

EX-99.24 22 d719492.htm GUARANTY AGREEMENT, DATED JUNE 30, 2006

EXHIBIT 99.24

**Confidential Materials omitted and filed separately with the
Securities and Exchange Commission. Asterisks denote omissions.**

Note: This Agreement contains confidential & proprietary information and may not be disclosed without the consent of both parties or as required by law

**AMENDED AND RESTATED GUARANTY AGREEMENT
between
THE EDUCATION RESOURCES INSTITUTE, INC.
and
BANK OF AMERICA, N.A.**

(Bank of America School Channel Loan Programs)

This Amended and Restated Guaranty Agreement (this "Agreement") is made as of this 30th day of June, 2006, by and between The Education Resources Institute, Inc. ("TERI"), a private non-profit corporation organized under Chapter 180 of the Massachusetts General Laws with its principal place of business at 31 St. James Avenue, 6th Floor, Boston, Massachusetts 02116, and Bank of America, N.A. (the "LENDER"), a national banking association organized under the laws of the United States and having a place of business located at 600 Wilshire Blvd., Los Angeles, California 90017.

WHEREAS, The First Marblehead Corporation ("FMC") and LENDER have established the Bank of America School Channel Loan Programs (the "Programs") to assist parents in financing the cost of education at private elementary and secondary schools and at various institutions of higher education; and

WHEREAS, pursuant to agreements between the LENDER and FMC, the LENDER is the exclusive lender for the Programs, and has agreed to originate loans conforming to the Programs ("Loans"); and

WHEREAS, pursuant to such agreements between the LENDER and FMC, FMC has agreed to purchase or to cause to be formed one or more special purpose business trusts or other entities (each an "SPE") to purchase promissory notes evidencing Loans following origination; and

WHEREAS, TERI is in the business of providing financial assistance in the form of loan guaranties to and on behalf of students enrolled in programs of higher education and their parents at TERI-approved schools; and

WHEREAS, the LENDER is willing to make Loans to eligible Borrowers under the Program, and TERI is willing to guaranty the payment of principal and interest against the Borrowers' default or certain other events as more fully described below, in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, TERI and the LENDER agree as follows:

Section 1: DEFINITIONS

As used in this Agreement the following terms shall have the following meanings:

1.1 "Agent" shall mean U.S. Bank National Association, its successors and assigns, in its capacity as Agent under the Deposit and Security Agreement between TERI and the LENDER, dated April 30, 2001.

1.2

“Authentication” refers to the methods and processes used by a financial institution, or TERI as its agent, to form a conclusion that it has established the true identity of an applicant who is communicating electronically, by phone, or in another non-face-to-face manner.

- 1.3 “Bank of America Private Loan Programs” means the prepGATE Loan Program, the Bank of America Private Undergraduate Loan Program and the Bank of America Private Graduate Professional Loan Programs, each as more fully described in the Program Guidelines as the same may be amended from time to time.
- 1.4 “Bank of America School Channel Loan Programs” or the “Programs” means the Bank of America Private Loan Programs and the Bank of America TERI Loan Programs, each as more fully described in the Program Guidelines as the same may be amended from time to time.
- 1.5 “Bank of America TERI Loan Programs” means the Bank of America TERI Alternative Undergraduate Loan Program, the Bank of America TERI Alternative Graduate Loan Program, the Bank of America TERI Alternative Continuing Education Loan Program, the Bank of America TERI Alternative Health Professions Loan Program (including the CVS Loan Program), and the Bank of America TERI ISLP Programs, each as more fully described in the Program Guidelines as the same may be amended from time to time.
- 1.6 “Bank of America TERI ISLP Loan Programs” mean the Bank of America ISLP Undergraduate Loan Program, the Bank of America ISLP Graduate Loan Program and the Bank of America ISLP Medical Loan Program, each as more fully described in the Program Guidelines as the same may be amended from time to time. It does not include the Bank of America ISLP CanHelp Program, which is not governed by this Agreement.
- 1.7 “Borrower” shall mean the person, or all persons collectively, including all students, cosigners, coborrowers, guarantors, endorsers, and accommodation parties, who execute a Promissory Note individually or, in the case of multiple Borrowers, severally and jointly, for the purpose of obtaining funds from the LENDER under the Programs.
- 1.8 “Due Diligence” shall mean the utilization by the LENDER of policies, practices and procedures in the origination, servicing and collection of Loans that comply with the standards set forth in the Program Guidelines, that comply with the requirements of federal and state law and regulation, and, to the extent not inconsistent with the foregoing, that are in accord with the LENDER’s policies, practices and procedures applicable to its student loan and credit portfolios and with sound lending practices utilized throughout the consumer lending industry.
- 1.9 “FMC” shall mean The First Marblehead Corporation, a Delaware corporation located at 800 Boylston St., 34th Floor, Boston, MA 02199.
- 1.10 “Guaranty Claim” shall mean a claim by the LENDER to TERI for a guaranty payment with respect to a Loan pursuant to Section 2.1 of this Agreement.
- 1.11 “Guaranty Event” shall mean any of the following events with respect to a Loan:
- a. failure of a Borrower to make monthly principal and/or interest payments on a Loan when due, provided such failure persists for a period of one hundred eighty (180) consecutive days,
 - b. the filing of a petition in bankruptcy with respect to a Borrower, or
 - c. the death of a Borrower.

