending in 32551, and the Sun Capital, Inc. accounts identified on p. 4 of the Cash Flow PowerPoint, were or were not properly the subject of the Receiver's Transfer Notices.

Do the parties agree that those accounts should be released from the current freeze along with the lock box accounts, Sun Capital Healthcare's Government and Non-Government Master Accounts, Sun Capital Healthcare's Holding Account, and Sun Capital's Factoring Account?

From: Susan Barnes de Resendiz [mailto:sderesendiz@broadandcassel.com]
Sent: Sunday, July 19, 2009 7:40 PM
To: Foster, Joseph (Sh-Orl)
Cc: Daniel Newman; Jonathan Etra; Michael Magidson; 'Paparo, Vincenzo'; Scott Flint
Subject: FW: Attached Image

Dear Ed,
As promised, attached is the agreement between the Sun Capital and Sun Capital Healthcare and the Receiver regarding use of the Receiver's cash collateral in the Sun lock box accounts. Please instruct your client SunTrust to proceed in accordance with the attached agreement. Please call me ASAP to discuss the process by which your client will permit the collections in the Sun lock boxes to be transferred to the respective Sun Capital and Sun Capital Healthcare bank accounts at SunTrust to permit use of these collections by the Sun Entities.

To the extent that the Receiver's Notices direct that SunTrust begin transferring the monies in the Sun lock box accounts tomorrow, the Receiver and the Sun Entities have agreed that SunTrust can release funds to Sun in accordance with the attached Agreement. In order to implement this Agreement, the Receiver understands that your client will permit the movement of collections in the lock boxes to the master accounts and the holding accounts for use by Sun. This instruction applies to alll funds currently held in the lock boxes and collected in the lock boxes through Friday, July 26, 2009, up to $14,000,000.
I am available to discuss the implementation of the depositors' and the lender's agreement attached hereto. My cell phone is 713-907-0571.
It is critical to the operation of the Sun healthcare facilities that funds should be released to Sun no later than 10 AM tomorrow morning.
Sincerely,
Susan

Susan Barnes de Resendiz
OF COUNSEL
2 SOUTH BISCAYNE BLVD.
21ST FLOOR
MIAMI, FL 33131
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FACSIMILE: 305.373.9443
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DIRECT LINE: 305-373-9474
DIRECT FACSIMILE: 305-995-6425
E-MAIL: sderesendiz@broadandcassel.com

BROAD AND CASSEL
ATTORNEYS AT LAW

www.broadandcassel.com

From: David Armstrong [mailto:darmstrong@promisehealthcare.com]
Sent: Sunday, July 19, 2009 6:12 PM
To: Susan Barnes de Resendiz
Subject: FW: Attached Image

See attached.

David J. Armstrong, Esq.
EVP, General Counsel &
Chief Compliance Officer
Promise Healthcare, Inc.
999 Yamato Road
Third Floor
Boca Raton, FL 33431
Telephone: 561-869-3100
darmstrong@promisehealthcare.com

prohibited. If you have received this communication in error, please destroy all copies of this communication and any attachments and contact the sender by reply email.

From: canonL@promisehealthcare.com [mailto:canonL@promisehealthcare.com]
Sent: Sunday, July 19, 2009 6:17 PM
To: David Armstrong
Subject: Attached Image

Pursuant to federal regulations imposed on practitioners who render tax advice ("Circular 230"), we are required to advise you that any tax advice contained herein is not intended or written to be used for the purpose of avoiding tax penalties that may be imposed by the Internal Revenue Service. If this advice is or is intended to be used or referred to in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement, the regulations under Circular 230 require that we advise you as follows: (1) this writing is not intended or written to be used, and it cannot be used, for the purpose of avoiding tax penalties that may be imposed on a taxpayer; (2) the advice was written to support the promotion or marketing of the transaction(s) or matter(s) addressed by the written advice; and (3) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

THE INFORMATION CONTAINED IN THIS TRANSMISSION IS ATTORNEY PRIVILEGED AND CONFIDENTIAL. IT IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. ANY ATTACHMENTS TO THIS TRANSMISSION ARE FOR THE SOLE PURPOSE OF CONVEYING THE DIRECT WRITTEN AND COMMONLY VISIBLE COMMUNICATION CONTAINED THEREIN. NO TRANSMISSION OF UNDERLYING CODE OR METADATA IS INTENDED. USE OF ANY ATTACHMENT FOR ANY PURPOSE OTHER THAN RECEIPT OF THE DIRECT WRITTEN COMMUNICATION CONTAINED THEREIN IS STRICTLY PROHIBITED. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY AND RETURN THE ORIGINAL MESSAGE TO THE SENDER. THANK YOU.

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Koslow Affidavit Exhibit 8

From: Michael Magidson [mailto:mmagidson@broadandcassel.com]
Sent: Monday, July 20, 2009 10:49 AM
To: Foster, Joseph (Sh-Orl); Laura.Frick@SunTrust.com; Brian.Clay@SunTrust.com
Cc: Jonathan Etra; Susan Barnes de Resendiz; Daniel Newman; DSIEGEL@bdpb.com
Subject: RE: Instructions from Receiver to SunTrust

Ed,

The funds need to be released immediately per the instructions and as we discussed. You are welcome to speak with Sun's counsel, but that does not prevent SunTrust from releasing the funds per the agreement as soon as possible. The Receiver has done everything he is required to do under the agreement and SunTrust does not need validation from Sun as to these instructions, which clearly implement the terms of the agreement Sun entered into. Sun is waiting for the release of the funds.

Please ask your client to comply with the instructions and release the money immediately.

Time is critical and the funds need to be released to ensure the continued operation of the hospitals. We will hold you and your client responsible if the instructions are not implemented immediately and the funds released immediately.

Mike

From: ed.foster@akerman.com [mailto:ed.foster@akerman.com]
Sent: Monday, July 20, 2009 10:36 AM
To: Michael Magidson; Laura.Frick@SunTrust.com; Brian.Clay@SunTrust.com
Cc: vpaparo@proskauer.com; Jonathan Etra; Susan Barnes de Resendiz; Daniel Newman; DSIEGEL@bdpb.com; darmstrong@promisehealthcare.com; saufiero@proskauer.com
Subject: RE: Instructions from Receiver to SunTrust

At Susan Barnes de Resendiz's suggestion, I have called and left a message for Sun Capital Healthcare's in-house counsel, David Armstrong, to talk about the logistics of how these instructions would work in actual practice.

