

## SETTLEMENT AND MUTUAL RELEASE AGREEMENT

On this <sup>16<sup>th</sup></sup> day of February 2009, each and every person listed in Exhibit A hereto (collectively, "Plaintiffs"),<sup>1</sup> on the one hand, and KeyBank National Association, formerly known as KeyBank USA, National Association, ("KeyBank"), and Great Lakes Educational Loan Services, Inc. ("Great Lakes"), on the other hand, hereby execute this Settlement and Release Agreement (the "Agreement").

### RECITALS

**WHEREAS**, KeyBank and Great Lakes assert KeyBank lent money (the "Loans") to Plaintiffs, secured by promissory notes (the "Notes"), to fund the tuition and other expenses related to Plaintiffs' enrollment at a flight school located in Deland, Florida called TAB Express International, Inc. (the "School").

**WHEREAS**, the Plaintiffs listed in, and where so reflected on, Exhibit A to the Agreement signed enrollment forms to attend the School and/or signed or co-signed Notes that were intended for the purpose of securing or guaranteeing Loans to pay for the School's tuition. Additionally, some of the Plaintiffs listed in, and where so reflected on, Exhibit A signed additional Notes that were intended for the purpose of securing or guaranteeing Loans to fund other expenses while enrolled at the School.

**WHEREAS**, Great Lakes had a contractual relationship with KeyBank.

**WHEREAS**, Great Lakes and KeyBank assert Great Lakes, under its contract with KeyBank, performed certain loan servicing functions for KeyBank with respect to the aforementioned student loans.

**WHEREAS**, a dispute has arisen between Plaintiffs, KeyBank and Great Lakes regarding, *inter alia*, the aforementioned assertions and recitals, and KeyBank has assigned correlative loan numbers as set forth in Exhibit A to this Agreement.

**WHEREAS**, Plaintiffs contend that KeyBank is not entitled to collect on the Notes because the School could not provide and failed to provide Plaintiffs with the education and/or training despite KeyBank's transfers of funds to the School.

**WHEREAS**, KeyBank and Great Lakes deny and vigorously dispute any and all liability arising from the failure of the School.

**WHEREAS**, Plaintiffs brought a lawsuit against the School, KeyBank and Great Lakes, which is currently pending in the Circuit Court of the Seventh Judicial Circuit in and for Volusia County, Florida, entitled *Bergen et al. v. KeyBank USA, National Association, et al.* Case No. 2005-11031-CIDL (the "Action").

**WHEREAS**, Plaintiffs assert claims against KeyBank and Great Lakes for rescission, breach of fiduciary duty, breach of contract, unconscionability, breach of the implied duty of good faith and fair dealing, common law defamation of credit, fraud in the inducement, negligent misrepresentation, conspiracy to commit fraud, and for violations of the Florida Consumer Collection Practices Act ("FCCPA") (Fla. Stat. § 559.551, *et seq.*), and the federal Racketeering Influenced and Corrupt Organizations Act ("RICO Act") (18 U.S.C. § 1962, *et seq.*) collectively, "the Claims", and Plaintiffs

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<sup>1</sup> As used throughout this Agreement, "Plaintiffs" means both each and all Plaintiffs listed hereto.

assert they are protected against incurring any liability to Great Lakes and KeyBank or any assignees of the Notes under the Holder Rule as recognized by the U.S. Federal Trade Commission.

**WHEREAS**, Plaintiffs allege that KeyBank collaborated with the School in a “business enterprise, scheme and relationship” that was aimed at fraudulently inducing students to enroll at the School and at fraudulently inducing the students and, where applicable, their co-signers into applying for KeyBank student loans and signing the Notes.

**WHEREAS**, Plaintiffs allege that KeyBank and the School designed their alleged scheme such that KeyBank would realize profits derived from interest on the Notes and by charging loan fees.

**WHEREAS**, Plaintiffs allege that they were victims of this alleged scheme and that the Notes and enrollment forms are a product of this alleged scheme.

**WHEREAS**, Plaintiffs seek compensatory damages, special damages, statutory damages under the FCCPA, treble damages under the RICO Act, rescission of the Notes, an injunction preventing KeyBank and Great Lakes from defaming their credit or reputation in the community, and an award of interest and reasonable attorneys’ fees and costs.

**WHEREAS**, Plaintiffs assert that the Notes and Loans were void *ab initio* or would have been rescinded or rendered void, that the denomination herein of “Notes” and “Loans” is for ease of reference only and not as admissions by Plaintiffs as to the true legal effect of, or as subjective descriptions of, the documents or events, and that upon proof at trial and the return of jury verdicts with findings of fact and applications of the laws and resulting judgments, the services offered or provided by the School had no value, the actions of KeyBank and the School resulted in a net cost to each Plaintiff, Plaintiffs have and had no legal debts to KeyBank or the School, there were in law no enforceable promissory notes or true liabilities thereon, there never was a legal debtor-creditor relationship, there never was nor could there ever be debt cancellation or other income or gains on account of any of the claims or counterclaims and this Agreement, and the moneys transferred by KeyBank to the School were never sent to, received by, or controlled or capable of control, directly or indirectly, by the Plaintiffs.