For Loans on which the Borrower is two or more persons, none of the above, with the exception of paragraph b, shall be a Guaranty Event unless one or more such events shall have occurred with respect to all such persons. The foregoing notwithstanding, if a Borrower files a petition in bankruptcy pursuant to Chapter 7 of the U.S. Bankruptcy Code and does not seek a discharge of the affected Loan(s) under 11 U.S.C. §523(a)(8)(B) of the U.S. Bankruptcy Code, the LENDER at TERI’s request will withdraw its Guaranty Claim unless or until one of the other Guaranty Events shall have occurred with respect thereto.

- 1.12 "Loan" shall mean a loan of funds, including all disbursements thereof, made by the LENDER under the Programs.
- 1.13 "Loan Origination Agreement" means the amended and restated agreement of that name between LENDER and TERI dated as of June 30, 2006, as it may be amended from time to time.
- 1.14 "Note Purchase Agreement" means the amended and restated agreement of that name between LENDER and FMC dated as of June 30, 2006, as may be hereinafter amended.
- 1.15 "Program Guidelines" shall mean (i) Underwriting, Origination and Loan Term Guidelines for Bank of America SC Loan Programs, (ii) the TERI Servicing Guidelines, and (iii) Specific Program Summaries for Bank of America SC Loan Programs, copies of the Program Guidelines are attached hereto as Exhibits A1, A2, A3 and A4 all as may be amended from time to time.
- 1.16 "Promissory Note" shall mean a promissory note executed by a Borrower evidencing a Loan, as set forth in the Program Guidelines, as the same may be amended from time to time.
- 1.17 "Securitization Transaction" shall mean and refer to a purchase of Loans guaranteed hereunder by a special purpose entity formed by FMC, which purchase is funded through the issuance of debt instruments or other securities by such entity, the repayment of which is supported by payments on the Loans.
- 1.18 "TERI Electronic Signature Process" means the process described in Exhibit C attached hereto.

Section 2: GUARANTEE OF LOANS

- 2.1 TERI hereby guarantees to the LENDER, unconditionally except as set forth in Section 2.2 below, the payment of 100% of the principal of and accrued interest on every Loan as to which a Guaranty Event has occurred. "Accrued interest" shall mean interest accrued and unpaid to the date of payment in full by TERI of a Guaranty Claim, less any interest that shall have accrued after the filing of a Guaranty Claim but before TERI shall have received all the documentation necessary to process the Guaranty Claim as set forth in the Program Guidelines. TERI will use all reasonable efforts to make payment on its guaranty within sixty (60) days, and will in any event make payment within ninety (90) days, of receipt by TERI of a Guaranty Claim from the LENDER stating the name of the Borrower and the type of Guaranty Event that has occurred accompanied by the full claim documentation required in the Program Guidelines.
- 2.2 TERI's guaranty is conditioned upon the following:
- a. The LENDER must have filed its Guaranty Claim within the time period and following the procedures specified in the Program Guidelines.
 - b. The LENDER and its predecessors in interest must at all times have exercised Due Diligence with respect to the Loan (or shall have cured any failure to exercise Due Diligence under the reinstatement provisions in Section 2.4 hereof and the Program Guidelines), and must have complied with all other requirements of the Program Guidelines applicable to the Loan.
 - c. The LENDER shall have paid to TERI the Initial Guaranty Fee (as defined in Section 3.3.a. below) for the Loan in question, and shall have paid to the Agent any Subsequent Guaranty Fee (as defined in Section 3.3.b. below) for the Loan in question which is due and payable as provided in Section 3.3.b. below.
 - d. TERI must have received from the LENDER the original Promissory Note, enforceable against the Borrower (except as provided in this Section 2.2.d. below), endorsed to TERI in such manner as to transfer to TERI all rights in and title to such Promissory Note, free and clear of all liens and encumbrances, and of all defenses, counterclaims, offsets, and rights of rescission that might be raised by the Borrower. Submission of a Guaranty Claim to TERI shall constitute the LENDER's certification that the conditions of 2.2.b. and 2.2.d. have been met, and TERI is entitled to rely on such certification.