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of (i) avoiding penalties under the U.S. Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this e-mail or attachment.

From: Michael Magidson [mailto:mmagidson@broadandcassel.com]
Sent: Monday, July 20, 2009 10:24 AM
To: Foster, Joseph (Sh-Orl); Laura Langford Frick (Laura.Frick@SunTrust.com); 'Brian.Clay@SunTrust.com'
Cc: 'vpaparo@proskauer.com'; Jonathan Etra; Susan Barnes de Resendiz; Daniel Newman; 'David Siegel'; David J. Armstrong Esq (darmstrong@promisehealthcare.com)
Subject: Instructions from Receiver to SunTrust

Instructions regarding implementation of agreement between Receiver, Sun Capital, Inc., Sun Capital Healthcare, Inc., and LH Acquisitions, LLC:

1. The customer lockboxes (75 for Sun Capital Healthcare and 2 for Sun Capital) should be unfrozen/released so that funds can be received into them and then swept into the Master Accounts ending in 31847 ($220,570.92) and 31913 ($323,682.47) (both, for Sun Capital Healthcare clients) and the Factoring Account ending in 83842 ($146,533.65) (for Sun Capital).

2. The LH Acquisition account ending in 67033 should not be unfrozen/released ($120,570.04).

3. The other accounts used for operating the Sun Capital and Sun Capital Healthcare businesses should be unfrozen/released. For clarification, these are the Sun Capital Group account ending in 46582 ($25,078.61), the Sun Capital Healthcare Payroll Account ending in 31880 ($56,035.65 - this figure includes the amount cleared for payroll on Friday), the Sun Capital Healthcare Operating Account ending in 31902 ($51,116.98), the Sun Capital Healthcare Reserve Accounts ending in 32551 ($90.81) and 61258 ($500.00), and the Sun Capital accounts ending in 80300 ($100.00) and 83831 ($41,842.43) .

4. All of the amounts in every account (except the LH Acquisition account) should be aggregated and counted toward the total amount ($14 million) to be released to Sun Capital and Sun Capital Healthcare. This amount is $868,643.78, when the LA Acquisition Account amount is deducted and the amount cleared last Friday for payroll ($38,299.33) is added back in.

5. SunTrust should continue releasing money, until Friday, July 24, to Sun Capital and Sun Capital Healthcare until the total amount released from all accounts equals $14 million.

Michael D. Magidson, Esq.
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BROAD AND CASSEL
ATTORNEYS AT LAW

www.broadandcassel.com

EXHIBIT C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs. Case No. 2:09-cv-229-JES-SPC

FOUNDING PARTNERS CAPITAL MANAGEMENT CO. and WILLIAM L. GUNLICKS,

Defendants,

SUN CAPITAL, INC., SUN CAPITAL HEALTHCARE, INC., FOUNDING PARTNERS STABLE-VALUE FUND, LP, FOUNDING PARTNERS STABLE-VALUE FUND II, LP, FOUNDING PARTNERS GLOBAL FUND, LTD., and FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

AFFIDAVIT OF HOWARD KOSLOW

STATE OF FLORIDA)
: ss.:
COUNTY OF PALM BEACH)

HOWARD KOSLOW, being duly sworn, deposes and says:

1. I am President and COO of Sun Capital Healthcare, Inc. ("SCHI") and Sun Capital Inc. ("SCI") (together, "Sun Capital").

2. SCHI and SCI each entered into a credit and security agreement ("CSA") as borrower with Founding Partners Multi-Strategy Fund LLP (subsequently renamed Founding Partners Stable-Value Fund, LP) ("Founding Partners") as lender in June 2000 and January 2002, respectively. Thus, Sun Capital has had a contractual borrower-lender

relationship with Founding Partners for nine years. During that time, the Lender has made periodic loans to Sun Capital pursuant to Sun Capital's draw-down requests under the CSA, secured by all assets of Sun Capital, including all receivables; and Sun Capital has made monthly interest payments (at a high rate of interest favorable to the Founding Partners' investors). Sun Capital has successfully factored approximately $3.5 billion in Healthcare receivables and paid over $230 million in interest to its lender, Founding Partners, over this nine-year commercial relationship. Until January 2009, when Founding Partners defaulted on its loan obligations, Sun Capital never failed to make a single interest payment; it made over 100 consecutive monthly interest payments. At no time did Founding Partners ever claim Sun Capital had defaulted, nor did it ever have any basis to do so.

3. On January 27, 2009, Sun Capital made a $5 million funding request pursuant to the CSA. Founding Partners failed to fund that request despite availability on the line of credit under the CSA. As a result of that failure, Founding Partners defaulted on its obligations under the CSA. On January 29, 2009, William Gunlicks, whose company, Founding Partners Capital Management Company ("FPCM"), is the general partner of our lender, advised Sun Capital to stop making interest payments. I believe he took this action because he knew that Sun Capital would be damaged by the failure to fund in violation of the CSA and that the failure to fund would be contrary to substantial future commitments made to Sun Capital on which Sun Capital and all its clients relied to their detriment in undertaking major transactions and obligations.

4. Mr. Gunlicks was correct that Founding Partners' default would cause grave financial harm to Sun Capital. As set forth in greater detail below, both the default as well

as the reneging on other major commitments Mr. Gunlicks made to Sun Capital and to its clients, including Promise Healthcare, have caused Sun Capital great financial harm and placed at risk Sun Capital's 22 hospital clients, as well as their patients and employees, which depend on Sun Capital to stay in business.

Background – The CSA

5. At the time the CSA was drafted and entered into, SCHI was a new business with no previous experience in the healthcare receivables financing business. Thus, certain of the provisions of the CSA needed to be, and were over time, modified as a result of experience. For one thing, the interest rate was too high for the business to sustain and Sun Capital had numerous conversations with Mr. Gunlicks about lowering the rate. Although he always promised to lower the rate, he failed to do so for many years and, when he finally did reduce interest slightly, it was in the form of limited exceptions to the very high interest rate for certain loans. Nonetheless, SCHI always made every one of its monthly interest payments. Additionally, although the CSA provided that SCHI could make principal repayments (CSA § 4.4), when SCHI received its first large repayment in late 2002 or early 2003 and sought to pay down some debt, Gunlicks refused to permit any paydown of debt.