**WHEREAS**, each of KeyBank and Great Lakes denies that it engaged in or conspired, colluded or agreed to engage in any illegal, deceptive, fraudulent or unfair practice or activity, that it breached any contract with or duty owed to Plaintiffs, that injunctive relief is warranted, and that it in any way injured or damaged any of the Plaintiffs and, to the contrary, each of KeyBank and Great Lakes contends that its lending and other practices, at all times, were and are lawful and proper.

**WHEREAS**, KeyBank asserts counterclaims in the Action against Plaintiffs, to wit, claims for breach of contract, account stated, open account, unjust enrichment, and quantum meruit (collectively, “the Counterclaims”), and seeks judgment against Plaintiffs for damages together with prejudgment interest, attorneys’ fees and costs.

**WHEREAS**, in order to avoid the possible future costs, burdens and distractions of litigation, KeyBank, Great Lakes, and Plaintiffs desire to fully resolve, compromise, settle and release all issues, claims, demands and actions, including the Claims and the Counterclaims pending in the Action, that have or could have been claimed by Plaintiffs or KeyBank or Great Lakes arising from the Notes and the failure of the School.

## AGREEMENT

**NOW THEREFORE**, in consideration of the mutual promises, covenants and agreements hereafter set forth and the exchange of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Plaintiffs, KeyBank, and Great Lakes agree as follows:

1. Cancellation/Cessation. Concurrently with the signing of this Agreement, KeyBank, Great Lakes, and any assignees or agents thereof including without limitation ACS, agree to cease and desist, now and forever, any action to seek payment or assets from the Plaintiffs on any of the Loans or Notes cataloged in Exhibit A attached hereto. As soon as practicable, but in no event more than 30 days after termination of the Action, KeyBank shall contact the four credit reporting agencies with whom KeyBank or Great Lakes regularly does business – viz., Equifax, Experian, TransUnion, and Innovis (hereinafter the “credit reporting agencies”) – and request that the credit reporting agencies delete any negative reference to the Notes or Loans previously reported to the applicable credit reporting agencies or said agencies’ agents, representatives, employees, personnel, representatives, successors, or assigns, and shall refrain from submitting negative reports on said Notes and Loans hereafter. KeyBank, Great Lakes, and Plaintiffs agree to work cooperatively and in good faith to ensure that the above-referenced changes to Plaintiffs’ respective credit reports are made. Plaintiffs acknowledge that KeyBank and Great Lakes have no control over the credit reporting agencies and therefore agree to hold KeyBank and Great Lakes harmless for any failure of any credit reporting agency to abide by KeyBank’s or Great Lakes’ requests made pursuant to this Agreement.

2. Payment of Attorneys’ Fees and Costs. Upon execution of this Agreement, KeyBank agrees to cause a wire in the amount of TWO-HUNDRED AND SIXTY-SEVEN THOUSAND, NINE-HUNDRED AND SEVENTY-TWO DOLLARS (\$267,972.00) (“Fees and Costs Settlement Amount”) to be sent to GrayRobinson, P.A., c/o Kevin P. Kelly (“Plaintiffs’ Counsel”). Plaintiffs acknowledge that the Fees and Costs Settlement Amount is in complete satisfaction of any and all claims against KeyBank or Great Lakes for attorneys’ fees or costs incurred by anyone on behalf of the Plaintiffs and that KeyBank and Great Lakes have no further obligation for any fees or costs in this matter. KeyBank’s payment under this provision is conditioned on Plaintiffs’ Counsel’s execution and submission of an IRS Form W-9.

3. Termination of the Action. Upon execution of this Agreement and receipt of the above-referenced payment of the Fees and Costs Settlement Amount, Plaintiffs agree to dismiss the Claims with prejudice and KeyBank agrees to dismiss the Counterclaims with prejudice, thus terminating with prejudice all claims and issues pending in the Action. To the extent there are any claims in the Action not contemplated in this Agreement, the parties to this Agreement hereby state their intent that, upon execution of this Agreement, all claims in the Action will be dismissed with prejudice. With the exception of KeyBank’s payment of the Fees and Costs Settlement Amount, each party agrees (subject only to any indemnification rights between KeyBank and Great Lakes) to pay their own costs and attorneys’ fees associated with the Action.