Subsections 2.2.b. and 2.2.d. above notwithstanding, if a Loan that is the subject of a Guaranty Claim was originated by TERI on behalf of the LENDER pursuant to a Loan Origination Agreement between the parties, (i) TERI will not deny the LENDER's Guaranty Claim on such Loan if the sole basis for denial is a violation of the Program Guidelines or a violation of Massachusetts or federal law committed by TERI in the origination process, and (ii) TERI will have no recourse against the LENDER in the event that TERI's actions or omissions in the origination process shall have given rise to a defense in favor of the Borrower in a suit on the Promissory Note. In addition, a loan originated by TERI using the TERI Electronic Signature Process that otherwise qualifies in all respects for coverage under the Guaranty Agreement shall not be denied such coverage on account of any defect in the TERI Electronic Signature Process.

- 2.3 TERI's guaranty obligation with respect to any Loan shall not be terminated or otherwise affected or impaired (i) by the LENDER's granting an extension to the Borrower of time to make scheduled payments, or by any other indulgence the LENDER may grant to the Borrower, provided that all extensions and other indulgences meet the forbearance standards and other requirements of the Program Guidelines; or, Section 2.2.d. above notwithstanding, (ii) because of any fraud in the execution of the Promissory Note, (iii) because of any illegal or improper acts of the Borrower, (iv) because the Borrower may be relieved of liability for such Loan due to lack of contractual capacity or any other statutory exemption.
- 2.4 TERI may deny the LENDER's Guaranty Claim on any Loan on the grounds of Due Diligence deficiencies. If TERI properly denies the LENDER's claim on any Loan on the grounds of Due Diligence deficiencies, the LENDER may thereafter require that TERI reinstate the guaranty of such Loan if (a) the LENDER corrects such deficiencies and receives four (4) consecutive full on-time monthly payments from the Borrower, according to any schedule permitted by the Program Guidelines, and if at the time of the LENDER's request the Borrower is within thirty (30) days of being current on all principal and interest payments on such Loan, or (b) the LENDER satisfies any other method of cure set forth in the Program Guidelines.
- 2.5 TERI's guaranty hereunder is a continuing and absolute guaranty of payment and not merely of collection, covering Loans made in accordance herewith either (i) prior to termination of this Agreement, or (ii) based upon applications received by the LENDER prior to such termination; and shall not affect TERI's obligations to the LENDER then existing, whether direct or indirect, absolute or contingent, then due or thereafter to become due.
- 2.6 TERI agrees not to exercise any right of subrogation, reimbursement, indemnity, contribution or the like against the Borrower of any Loan unless and until all TERI's obligations under this Agreement with respect to such Loan have been satisfied in full, except to the extent that it is deemed a valid claimant as a contingent creditor, for example, under Title 11 of the United States Code (the "Bankruptcy Code"), or applicable state law.
- 2.7 TERI will permit the LENDER, any duly designated representative of the LENDER, or any governmental body having jurisdiction over the LENDER (subject to written notice being provided to TERI by the LENDER, identifying the requesting party and the date of the review), to examine and audit the books and records of TERI pertaining to the Loans, at any time during TERI's regular business hours, provided that in the case of examinations by the LENDER or its representative absent good cause (i) TERI must be given ten (10) business days' prior written notice and, (ii) no more than one such audit may be conducted with respect to any twelve-month period or will take place in any twelve-month period. In no event will any audit be performed during July, August, September, or October in any year except at the request of a regulatory authority having jurisdiction over the LENDER.
- 2.8 TERI will indemnify the LENDER and hold it harmless from and against any loss, cost, damage and expense that the LENDER may suffer as a result of claims arising out of TERI's actions or omissions relative to the LENDER's participation in the Program. "Expense" includes, without limitation, the LENDER's reasonable attorney's fees. TERI will further indemnify the LENDER and hold it harmless from and against any claim brought against the LENDER by any Borrower based on actions or omissions of the LENDER that were mandated under the Program Guidelines.
- 2.9 Although the LENDER agrees not to use any loan servicer not approved by TERI, the LENDER acknowledges that TERI's approval of a servicer is in no way an endorsement of such servicer and that TERI shall have no liability to the LENDER for any losses arising from such servicer's failure to comply with Due Diligence or the Program Guidelines or applicable law, nor shall TERI be required to honor any claim submitted by such servicer if the claim does not comply with the requirements of this Agreement.