6. As acknowledged by the SEC in its complaint, "Gunlicks would not allow Sun Capital to repay any principal on the loans because he wanted to maintain a stable return for his investors by having Stable-Value's assets fully invested in loans to Sun Capital." (SEC Complaint ¶ 30). As further acknowledged by the SEC, without the ability to make principal repayments and required to pay high interest on idle monies, Sun Capital was "forced to look beyond the typical healthcare receivable for additional investment

opportunities." (*Id.*).

7. During the entire nine-year relationship with Founding Partners, Sun Capital never undertook any transaction without approval by Founding Partners. For example, the Founding Partners Receiver ("FP Receiver") states that the purchase of workers' compensation receivables and DSH receivables breached the CSA because those receivables have a longer collection period than the time period contemplated in the CSA. To the contrary, both types of receivable purchases were expressly authorized by Founding Partners with full knowledge of the longer collection periods for these types of receivables. Drafts of various amendments to the CSA were exchanged over the years reflecting these changes and others, but Founding Partners never finalized any of them. Nonetheless, numerous incontrovertible documents reflect Founding Partners' knowledge of and agreement to all uses of the loan funds. For example, a May 3, 2005 email memorandum from Mr. Gunlicks commemorating an interest rate reduction specifies it is for the "workers compensation receivables" and the "City of Angels' receivables". (Ex. **1**, attached). City of Angels is a hospital, now known as Silver Lakes, and its receivables, referred to in Mr. Gunlicks' memorandum, include DSH receivables. A subsequent June 2, 2005 email from Mr. Gunlicks attaches a draft amendment to the CSA "to accommodate workers' compensation receivables". (Ex. **2**, attached). Subsequent drafts also expressly addressed DSH receivables, addressing the much longer average collection periods for these two types of receivables: 1065 days for workers compensation receivables and 550 days for DSH receivables.

8. The SEC requested and was provided with documents reflecting Founding Partners' agreement to the purchase of workers' compensation and DSH receivables. The above documents and many others were provided to the SEC and demonstrate Founding Partners' agreement to the purchases as well as to the longer time periods to collect those receivables. Further, the SEC has Sun Capital financial records which were provided to Founding Partners on a regular on-going basis and these records contain aging reports expressly laying out the collection periods for these two forms of receivables. Thus, as the SEC acknowledged in its complaint, Sun Capital's uses of loan proceeds were authorized by its lender. "Gunlicks approved the purchases [of workers-compensation and DSH receivables] and, among other things, waived the requirement in the loan agreement that Sun Capital purchase healthcare receivables with 150-day collection periods." (SEC Complaint ¶ 30; see ¶ 3).

Promise Healthcare and the Promise Hospitals

9. The FP Receiver claims that the principals of Sun Capital, of which I am one of three, engaged in "self-dealing" by using Founding Partners loan proceeds in connection with Promise Healthcare, Inc. ("Promise") and the Promise hospitals.[1] This is untrue. No loan was ever made to any entity or for any purpose without the full knowledge and agreement of Founding Partners. As the SEC acknowledged in its complaint: "Gunlicks also approved using Stable-Value borrowings to help Sun Capital's principals operate the

[1] The three principals of Sun Capital, Peter Baronoff, the CEO, Larry Leder, the CFO, and myself, each have lengthy and substantial business backgrounds, including my own experiences in turnaround and workout capacities. None of us has any cloud on our reputation, including any regulatory issue, despite operating as Promise in the health care industry, a highly regulated industry, for many years. (See Ex. **3**, resumes, attached).

hospitals". (SEC complaint ¶ 30). There was no self-dealing, and Promise-owned hospitals always received the exact same financial terms and commitments as all other Sun Capital hospital clients. Not only did Founding Partners know about the relationship between Sun Capital and Promise, Founding Partners was always enthusiastic about the plan for the Sun Capital principals to build up the Promise hospital business and made numerous commitments of assistance. In fact, some of the later hospital acquisitions were undertaken by Promise to save DSH receivables, because DSH receivables cannot be collected if a hospital closes.

10. As background, all the hospitals for which Sun Capital provides receivables financing are necessarily troubled institutions or they would not be paying such high rates of interest to factor their receivables. Thus, opportunities arose over time to take over certain hospitals which were factoring clients of Sun Capital. In 2003, after Founding Partners would not permit principal repayments but still expected a 16% to 18% interest return on its money, in addition to workers compensation and DSH receivables financing, Promise was formed to own and operate hospitals. Over the last five years, Promise has become the fifth largest long term acute care hospital ("LTAC") operator in the United States. Promise, and a separate entity, Success Healthcare LLC (together "Promise"), own 19 hospitals in 7 states: Mississippi, Louisiana, Texas, Arizona, Missouri, Utah, and California. These hospitals have over 1,000 seriously ill patients and more than 3,500 employees, and most have become Joint Commission accredited ("JCAHO") hospitals since Promise took ownership. JCAHO accreditation means that a hospital has met the "state of the art" standards of performance to provide "quality care in a safe environment."

(See www.jointcommission.org/standards/facts_about_accreditation_standards.htm.) These are hospitals located in communities with real needs, and Promise has made commitments to the patients, to the hospitals and their over 3,500 employees, to the communities served by these hospitals, and to state regulators in the states where these hospitals are located. We intend to keep those commitments to the best of our ability.

11. Initially, Promise was formed in 2003 in connection with the acquisition of the stock of eight hospitals from Camelot Healthcare, a transaction which Founding Partners agreed to fund, including funds for the acquisition of the one mortgage involved in the transaction as well as the payoff of IRS liabilities and other assumed liabilities.