4. Covenant Not to Sue KeyBank. Plaintiffs covenant and agree never to sue, institute, cause to institute, assist in instituting or permit to be instituted any proceeding in any court or any other proceeding filed with any administrative or regulatory body, state or federal, against KeyBank and/or any of its predecessors, successors, subsidiaries, affiliates, assigns, insurers, directors, officers, agents, employees or attorneys for purposes of charging any of them with any liability for or in any other way complaining of their conduct based on or on account of any claims, controversies, actions, causes of action, demands or liabilities of any nature whatsoever arising from the failure of the School and the funds that were issued by KeyBank pursuant to the Loans including any documentation related to the Loans.

5. Covenant Not to Sue Great Lakes. Plaintiffs covenant and agree never to sue, institute, cause to institute, assist in instituting or permit to be instituted any proceeding in any court or any claims, complaint or other proceeding filed with any administrative or regulatory body, state or federal, against Great Lakes and/or any of its predecessors, successors, subsidiaries, affiliates, assigns, insurers, directors, officers, agents, employees or attorneys for purposes of charging any of them with any liability for or in any other way complaining of their conduct based on or on account of any claims, controversies, actions, causes of action, demands or liabilities of any nature whatsoever arising from the failure of the School and the funds that were issued by KeyBank pursuant to the Loans including any documentation related to the Loans.

6. Covenant to Disavow Debt. Upon being notified in writing, with a copy of this Agreement attached, by any Plaintiff of any negative report of or reference to any Note or Loan cataloged in Exhibit A attached hereto affecting the credit of the Plaintiff or any mortgage or other loan or financing agreement or application, KeyBank and Great Lakes shall immediately notify the prospective lender in writing, in substantially the following terms:

“There is no debt or financial obligation of [INSERT APPLICABLE PLAINTIFF’S NAME] to KeyBank or Great Lakes or any of our assignees relating to or arising from [INSERT PLAINTIFF’S NAME]’s loan number [INSERT APPLICABLE LOAN NUMBER(S) IDENTIFIED IN EXHIBIT A TO THIS AGREEMENT].”

7. Non-disparagement. Plaintiffs agree not to make, and not to cause any other person to make, any false, disparaging or defamatory comments, whether by electronic, written or oral means, about KeyBank or Great Lakes or the predecessors, successors, subsidiaries, affiliates, assigns, insurers, directors, officers, agents, employees and attorneys of KeyBank or Great Lakes in any way relating to this Agreement or the Action. Plaintiffs acknowledge that any violation of this Paragraph shall constitute a material breach of this Agreement and will entitle the non-breaching party to seek immediate injunctive relief, as well as damages associated with said breach of this Paragraph, along with any reasonable attorneys’ fees and costs associated with the enforcement of this Paragraph.

8. Reliance Upon Own Judgment. Plaintiffs declare and represent that in entering into this Agreement they have relied upon the advice of their attorneys and their own judgment, belief and knowledge. Each party to the Agreement shall bear their own costs and attorneys’ fees in connection with this Agreement, except as stated otherwise hereinabove. Furthermore, each party to this Agreement represents that (i) he/she/it has carefully read this Agreement, (ii) he/she/it has reviewed this Agreement with their respective legal counsel, (iii) the terms of this Agreement have been fully explained to him/her/it by legal counsel, and (iv) he/she/it fully understands the terms of this Agreement and enters into this Agreement voluntarily of his/her/its own free will and without duress.

9. Choice of Law. The Agreement shall be construed in accordance with the laws of the State of Florida.

10. Choice of Venue. Any dispute arising out of or related to this Agreement shall be brought exclusively in Florida Circuit Court in Volusia County, Florida.

11. Mutual Release.

(a) For the purpose of this mutual release, “KeyBank” and “Great Lakes” includes all predecessors, successors, subsidiaries, affiliates, assigns, insurers, directors, officers, agents, employees

and attorneys of KeyBank and Great Lakes.

(b) Except as to such rights, claims and obligations as may be created by this Agreement, Plaintiffs hereby release and discharge KeyBank and Great Lakes from any and all liabilities, obligations, claims, actions, causes of action and demands of any kind or nature whatsoever that have accrued as of the date of this Agreement, whether known or unknown, that Plaintiffs had, now have or may have against KeyBank and Great Lakes, whether any such claim or matter has or might have been asserted in a lawsuit or class action, arising out of, based on, or in any way connected with, the failure of the School and the funds that were issued by KeyBank pursuant to the Loans.

(c) Except as to such rights, claims and obligations as may be created by this Agreement, or such rights, claims and obligations that are not a subject of or arising out of the Action, KeyBank and Great Lakes hereby release and discharge Plaintiffs from any and all liabilities, obligations, claims, actions, causes of action and demands of any kind or nature whatsoever that have accrued as of the date of this Agreement, whether known or unknown, that KeyBank or Great Lakes had, now have or may have against Plaintiffs, whether any such claim or matter has or might have been asserted in a lawsuit or class action, arising out of, based on, or in any way connected with, the failure of the School and the funds that were issued by KeyBank pursuant to the Loans. Notwithstanding the foregoing, to the extent any of the Plaintiffs are indebted to KeyBank or Great Lakes because of any notes, loans, debts or obligations that are not listed in Exhibit A attached hereto, unrelated to the claims in the Action, KeyBank and Great Lakes do not hereby release Plaintiffs from any such notes, loans, debts or obligations and KeyBank and Great Lakes reserve the right to take actions to collect on any such notes, loans, debts or obligations.