Section 3:

OBLIGATIONS OF THE LENDER

- 3.1 In originating, servicing, disbursing, and collecting Loans, the LENDER will comply, and cause its servicer and others acting on its behalf to comply, at all times with all Program Guidelines (including Due Diligence requirements) and all applicable requirements of federal and state laws and regulations.
- 3.2 The LENDER will use Promissory Notes, Loan applications, disclosure statements, and other forms as set forth in the Program Guidelines, as the same may be amended from time to time. Without limiting the generality of Section 3.1, the LENDER warrants the conformity of such instruments and any agreed successors thereto with all applicable legal requirements, other than those of federal and Massachusetts laws and regulations, and TERI warrants their conformity with Massachusetts and federal laws.
- 3.3 The LENDER will pay a guaranty fee for each Loan (the "Guaranty Fee") as follows:
- a. At the time of each disbursement of the Loan, the LENDER will remit to TERI one and one-half percent (1.5%) of the principal amount of Loan disbursed (the "Initial Guaranty Fee").
 - b. At such times as are set forth in Schedule 3.3 attached hereto and incorporated herein by reference, such additional fees as are set forth in the fifth through seventh columns of Schedule 3.3 ("Subsequent Guaranty Fee").
 - i. If the terms of Schedule 3.3 call for any Guaranty Fees to be paid concurrent with the Securitization Transaction, the LENDER shall pay such fees directly (and be reimbursed in the Securitization Transaction to the extent provided in the Note Purchase Agreement).
 - ii. In the event that a Guaranty Claim is made with respect to a Loan before a Subsequent Guaranty Fee is scheduled to be paid by the LENDER for such Loan, the Subsequent Guaranty Fee shall become immediately due and payable.
 - iii. In the event that a loan is prepaid in full prior to the date that a Subsequent Guaranty Fee is scheduled to be paid by the LENDER for such Loan, the Subsequent Guaranty Fee shall nevertheless become due and payable at the time that would have applied if such prepayment had not occurred. For example, if a Subsequent Guaranty Fee is due at the time of a Securitization Transaction and a Loan is prepaid before it is eligible for Securitization, then the Subsequent Guaranty Fee with respect to such Loan shall become due at the first Securitization Transaction in which such Loan would have been eligible for inclusion, had prepayment not occurred.
 - iv. In the event that FMC fails to purchase any Loan under the Note Purchase Agreement, and the LENDER sells such Loan to a third party, the Guaranty Fees due with respect to such loan at the time of a Securitization Transaction will instead be paid by the LENDER at the time the loan is sold to the third party.
 - v. In the event FMC has no further right or obligation under the Note Purchase Agreement to purchase a Loan in a Securitization Transaction, the LENDER shall pay all Subsequent Guaranty Fees that are due to be paid at the time of securitization as set forth in Schedule 3.3. Such fees shall be payable (A) with respect to any Loan already funded, within thirty (30) days after presentation of an invoice by TERI to LENDER, and (B) with respect to Loans funded after the date of such invoice, at the time of disbursement.
 - vi. In the event that the LENDER fails to sell any Loan to FMC because the LENDER has breached the Note Purchase Agreement, the LENDER shall pay all Subsequent Guaranty Fees that are due to be paid at the time of securitization as set forth in Schedule 3.3. Such fees shall be payable directly to TERI and shall not be subject to the Deposit and Security Agreement.
 - c. Failure to remit any Guaranty Fee within thirty (30) days of the time set forth above will not affect the validity of the guaranty for any Loan for which the Guaranty Fee has already been paid in full, but, as a result, TERI will have the right, at its discretion to (i) void its obligation to guarantee or collect the Loan to which such Guaranty Fee relates or (ii) collect the amount of any such Guaranty Fee and to add interest at the rate of eighteen percent (18%) per annum from the disbursement date of the Loan to which such Guaranty Fee relates, plus any costs (including attorneys' fees and expenses) incurred by TERI in collecting or attempting to collect such Guaranty Fee from the LENDER.

- d. Anything in the Program Guidelines to the contrary notwithstanding, if the LENDER is required under the terms of a Promissory Note to refund all or part of the Guaranty Fees identified above to a Borrower, TERI will refund all or part of the Initial Guaranty Fee it has received and the Agent will refund all or part of any Subsequent Guaranty Fee it has received (in each case related to the refund to such Borrower) to the LENDER upon being so advised by the LENDER in writing.
- e. For purposes of application and interpretation of Schedule 3.3, LENDER and FMC (acting jointly) shall, from time to time, propose to TERI a list of those schools to be included on a "preferred" list. Loans to finance education at those schools will qualify for "preferred" fee levels shown on Schedule 3.3. TERI shall, within thirty (30) days, approve or disapprove, in whole or in part, proposals from FMC and LENDER.
- f. LENDER shall pay to TERI a Subsequent Guaranty Fee in addition to the Subsequent Guaranty Fees shown on Schedule 3.3 for loans identified as School Channel loans on Schedule 3.3 at the time of each securitization transaction. The fee shall be computed by (a) determining the product of the risk-weighted administration fee percentage for each pricing tier multiplied by the original gross principal amount of the Loans being sold by the LENDER in each pricing tier, (b) adding together all such products to produce a risk-weighted administrative allowance, and (c) subtracting the amount of Initial Guaranty Fees already paid to TERI by the LENDER. If the computation produces a negative number, no supplemental fee is due. The risk-weighted administrative fee percentages are set forth in Schedule 3.3.g attached hereto. Fees due from the LENDER to TERI under this Section 3.3.g shall not be subject to the Deposit and Security Agreement.