12. With respect to the acquisition of the Camelot Healthcare hospitals, the FP Receiver states that Founding Partners "did not receive reasonable equivalent value in exchange for the use of its loan proceeds to acquire the hospitals," suggesting some impropriety. (Memo of Law p. 13 ¶ 45). However, our lender, Founding Partners, determined to lend the funds under the CSA, which included the requirement for Sun Capital to pay 16% interest on that loan and to provide complete UCC-1's on hospital assets including receivables, as well as the requirement for lockboxes for all receivables payments and all the other protections provided in the CSA for all other loan proceeds financings.

13. As I testified before the SEC, the agreement with regard to the Camelot acquisition loan was that it would be converted into a mortgage between Founding Partners and LH Acquisition, the entity which holds the mortgage on the land and building of the Shreveport Louisiana Campus of Lagniappe Hospital, now called Promise Hospital of

Louisiana. (See SEC Testimony, Ex. A-2 to Rcvr. Mot. to Expand Powers, at pp. 124-27). The land and building has an appraised value of $16 million. Initially, conversion of the receivables loan into a mortgage loan was delayed because Lagniappe Hospital was in bankruptcy and Founding Partners could more easily execute the mortgage outside the bankruptcy. It took several years for the hospital to emerge from bankruptcy. All the work to complete the mortgage transaction, including terms, title report and lien searches, was completed earlier this year but Founding Partners never finalized the documentation to complete the transaction. It would have been much better financially for LH Acquisition and Promise if the mortgage transaction had occurred at the time of the original loan, because then it could have been refinanced at a lower interest rate. Real estate mortgages are not carrying 16% interest in today's market, so paying that rate was good for the lender, Founding Partners, but bad for the borrower, Sun Capital, and the ultimate loan recipients, Promise and LH Acquisition. Although the FP Receiver suggests it was somehow incumbent on Sun Capital alone to get the transaction completed (Memo of Law p. 13 ¶ 46), Sun Capital is the *borrower*, and has no ability to act without the *lender*, Founding Partners, including completing transactions creating different security arrangements.

14. Nor was there any fraud or "intentional fraud" involved whatsoever, as alleged by the FP Receiver, in the fact that the loan has not been repaid. (Memo of Law p. 14 ¶ 50). The loan was made to SCHI under the CSA, which is a term loan due in 2013. This allegation by the FP Receiver is particularly upsetting because the SEC is well aware and states in its complaint that "Gunlicks would not allow Sun Capital to repay any principal on the loans because he wanted to maintain a stable return for his investors by

having Stable-Value's assets fully invested in loans to Sun Capital." (SEC Complaint ¶ 30).

15. As the hospital business grew and was successful, Founding Partners increased its commitments to Promise. For example, Mr. Gunlicks testified before an administrative law judge in Tallahassee in January 2007, in connection with a Certificate of Need ("CON") application made by Promise in order to build a total of four hospitals in communities where they are needed in Florida. Mr. Gunlicks advised the Court and the Florida Agency for Health Care Administration in his testimony that Founding Partners was prepared to provide the $100 million necessary to finance construction and working capital for these hospital projects. Indeed, he testified that he had $17 billion of investable funds with a waiting list of investors to come into the fund but was not able to accept the monies until financing opportunities became available. The court subsequently issued a CON for the hospital at issue in that proceeding and two additional CONs were subsequently purchased for over $2.5 million (out of the profits of Sun Capital) on the basis of the Founding Partners commitments to fund construction and operations.

Founding Partners Capital (Bermuda) Ltd.

16. It is also not true that Sun Capital has profited in some wrongful way through an "insider relationship" with Founding Partners, as the FP Receiver alleges. Sun Capital's interest in Founding Partners Capital (Bermuda) Ltd. goes back to the inception of the relationship between Mr. Gunlicks and the Sun Capital principals and was the result of arms-length negotiations based upon appropriate and customary business terms.

17. In the fall of 1999, my partner Peter Baronoff and I were introduced to Mr.

Gunlicks, who had a fund management company called Founding Partners Capital Management ("FPCM") and a Bermuda advisory firm, Stewards & Partners, Ltd. (subsequently Founding Partners Capital (Bermuda) Ltd.) ("FP Bermuda"). At the time, we were operating SCI, which was a factor of commercial receivables, but were putting together a business model to go into the healthcare receivables factoring business. Gunlicks told us he was looking for an investment vehicle for his funds with low volatility to the market. We reached an agreement in principle that we would create a company with the infrastructure to operate a healthcare receivables factoring business at our own cost and Mr. Gunlicks would lend money for receivables purchases at 18% interest.

18. During the course of the next six months to a year, we created SCHI. We built a proprietary software system with the capability of not only tracking all healthcare receivables and payments but also accurately valuing each healthcare receivable, which is an absolute necessity for a successful healthcare factoring business. We also developed marketing strategies, retained counsel to prepare legal documents and analyze legal issues, and in sum undertook all the work and expense associated with beginning a new venture. In addition to our sweat equity, we incurred costs in the range of $1 million to start up SCHI. In return, FPCM gave SCHI a 19% interest in FP Bermuda, with the understanding that if the SCHI venture was successful, at some time in the future we might be compensated for our intellectual property (as well as our sweat equity and capital investment).

19. While the FP Receiver asserts that FPCM had the same percentage interest as SCHI, FPCM also received notes in the approximate sum of $700,000 apparently

covering its own cost outlay for starting up the healthcare receivables investment strategy, while SCHI did not recover its costs but agreed to defer them unless and until the venture was successful and FPCM had recovered all its costs.

20. Until 2005, Sun Capital never received a nickel from its interest in FP Bermuda. Although the FP Receiver asserts that Sun Capital has a 42 2/9% interest (Memo of Law p. 7 ¶ 16), she fails to advise the Court that, according to the same E & Y memo she cites, 24% to 30% of the gross income is apparently used to pay expenses of FP Bermuda, and 55% of all royalties go to two of the Founding Partners funds, which exchanged their stock interests for royalty payments, thus increasing the stock interests of the remaining stockholders but not their interests in royalty payments. (Rcvr. Mot. Ex. D at pp. 2-3). Thus, the FP Receiver's statement that Sun Capital "has been collecting a significant percentage of a royalty payment on the total amount of the outstanding loan amount from Founding Partners since at least September 2002" is untrue. For the years 2005 through 2008 respectively, the three Sun Capital principals each received through SCHI approximately $25,000, $32,000, $71,000 and $100,000 annually in royalty fees from FP Bermuda.