(d) Plaintiffs, KeyBank, and Great Lakes acknowledge and understand that hereafter they may discover or appreciate claims, facts, issues or concerns in addition to or different from those that they now know or believe to exist with respect to the subject matter of this Agreement that, if known or suspected at the time of execution of this Agreement, might have materially affected the settlement embodied herein. Plaintiffs, KeyBank, and Great Lakes nevertheless agree that the mutual general release and waiver described in Paragraph 11 to the Agreement applies to any such additional or different claims, facts, issues or concerns.

12. Further Understanding. Notwithstanding Plaintiffs' denial and intent to prove the contrary of such, KeyBank further declares that KeyBank's sole involvement in funds issued pursuant to the Loans was as a creditor to Plaintiffs.

13. Return of Notes. KeyBank represents that it has the authority to forgive all debts related to the loans listed in Exhibit A and that it possesses the original Notes for all such loans or the legal electronic substitute for the originals, which it shall immediately return to the Plaintiffs via their counsel: Kevin P. Kelly, Esq., GrayRobinson, P.A., 301 E. Pine Street, Suite 1400, Orlando, Florida 32801.

14. Condition to Settlement. Each party acknowledges and agrees that the opposing parties' agreement to the terms and conditions hereunder is based upon the truthfulness and accuracy of the statements and representations made by or on behalf of each opposing party. If any party reasonably determines that any material statement or representation made by or on behalf of the opposing parties is inaccurate or untrue, that party reserves the right to seek full recovery on account of or associated with the material statement or representation that is inaccurate or untrue.

15. Entire Agreement. The terms and conditions of this Agreement shall constitute the sole and entire agreement in compromise and settlement of all potential issues that Plaintiffs have or could have asserted against KeyBank or Great Lakes arising out of the failure of the School or the payment of funds that were issued by KeyBank pursuant to the Loans. This Agreement shall supersede any and all

prior agreements, negotiations, and discussions by and between the parties.

16. Interpretation. The language of this Agreement shall be interpreted in accordance with the plain meaning of its terms and shall not be construed for or against any of the parties hereto.

17. Amendments. Any amendments to this Agreement must be in writing signed by the parties hereto or their duly authorized representatives and stating the intent of the parties to amend this Agreement.

18. Tax Consequences. In paying the amount specified in Paragraph 2, KeyBank makes no representation as to the tax consequence and/or liability arising from said payment, the parties to this Agreement understand and agree that any tax consequences and/or liability that may arise from this payment shall be solely the responsibility of the respective Plaintiffs and that KeyBank shall not be responsible for any such tax consequences or liability. To the extent it may be required by law, the parties to this Agreement agree that Plaintiffs shall be responsible for reporting said payment to the Internal Revenue Service.

19. Binding on Successors and Assigns. All the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and his/her/its respective heirs, successors and assigns.

20. Severability. Should any provision of the Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity and enforceability of the remaining parties, terms, and provisions shall not be affected thereby, and said illegal, invalid, or unenforceable part, terms or provisions shall be deemed not to be part of this Agreement.

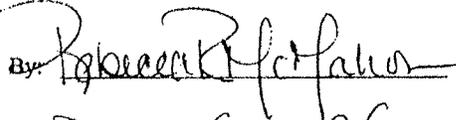
21. Enforceability. It is further understood and agreed that if, at any time, a violation of any term of this Agreement is asserted by any party hereto, that party shall have the right to seek specific performance of that term and/or any other necessary and proper relief, including but not limited to injunctive relief and/or damages, and the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees.

22. Continued Cooperation. Each party shall reasonably cooperate with each other party as may be reasonably requested or prove necessary to facilitate the intent of this Agreement, including without limitation, by executing such other documents as may be useful to the requesting party which do not create any substantive prejudice to, or undue inconvenience to, the other party.

IN WITNESS WHEREOF, Plaintiffs, KeyBank, and Great Lakes execute this Agreement effective as of the date first above written.

KEYBANK NATIONAL ASSOCIATION

By:

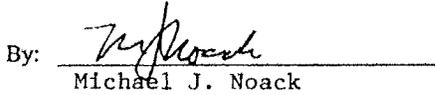


Title:

Deputy General Counsel

GREAT LAKES EDUCATIONAL LOAN  
SERVICES, INC.

By:



Title:

Chief Servicing Officer