3.4 If TERI shall have purchased a Loan due to the occurrence or alleged occurrence of a Guaranty Event described in Section 1.4.a. and/or 1.4.b. above, the LENDER will promptly repurchase such Loan from TERI, (i) if TERI succeeds, after purchase, in obtaining from the Borrower three full consecutive on-time monthly payments, according to any schedule permitted by the Program Guidelines, provided that on the date of TERI's notice to repurchase, the Borrower is within thirty (30) days of being current on his or her payments on such Loan; provided that this repurchase obligation may be invoked by TERI only once as to any Loan; or (ii) subject to Section 2.3 above, if TERI should determine that the Loan does not meet the conditions set forth in subsection (b), (c) and (d) of Section 2.2 above. With respect to the repurchase of any Guaranteed Loan pursuant to this Section 3.4, the repurchase price shall be equal to (1) the remaining unpaid principal balance of such Loan, plus (2) any accrued unpaid interest thereon.

3.5 To the extent permitted by applicable law, the LENDER will deliver to TERI such reports, documents, and other information concerning the Loans as TERI may reasonably require, and permit independent auditors or authorized representatives of TERI, and governmental agencies, if any, having regulatory authority over TERI, to have access to the operational and financial records and procedures directly applicable to Loans and to the LENDER's participation in the Program.

LENDER shall provide a monthly report containing information set forth on Exhibit B hereto at TERI's expense; TERI shall arrange directly with the loan servicer to receive the report and negotiate any necessary fee. Any other reporting or information shall be provided upon TERI's agreement to reimburse LENDER for its incremental cost of such report.

3.6 If the LENDER should violate any term of this Agreement, it will be liable to TERI for all loss, cost, damage, and expense sustained by TERI as a result. The LENDER will indemnify TERI and hold it harmless from and against all loss, cost, damage, and expense that TERI may suffer as a result of claims arising out of the LENDER's actions or omissions relative to the LENDER's participation in the Program unless such actions or omissions are specifically required by this Agreement. The LENDER will similarly indemnify TERI with respect to any defenses arising from the LENDER's violation of or failure to comply with any law, regulation, or order, or any term of this Agreement, that may be raised by a Borrower to any suit upon a Promissory Note. "Expense" includes, without limitation, TERI's reasonable attorney's fees.

Section 4: INTENTIONALLY OMITTED

Section 5: REPRESENTATIONS AND WARRANTIES

5.1 Each party represents and warrants to the other that its execution, delivery and performance of this Agreement are within its power and authority, have been authorized by proper proceedings, and do not and will not contravene any provision of law or such party's organization documents or by-laws or contravene any provision of, or constitute an event of default or an event which, with the lapse of time or with the giving of notice or both, would constitute an event of default, under any other agreement, instrument or undertaking by which such party is bound. Each party represents and warrants that it has and will

maintain in full force and effect all licenses required under applicable state, federal, local or other law for the conduct of all activities contemplated by this Agreement and comply with all requirements of such applicable law relative to its licenses and the conduct of all activities contemplated by this Agreement. This Agreement and all of its terms and provisions are and shall remain the legal and binding obligation of the parties, enforceable in accordance with its terms subject to bankruptcy and insolvency laws. The warranties given herein shall survive any termination of this Agreement.

- 5.2 Each party represents and warrants to the other that its computer and processing systems will (a) operate continuously without errors relating to date information; (b) continue to function and will not generate invalid or incorrect results as a result of date information, including any date information representing dates from different centuries or more than one century; and (c) have been designed to be and in fact are, Year 2000 compatible such that (i) all data created or stored by the software will be correct, regardless of the date information contained therein or the date the data is created or stored; (ii) all calculations performed will be correct regardless of the date information used or the date the calculations are performed; (iii) all date-related user interface functions and data fields include a century indication; and (iv) all reports generated will include a century indication.
- 5.3 The parties acknowledge that TERI is not an insurer or reinsurer and the LENDER expressly waives all claims it might otherwise have under applicable law were TERI to be held by any court or regulatory agency to be acting as an insurer or reinsurer hereunder. The only obligations of TERI to the LENDER shall be those expressly set forth herein.