The Current Situation

21. Founding Partners' breach of the CSA on January 27, 2009 left Sun Capital in a tight cash position. While Sun Capital was able to defer certain commitments to Promise and to other clients, others had to be completed. Meeting these other commitments strained its cash situation even further as well as the cash position of its clients. One hospital was just opened in January 2009, Promise Hospital of Baton Rouge; construction

was just completed in March 2009 on Promise Hospital of Miss Lou in Vidalia, Louisiana; and construction is approximately 50% complete on one of the Florida CON hospitals, Promise Hospital of the Villages, in Lake County, Florida. Today, Sun Capital is taking on no new business and is simply recycling receivables to keep all its client hospitals open and running.

22. Sun Capital is not "spend[ing] up to $14 million per week in Founding Partners' investors funds" as the FP Receiver alleges. (Memo of Law p. 12 ¶ 41). Currently, Sun Capital receives up to $14 million a week in receivable repayments which go into two lockbox accounts, governmental (such as Medicare and Medicaid receivables) and nongovernmental (commercial healthcare receivables such as private insurance). These funds are comprised of the return of loan proceeds, fees, and reserves (the amount returned that exceeds the loan and fees combined). The returned loan proceeds are then used to purchase like receivables from the hospitals. Thus, there is no material change from week to week in the cash position of Sun Capital's loan proceeds or any material change in the security interests which secure the Founding Partners' loan.

23. Nor is it correct that Sun Capital is somehow engaged in impropriety by "still continuing to collect their fees on accounts receivable" as the FP Receiver states. (Memo of Law p. 2). Some of the fees (as well as reserves) are being collected to pay Sun Capital operating expenses and to advance funds to complete the non-deferrable committed projects that Founding Partners had previously committed to fund. In addition, Sun Capital is using some of its fees for the purchase of new receivables from the 22 hospital clients so that the hospitals have operating cash to remain open.

24. The projected cash deficit of $53.8 million (later adjusted to $49.3 million) referred to by the FP Receiver was comprised of interest payments of $7 million a month and other commitments which have been deferred, and does not constitute "a cash flow burn and the dissipation of the Founding Partners loan proceeds at the approximate rate of $2.3 million per week and $335,000 per day." (Memo of Law, pp. 14-15). Indeed, Sun Capital's current total operating costs for SCHI and SCI (excluding interest payments to its lender) average $200,000 a week and $30,000 a day, not $2.3 million a week and $335,000 a day, and these figures are higher than usual because of the current cost of legal fees. These costs are covered by factoring fees, *not* the loan proceeds, and thus are not reducing either the loan proceeds or the security interests of Founding Partners. Indeed, as noted above, some of the Sun Capital fees are being used to purchase health care receivables. There is no projected cash deficit net of interest payments. In fact, Sun Capital had $9.4 million in net income in 2008, *after* payment of all interest to Founding Partners.

25. There is currently $383 million in factored receivables due from Sun Capital's 22 hospital clients.[2] Since a hospital needs working capital to operate and approximately 70% of a hospital's expenses are labor costs which cannot be extended or deferred, without a steady revenue stream a hospital must shut down. The principal source of a hospital's operating cash is its receivables, which is the reason hospitals factor their receivables. If Sun Capital were to stop factoring receivables for any one of its 22 hospital clients, that hospital would need to shut down within days and all DSH receivables would be lost and the value of all other receivables substantially reduced. As I indicated above,

[2] There is an additional $12 million in commercial receivables held by SCI, which will be liquidated in an orderly fashion.

the loan proceeds are not "diminishing" or "being squandered," but rather the status quo is being maintained with a lot of hard work and effort to protect both the investors' money and the hospitals. For this reason, it is alarming and irresponsible to have the FP Receiver request that the Court immediately put a stop to the purchase of receivables from the 19 Promise hospitals.

The FP Receiver's Request for Relief

26. We have had a contractual relationship with Founding Partners for nine years, have not breached it, have honored all our commitments to Founding Partners, and have built a substantial enterprise with which to meet those commitments. There is no basis to make requests to freeze our assets, shut down the hospitals or take over the management of our company.

27. Rather than spending time making false allegations against Sun Capital and seeking relief to which she is not entitled, I respectfully suggest the FP Receiver should be discussing a workout of the loan with Sun Capital and its counsel, which she has so far not done. However, we have advised the FP Receiver that she will shortly be receiving a written proposal in this regard and our counsel has retained independent financial experts to assist in this effort.

28. When Sun Capital learned from Mr. Gunlicks toward the end of 2008 that he would no longer fund new projects, even before the January 2009 breach of the CSA, we immediately began efforts to raise funds to pay off the Sun Capital loan early, although repayment is not due until 2013. We are working with a very well known investment banking firm in the healthcare field, Cain Brothers, and we have been advised by Cain

Brothers that they are optimistic that we can recapitalize Promise so it can pay down its Sun Capital loans and Sun Capital in turn can pay down its obligations to Founding Partners.

The FP Receiver's Conflicts

29. While as a businessman and based upon advice from my counsel I believe that a receiver is not appropriate relief here, even if there were to be a receiver, I cannot understand how it would be acceptable to have that receiver be the FP Receiver, an adverse party. There are several reasons for this conflict. First, Sun Capital as borrower has claims against Founding Partners, its lender, and those claims need to be asserted and adjudicated in order to protect Sun Capital and its clients, including its 22 hospital clients. Sun Capital would need a receiver independent of Founding Partners to protect these separate interests.

30. Second, I brought to the attention of my counsel the fact that, for the last two years, Gray Robinson, the firm of the Receiver and her counsel, has been retained and paid by Promise in connection with work relating to Promise's licensing requirements in Florida and Louisiana. (Ex. **4**, retainer agreement, attached). From time to time, Promise has consulted Gray Robinson on specific legal issues, such as the legal requirements for campaign contributions, and Gray Robinson has provided legal advice. Gray Robinson has been paid approximately $150,000 for this representation. Most recently, and as a direct result of Founding Partners' failure to meet its commitments (made to Sun Capital, Promise, the State of Florida, and the Court at the CON administrative hearing) to fund construction and operating costs for the Promise Florida hospitals with CON licenses, Gray Robinson was assisting in having the time requirements for CON licenses extended in Florida. As I mentioned above, Promise holds three CONs to construct hospitals in Florida,

and Promise is currently required to begin hospital construction within 18 months from the date of issuance of the CONs. Without the funds Founding Partners promised to provide, and represented to the State and to the Court it could and would provide, Promise cannot begin construction on two of the hospitals within the required 18 months. Thus, Gray Robinson has been advocating to have the time period extended, due to financing difficulties in the current economic climate.

31. While my counsel has told me that Gray Robinson has taken the position that its services were exclusively lobbying services and therefore not "the practice of law" and not a conflict, I cannot understand that. First, the retainer agreement specifically states that Gray Robinson is providing legal services as well as lobbying services, and it has in fact acted as our legal counsel. Second, with due respect, I cannot understand how this law firm, Gray Robinson, which has acted, and is *still* acting, on behalf of Promise since it was retained in June 2007, can now try to stop all receivables financing for Promise and the 19 Promise hospitals and put each and every one of those hospitals out of business immediately. In fact, the FP Receiver has made allegations against the Sun Capital principals, who are the same principals as in Promise, Gray Robinson's client, and about which allegations she has also apparently given press interviews.

32. I understand from my counsel that neither the court nor the SEC was aware of this representation by Gray Robinson at the time of the ex parte appointment of Gray Robinson as the FP Receiver. When the matter was called to the attention of Gray Robinson by Sun Capital's counsel, Gray Robinson advised that they were well aware of it but had disclosed the matter neither to the SEC nor to the Court. The situation was then

apparently brought to the attention of the SEC by Gray Robinson at the insistence of Sun Capital's counsel. To me, it would appear to be a gross conflict of interest for Gray Robinson to act as the FP Receiver, and certainly in connection with taking any actions against Sun Capital and its client, Promise. Therefore, if a receiver were appropriate at Sun Capital, I request it be an independent party and not Gray Robinson in that capacity, or in any other capacity deemed appropriate by the Court.

HOWARD KOSLOW

Sworn to before me this
4 day of May, 2009.

Notary Public

LINDA EISENBERG
MY COMMISSION # DD 427159
EXPIRES: September 7, 2009
Bonded Thru Notary Public Underwriters

Koslow Affidavit Exhibit 1

Howard Koslow

From: Wm L Gunlicks [foundingcapital@cs.com]
Sent: Tuesday, May 03, 2005 11:27 AM
To: Howard Koslow
Subject: GUNLICKS MESSAGE TO HOWARD REGARDING RATE REDUCTION

Howard,

We would be able to make a 2% borrowing rate reduction from 16% to 14.0% work based upon the funding takedowns being effective from the beginning of the month (our new program that we started last month).

Go ahead and plan that we can do this rate reduction program for the workmens comp receivables, the City of Angles' receivables, and for new prospective medical receivable clients. I hope this will help you going forward. Thanks.

- Bill

Sent via BlackBerry - a service from AT&T Wireless.

CONFIDENTIAL TREATMENT REQUESTED
SC 0116

Koslow Affidavit Exhibit 2

Gold, Sarah S.

From: Howard Koslow
Sent: Thursday, June 02, 2005 5:57 PM
To: Larry@SunCapitalInc.com; wvazquez@uuvlaw.com
Subject: FW: Sun Capital/Amendment to Credit Agreement
Attachments: Sun Capital/Amendment to Credit Agreement

fyi

From: FoundingCapital@cs.com [mailto:FoundingCapital@cs.com]
Sent: Thursday, June 02, 2005 12:06 PM
To: HKoslow@PromiseHealthCare.com
Subject: Fwd: Sun Capital/Amendment to Credit Agreement

Howard,

Attached in this E-mail is Marc Klyman's draft of the amendment to the Credit and Security Agreement to accommodate Workers' Compensation receivables. Please call to discuss.

Thanks, - Bill Gunlicks

DRAFT 5/24/05

[ ], 2005

Sun Capital Healthcare, Inc.
929 Clint Moore Road
Boca Raton, Florida 33487
Attention: Howard Koslow

Re: Credit and Security Agreement

Dear Howard:

Please refer to the Credit and Security Agreement dated as of June 6, 2000 ("Agreement") between Sun Capital Healthcare, Inc. and Founding Partners Stable-Value Fund, L.P., formerly known as Founding Partners Multi-Strategy Fund, L.P. ("Founding Partners"). Founding Partners hereby agrees to amend the Agreement to read as follows:

1. The definition of Borrowing Base in Section 1.12 of the Agreement is hereby amended by adding the following at the end thereof: "Notwithstanding anything to the contrary in this Agreement, the total dollar amount of Workers' Compensation Receivables (whether measured by reference to Outstanding Amounts Paid to Sellers or by reference to Net Collectible Value) included in the Borrowing Base at any time shall not exceed [ ] percent (%) of the Borrowing Base."

2. The definition of Defaulted Account in Section 1.32 of the Agreement is hereby amended by inserting the following at the end thereof: "; provided that, in the case of a Purchased Account that is a Workers' Compensation Receivable, clause (i)(x) shall be deemed to refer to [one thousand (1000)] days [?] rather than one hundred twenty (120) days."

3. Clause (c) of the definition of Eligible Account in Section 1.37 of the Agreement is hereby amended by adding the following at the end thereof: "; provided that, in the case of an Account that is a Workers' Compensation Receivable, the Purchase Date is not more than [one thousand (1000)] days [?] after the applicable Date of Service."

4. The following new Section 1.125A is hereby added to the Agreement:

"1.125A "Workers' Compensation Receivable" means an Account payable under workers' compensation insurance in the State of California (or in any other state (a) which has been consented to in writing by the Lender and (b) which consent has not been withdrawn by the Lender in its sole discretion)."

Sincerely,

FOUNDING PARTNERS STABLE-VALUE FUND, L.P.

By: Founding Partners Capital Management Company, its general partner

By:_____
William L. Gunlicks
President and Chief Executive Officer

Agreed as of the date first above written:

SUN CAPITAL HEALTHCARE, INC.