Section 6: MISCELLANEOUS

- 6.1 Neither party is or will hold itself out to be the agent, partner, or joint venturer of the other party with regard to any transaction under or pursuant to this Agreement.
- 6.2 Each party's respective rights, remedies, powers, privileges, and discretions ("Rights and Remedies") shall be cumulative and not exclusive. No delay or omission by either party in exercising or enforcing any of its Rights and Remedies shall operate as to constitute a waiver of them. No waiver by a party of any default under this Agreement shall operate as a waiver of any subsequent or other default under this Agreement. No single or partial exercise by a party of any of its Rights and Remedies shall preclude the other or further exercise of such Rights and Remedies. No waiver or modification by a party of the Rights and Remedies on any one occasion shall be deemed a continuing waiver. A party may exercise its various Rights and Remedies at such time or times and in such order of preference as it in its sole discretion may determine.
- 6.3 This Agreement (including the Program Guidelines and all exhibits and schedules hereto), together with (i) the Deposit and Security Agreement and (ii) the Loan Origination Agreement, of even date herewith, between TERI and the LENDER ((i) and (ii) together, the "Ancillary Agreements"), represents the entire understanding of the parties with respect to the subject matter hereof. This Agreement, together with any contemporaneous contract concerning credit analysis and the Ancillary Agreements, supersedes all prior communications whatsoever between the parties relative in any way to Loans or the LENDER's participation in the Program. This Agreement may be modified only by written agreement of the parties hereto, except as may otherwise be set forth herein.
- 6.4 Any determination that any provision of this Agreement is invalid, illegal, or unenforceable in any respect shall not affect the validity, legality, or enforceability of such provision in any other instance and shall not affect the validity, legality, or enforceability of any other provision of this Agreement.
- 6.5 Each of the parties will timely implement, if it has not already, and will maintain, a reasonable disaster recovery plan. Subject to the foregoing, no party hereto shall be responsible for, or in breach of this Agreement if it is unable to perform as a result of delays or failures due to any cause beyond its control, howsoever arising, and not due to its own act or negligence and that cannot be overcome by the exercise of due diligence. Such causes shall include, but not be limited to, labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, wars, terrorist acts, civil disorder, hostilities, expropriation or confiscation of property, failure or delay by carriers, interference by civil and military authorities whether by legal proceeding or in fact and whether purporting to act under some constitution, decree, law or otherwise, acts of God and perils of the sea.
- 6.6 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to the conflict of laws provisions thereof.
- 6.7 This Agreement will be binding on the parties' respective successors and assigns. Except as otherwise set forth in this Section 6.7, this Agreement may not be assigned by either party without the other's written consent.

- a. The LENDER may, without TERI's consent, assign any Loan, together with the provisions hereof as applicable to such Loan, to another entity participating in the Program, or to an SPE formed by the LENDER, in each case upon written notice to TERI.
 - b. TERI specifically acknowledges that FMC or an SPE sponsored by FMC is expected to purchase some or all of the Loans, and this Agreement shall inure to the benefit of FMC or any such SPE upon such purchase. No notice of such purchase or consent to the assignment of the LENDER's rights under this Agreement in connection with a purchase of some or all of the Loans by FMC or any SPE sponsored by FMC shall be necessary.
 - c. In assigning any Loan and its rights under this Agreement relating to such Loan in accordance with Section 5.7(a), (i) the LENDER's written notice to TERI must be made within thirty (30) days after said assignment and must identify each Loan to which such assignment relates, and (ii) TERI will fully cooperate with any Securitization Transaction or other sale of a portfolio of Loans, provided it is given thirty (30) days advance written notice of the date that information or documents are required of it and provided that its reasonable legal fees and other expenses incurred in connection with such transaction are reimbursed by the seller of such Loans.
 - d. Except for any assignment hereunder to FMC or any SPE sponsored by FMC in connection with a purchase of Loans as described in subsection b. above, no assignment of Loans or the LENDER's rights hereunder without TERI's express written consent shall release the LENDER from any liability to TERI under this Agreement arising out of the LENDER's ownership of such Loans (whether arising prior to, as a result of or after the sale of such Loans by the LENDER) including, without limitation, the LENDER's obligation to pay any unpaid Guaranty Fees and to repurchase Loans pursuant to Section 3.4.
 - e. LENDER acknowledges that TERI has outsourced or subcontracted some or all of its administrative functions, including but not limited to the processing of guarantee claims, to First Marblehead Education Resources, Inc. In addition, LENDER acknowledges that TERI has subcontracted and may hereafter subcontract any administrative obligations necessary or convenient to TERI to perform its obligations hereunder, and that such subcontracts do not and shall not require the consent of the LENDER. Such outsourcing or subcontracting shall not relieve TERI of its obligations under this Agreement.
- 6.8 Notice for any purpose hereunder may be given by any means requiring receipt signature, or by facsimile transmission confirmed by first class mail. In the case of TERI, notices should be sent to its President, and if by fax, to (617) 451-9425, or to its Senior Vice President-Loan Programs, Fax No. (617) 422-8880. In the case of the LENDER, notices should be sent to Bank of America Student Banking Group, Bank of America, N.A., Mail Code: NC1-002-15-26, Charlotte, NC 28255-0001, Attention: Mark Wilcox, and if by fax, (213) 345-2111. Either party may from time to time change the person, address or fax number for notice purposes by formal notice to the other party.
- 6.9 For the Bank of America School Channel Loan Program, TERI has established a system of risk-based pricing based on tiered guaranty fees and/or tiered interest rates that correspond to the actual risk of lending to borrowers with lesser creditworthiness ("Risk-Based Pricing") The Risk-Based Pricing system is set forth in the Program Guidelines attached hereto. TERI bases Risk-Based Pricing upon the projected net cost of defaults, which TERI believes provides business justification for the pricing levels set forth in the Risk-Based Pricing it has offered to LENDER. Any representation or warranty of compliance with federal or state law made by TERI in this Guaranty Agreement, or the Loan Origination Agreement between the parties of same date, that may relate to Risk-Based Pricing does not extend beyond the pricing actually included in the Program Guidelines attached hereto.