By:_____
Name:_____
Title:_____

Koslow Affidavit Exhibit 3

Peter R. Baronoff

Peter R. Baronoff brings more than 25 years of senior-level leadership experience to Success Healthcare, LLC with specialized expertise in strategic planning, finance, business re-structuring, acquisition and expansion, business development, brand development, and marketing.

Mr. Baronoff also serves as Co-Founder, Chairman and CEO of Promise Healthcare, Inc., one of the country's leading and largest long-term acute care (LTAC) hospital companies that owns and manages 14 facilities in six states with six new hospitals under construction or development.

He is the former three-term president of the Acute Long-Term Hospital Association (ALTHA), a membership of more than 300 long-term acute care hospitals in more than 30 states. Baronoff is a nationally recognized authority on financial services and has been an active lecturer, author, and journalist on commercial and healthcare funding. As president, he successfully led ALTHA's efforts to unite the LTAC hospital community to protect patient access to quality long-term hospital care. He was also ALTHA's lead advocate on Capitol Hill in Washington, DC effectively negotiating with senior government and elected officials on regulatory issues facing the LTAC industry.

Prior to co-founding Sun Capital, Inc. and Sun Capital HealthCare, Inc., Mr. Baronoff was the president and founder of Blair Importers, Ltd., a leading national importer of wine and spirits. Blair Importers developed a national reputation by acquiring wine and liquor brands from major international competition.

Mr. Baronoff has also served as president of Cordoniu USA, a subsidiary of a Spanish company, and as executive vice president of Guinness PLC. As chief executive officer and president of Dev-Tech Corporation (d/b/a Florida Growth Capital, Inc., a NASDAQ-listed company), Mr. Baronoff was retained by the company's board to redirect the company and increase shareholder value.

He also served his community as Deputy Mayor of the City of Boca Raton, Florida and was elected to two terms on the Boca Raton City Council during which he served a term as Chairman of the city's Community Redevelopment Agency.

Howard B. Koslow

Howard Koslow brings more than 35 years of extensive experience in senior-level management for several prominent national certified public accounting, financial services, and real estate firms to Success Healthcare, LLC. Koslow has earned a national reputation as a skilled financial and operations executive and business re-structuring consultant.

Koslow's areas of expertise include strategic planning, corporate operations direction and oversight for multi-unit organization structures, finance, forecasting, acquisition and expansion, business re-structuring, and turnaround management. He currently serves as Co-Founder, President and Chief Operating Officer of Promise Healthcare, Inc., one of the country's leading and largest long-term acute care (LTAC) hospital companies that owns and manages 14 facilities in six states with six new hospitals under construction or development. Koslow also serves as director of the Commercial Finance Association (CFA) and has been an active board member of several successful NASDAQ-listed companies.

Mr. Koslow is a co-founder of Sun Capital, Inc. and Sun Capital HealthCare, Inc. and has extensive experience in executive-level management positions with several real estate, national certified public accounting and financial services firms. He has developed a national reputation as a skilled financial and operations manager, and restructuring consultant to businesses nationwide.

Before co-founding Sun Capital, Mr. Koslow served as executive vice president and chief operating officer of Dev Tech Corporation (d/b/a Florida Growth Capital, Inc., a NASDAQ-listed company). He also was the vice president and controller of Olympia & York Companies (USA), an international real estate owner and developer. At Olympia & York Companies, he directed the financial administration activities for the company's U.S. joint venture investments, aggregating several hundred million dollars.

Lawrence Leder _____

Lawrence Leder brings more than 35 years of experience serving the financial needs of the healthcare industry to Success Healthcare. His areas of expertise include finance; business re-structuring; budget, policy, procedure, reporting and quality control development and analysis; strategic financial planning for acquisitions and expansion.

He currently serves as Executive Vice President and Chief Financial Officer for Promise Healthcare, Inc., one of the country's leading and largest long-term acute care (LTAC) hospital companies that owns and manages 14 facilities in six states with six new hospitals under construction or development.

Mr. Leder began his career in servicing the financial needs of the healthcare industry as a supervisory auditor for the U.S. General Accounting Office (GAO) in charge of the nationwide audit of the then newly created Medicare program. He provided testimony to the House Ways and Means Committee on Medicare and to various states' rate-setting commissions for Medicaid. He left the GAO to go into his own healthcare consulting practice. As CPA for the Archdiocese of the City of New York, he worked with Cardinal Cook Health Center, St. Claire's Hospital, Cabrini Hospital, St. Vincent's Hospital and Our Lady of Mercy Hospital. He also served as Healthcare Manager and Reimbursement Specialist for Coopers & Lybrand's New York Office. Later in private practice he focused on the valuation and collectability of medical receivables and provided expert counsel to banks and other asset-based lending institutions.

Koslow Affidavit Exhibit 4

GRAY | ROBINSON
ATTORNEYS AT LAW

Agreement for Legal and Advisory Services

This Agreement is entered into on this 28th day of June, 2007 by and between Promise Healthcare, Inc. ("Client") and the law firm of GrayRobinson, P.A. (the "Firm").

Scope of Services

The Firm will provide State of Florida executive branch lobbying services and legal services regarding an Agency for Health Care Administration Certificate of Need [07-0598CON] to Client.

The Firm shall render the above described services as an independent contractor, and not as an agent or employee of Client.

Payment for Services

As consideration for the services rendered by the Firm pursuant to this Agreement, Client agrees to pay the Firm $5,000.00 per month for executive branch lobbying services. Jason Unger will be primarily responsible for the executive branch lobbying services. Legal services will be billed at the rate of $295.00 per hour for partners, $190.00 per hour for associates, and $90.00 per hour for paralegals, as needed. Michael Riley will be primarily responsible for the legal services provided.

Routine expenses such as Federal Express, long distance telephone charges, and travel will be the responsibility of Client.

Terms of Payment for Services

The monthly fee for the Firm's services shall be due on the first day of each month. Legal fees and expenses incurred during any month shall be due in the subsequent month. Billing statements from the Firm shall be processed for payment within 30 days of receipt.

Term of Agreement

This Agreement shall be effective upon execution and shall end on December 31, 2007; thereafter, it shall continue month to month until terminated by either party with at least thirty (30) days notice.