Section 7: CHANGES TO PROGRAM GUIDELINES

The parties agree that the Program Guidelines will need to be updated and modified from time to time to respond to changed conditions. The parties intend to make such modifications in a manner that does not interfere with the ordinary advertising and origination cycle for education loans. Amendments necessary to meet state or federal regulatory requirements may be made at any time. TERI may request, in writing, modifications to the Program Guidelines, including without limitation any requested changes to the provisions of the Program Guidelines concerning the Guaranty Fees, in the first part of the first calendar quarter of each year. LENDER shall respond in writing to proposals from TERI within thirty (30) days, and both parties will attempt to resolve any differences within thirty (30) days after TERI receives a response to a request. All modifications must be mutually acceptable. Modifications shall take effect as soon after TERI and the LENDER's loan servicer shall be able to adjust their systems to accept loans made on the modified terms, and the LENDER agrees to take such actions as are reasonably necessary to ensure that its loan servicer adjusts its systems as

promptly as practicable. The parties shall use their best efforts to conclude all negotiations of proposed changes prior to May 1 of each year. The foregoing process shall not apply to modification of the Servicing Guidelines, which are subject to the modification process contained therein.

Section 8: TERM AND TERMINATION

- 8.1 The initial term of this Agreement shall commence on June 30, 2006, and shall continue until June 30, 2007. Thereafter, this Agreement shall automatically renew for successive one-year terms unless either party provides written notice of non-renewal and termination not less than [**] days prior to the end of the then-current term.
- 8.2 In the event that the parties are unable to agree on a proposed modification to the Program Guidelines as provided in Section 7, above, TERI shall have the option of terminating this Agreement effective immediately upon written notice of termination to LENDER, provided that TERI does so within [**] days of the end of the [**] day period provided in Section 6 for the resolution of any differences.
- 8.3 To the extent permitted by applicable law, if either party should become subject to bankruptcy, receivership, or other proceedings affecting the rights of its creditors generally, the party becoming subject to such proceedings will promptly notify the other party thereof, and this Agreement will be deemed terminated immediately upon the initiation of such proceedings without the need of notice to the other party.
- 8.4 Termination shall be prospective only and shall not affect the obligations of the parties hereto which were incurred prior to such termination or any of the warranties and indemnities contained herein or the provisions of Section 9 below (regarding confidentiality). Not less than [**] days prior to the effective date of termination, TERI may, by additional notice to the Lender, terminate its obligation to assume the guaranty of all or any subset of otherwise qualifying Loans as to which a commitment to lend is made after the Lender's receipt of such additional notice. In the absence of such additional notice TERI will, subject to the terms and conditions of this Agreement, assume the guaranty of all Loans as to which a commitment to lend is made prior to the effective date of termination. In the event this Agreement terminates or expires and only one disbursement of a multi-disbursement loan has been made prior to that date, the other disbursement will also be guaranteed pursuant to the terms of this Agreement.

Section 9: CONFIDENTIALITY; RESTRICTIONS ON USE OF INFORMATION

- 9.1 During the course of negotiating this Agreement and hereafter during the pendency of this Agreement, the parties from time to time may have revealed or may hereafter reveal to each other certain information concerning their respective business plans, business methods, financial data and projections, and/or information that is not generally known in the student loan industry, including, without limitation, the terms and conditions of this Agreement. All the foregoing is referred to herein as "Confidential Information." In TERI's case, its Confidential Information also includes, but is not limited to, information concerning the operation of its telephone and on-line loan applications procedures, and its online credit scoring system. Each party will use reasonable efforts to preserve the confidentiality of Confidential Information contained herein or disclosed to it by the other party, such efforts to be not less vigilant than those that such party uses to protect its own proprietary information. The foregoing is subject to the following qualifications:
- a. No party will be so bound with respect to information that is or becomes public knowledge in the student loan industry (but if it does so through any fault of such party that fault will be considered a material breach of this Agreement);
 - b. No party will be so bound with respect to information that is now or hereafter comes into its possession by its own documented independent efforts or from a third party who, so far as the recipient party has reason to believe, is under no comparable restriction with respect to such information;
 - c. Either party may disclose Confidential Information to its attorneys, auditors, agents, and consultants who are bound to maintain the confidentiality of such information;
 - d. Either party may disclose Confidential Information in the context of any regulatory review of its operations or as compelled by law, regulation, or court order, provided that in the context of a court order the party required to disclose will (i) give the other party prompt written notice upon learning of the requirement so that the other party may take appropriate action to prevent or limit the disclosure, (ii) consult with the other party and use all reasonable efforts to

agree on the nature, form, timing and content of the disclosure, (iii) except as otherwise agreed under (ii), disclose no more than its counsel advises is legally required, and (iv) inform the Court and all counsel concerned that such information is and should be treated as confidential information of the other party; and

- e. Information concerning Loans and Borrowers that comes into TERI's possession shall not be considered Confidential Information of the Lender.
- f. Without limiting the foregoing, TERI may disclose any of the LENDER's Confidential Information to any entity to which TERI subcontracts its obligations under this Agreement pursuant to Section 6.7(e) hereof.

- 9.2 In accordance with the provisions of Title V of the Gramm-Leach-Bliley Act (the "GLB Act") and Federal Reserve Board Regulation P ("Regulation P"), TERI agrees, as a financial institution subject to Regulation P, to respect and protect the security and confidentiality of any "nonpublic personal information" (as defined in the GLB Act and Regulation P) relating to applicants for Loans and to Borrowers, including, where applicable, the restrictions on the disclosure of such information set forth in the GLB Act and Regulation P.

Notwithstanding the foregoing, TERI may purchase credit score analysis and validation services from time to time from consumer reporting agencies. In order to perform the score analysis and validation services, the consumer reporting agencies may access personal information about applicants and borrowers, including (i) application information and loan servicing data concerning loans funded by Lender and guaranteed by TERI, (ii) application data concerning loan applications that were approved but not funded (e.g., due to withdrawal of the loan application), and (iii) application data concerning denied applications. In order to facilitate the analysis of this data and the score validation process, TERI may retain third party database vendors to receive and store this data in a secure database, and to provide TERI and the consumer reporting agencies with restricted access to such information. In order to comply with applicable privacy laws, TERI will contract with the consumer reporting agencies and such third party database vendors to ensure that the information is protected and used only for the purposes of providing the score validation and analysis services.

- 9.3 Without limiting the foregoing, TERI may retain as its own property and use for any lawful purpose any or all aggregated or de-identified data concerning Loan applicants and Borrowers, which does not include the name, address or social security number of the Loan applicants or Borrowers. TERI may sell, assign, transfer or disclose such information to third parties including, without limitation, FMC, who may also use such information for any lawful purpose.

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IN WITNESS WHEREOF, TERI and the LENDER have caused this instrument to be executed by their duly authorized officers under seal as of the day and year indicated above.

THE EDUCATION
RESOURCES INSTITUTE, INC.

BANK OF AMERICA, N.A.

By: /s/ William G. Davidson, Jr.
Print Name: William G. Davidson, Jr.
Title: Treasurer and CFO

By: /s/ Mark Wilcox
Print Name: Mark Wilcox
Title: Senior Vice President

TABLE OF EXHIBITS

Exhibit A1 --	Program Guidelines for the Bank of America Private Undergraduate Education Loan Program and the Bank of America Private Graduate Professional Education Loan Program.
Exhibit A2 --	Program Guidelines for the prepGATE Loan Program, the Bank of America TERI Alternative Undergraduate Loan Program, the Bank of America TERI Alternative Graduate Loan Program, the Bank of America TERI Alternative Continuing Education Loan Program, the Bank of America TERI Alternative Health Professions Loan Program (including the CVS Loan Program).
Exhibit A3 --	Program Guidelines for Bank of America ISLP Undergraduate Loan Program and the Bank of America ISLP Graduate Loan Program.
Exhibit A4 --	Program Guidelines for the Bank of America ISLP Medical Loan Program.
Exhibit -- B	Servicer Data Requirements
Schedule 3.3 --	Guaranty Fee Amounts

EXHIBIT A
Program Guidelines

[**]

EXHIBIT B
Servicer Data Requirements

[**]

EXHIBIT C
TERI Electronic Signature Process

[**]

SCHEDULE 3.3

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