Prohibition Against Assignment

This Agreement is a personal agreement and may not be assigned in whole or in part. The Firm agrees that its performance of any other services during the term of this Agreement shall not interfere with the faithful and timely performance of this Agreement.

Resolution of Disputes

Any dispute between the Firm and Client as to the application, meaning, or interpretation of any part of this Agreement shall be resolved in Leon County, Florida, by application of Florida Law.

Entire Agreement

This Agreement constitutes the entire understandings of the parties. This Agreement cannot be changed or modified, except in writing, duly executed by both parties.

IN WITNESS WHEREOF this Agreement has been executed by Jason Unger on behalf of the Firm, and by Peter Baronoff on behalf of Promise Healthcare, Inc.

GrayRobinson, P.A.

By: _____
Jason L. Unger

Promise Healthcare, Inc.

By: _____
Peter Baronoff

EXHIBIT D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

Case No. 2:09-cv-229-JES-SPC

FOUNDING PARTNERS CAPITAL MANAGEMENT CO. and WILLIAM L. GUNLICKS,

Defendants,

FOUNDING PARTNERS STABLE-VALUE FUND, LP, FOUNDING PARTNERS STABLE-VALUE FUND II, LP, FOUNDING PARTNERS GLOBAL FUND, LTD., and FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

TEMPORARY RESTRAINING ORDER

THIS CAUSE came before the Court on Sun Capital Healthcare, Inc. and Sun Capital, Inc.'s Motion for Temporary Restraining Order and Preliminary Injunction, e-filed on July 22, 2009, seeking temporary and preliminary injunctive relief against the implementation of certain Transfer Notices sent by the Receiver for the Founding Partners entities (the "FP Receiver") to SunTrust Bank, which freeze certain Sun Capital operating accounts and instruct that all funds flowing into those accounts be permanently redirected to the FP Receiver.

The Court, having reviewed the Motion, the Incorporated Memorandum, and the record, including the Affidavit of Howard Koslow sworn to July 22, 2009 (with exhibits) and the prior Affidavit of Howard Koslow sworn to May 4, 2009 (with exhibits) (Doc. 40-2), and being

familiar with the prior proceedings in this action and otherwise duly advised in the premises, does hereby FIND as follows:

1. Sun Capital Healthcare, Inc. and Sun Capital, Inc. (together, "Sun Capital"), have maintained a healthcare financing business, funded exclusively through their contractual borrower-lender relationship with Relief Defendant Founding Partners Stable-Value Fund, LP (and its predecessors and successors) (the "Lender") since 2000. Sun Capital's healthcare financing business is essential to the operations of its client hospitals, which are dependent upon the ongoing financing they receive from Sun Capital.

2. In connection with its contractual relationship with the Lender, Sun Capital has maintained certain "lockbox" bank accounts at SunTrust Bank, into which accounts receivable collections flow and from which funds Sun Capital makes further purchase of accounts receivable, since 2000. The lockbox accounts are governed by a Master Wholesale Lockbox Deposit and Blocked Account Service Agreement among Sun Capital, SunTrust Bank, and the Lender (the "Master Lockbox Agreement").

3. On July 15, 2009, in the evening after the close of business at SunTrust Bank, the FP Receiver, acting in his capacity as the current representative of the Lender, sent certain Transfer Notices to SunTrust Bank, pursuant to the terms of the Master Lockbox Agreement. The Notices direct SunTrust Bank to (i) transfer all funds in the lockbox accounts to the FP Receiver's account each day, (ii) cease transferring funds to Sun Capital's account, and (iii) follow the directions of the FP Receiver and not of Sun Capital concerning the accounts.

4. This seizure by the FP Receiver of Sun Capital's operating funds will cause immediate and great irreparable harm, because both Sun Capital's business and the 22 hospitals' businesses are dependent upon Sun Capital's continuous receipt and use of the funds in the

lockbox accounts. Without access to the lockbox funds, Sun Capital will be forced to go out of business, and the hospitals dependent upon Sun Capital's financing will be forced to shut down. All of the hospital patients, including the more than 1,000 acute-care patients, will immediately have to be relocated to other facilities, a process that poses significant danger to those patients. The hospitals' 3,500 professional staff and employees will lose their jobs.

5. In addition, if the hospitals close, many of the outstanding receivables, including at least $150 million worth of DSH receivables, will become unrecoverable, because DSH and other types of receivables can only be recovered if the hospital is still operating. Consequently, the closure of the hospitals would mean that the investors in Stable-Value, whose funds were invested in Sun Capital's healthcare financing business, will suffer a dramatic reduction in value of their investments.

Accordingly, the Court does hereby ORDER and ADJUDGE as follows:

6. The existing Transfer Notices, and any similar oral or written instructions, are hereby declared to be null and void and of no force and effect; and the FP Receiver, acting for the Lender under the Credit and Security Agreements with Sun Capital Healthcare, Inc. and Sun Capital, Inc., shall promptly withdraw said Notices and any substantially similar instructions from SunTrust Bank; and

7. The FP Receiver, the Lender, and all of their agents and representatives are hereby enjoined and prohibited from taking any further self-help steps, implementing any contractual remedies, or otherwise altering the *status quo* respecting the lender-borrower relationship with Sun Capital Healthcare, Inc., Sun Capital, Inc., or respecting any of their affiliates, until such time as either the contracting parties' rights and obligations have been

adjudicated or upon further order of this Court following notice and an opportunity to be heard afforded to Sun Capital.

DONE AND ORDERED in Chambers, Fort Myers, Florida, this ____ day of July, 2009.

United States District Judge

cc: See attached Service List

SERVICE LIST

Securities and Exchange Commission v.
Founding Partners Capital Management Co. and William L. Gunlicks, et al.

Case Number: 2:09-CV-229-JES-SPC

UNITED STATES DISTRICT COURT,
MIDDLE DISTRICT OF FLORIDA – FORT MYERS DIVISION

SECURITIES AND EXCHANGE COMMISSION
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Via CM/ECF

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Attorneys for Receiver (Daniel S. Newman, Esq.) over Founding Partners Capital Management Company, Founding Partners Stable-Value Fund, LP, Founding Partners Stable-Value Fund II, LP, Founding Partners Hybrid-Value Fund, LP, and Founding Partners Global Fund, Ltd.
Via CM/ECF

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