



**SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 8-K**

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

Date of Report (Date of earliest event reported): February 22, 2002

**MCM Capital Group, Inc.**  
(Exact Name of Registrant as Specified in its Charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**000-26489**  
(Commission File Number)

**48-1090909**  
(I.R.S Employer  
Identification No.)

**5775 Roscoe Court**  
**San Diego, California 92123**  
(Address of Principal Executive Offices) (Zip Code)

**(877) 445-4581**  
(Registrant's Telephone Number, Including Area Code)

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**Item 5. Other Events.**

(a) Equity Investment and Reduction of Outstanding Debt.

On February 22, 2002, certain existing stockholders and their affiliates (the “Purchasers”) made an additional \$5,000,000 investment in MCM Capital Group, Inc. (the “Company”). Immediately prior to such investment, the Purchasers on a collective basis beneficially owned in excess of 50% of the Company’s common stock. In a related transaction, one of the Company’s principal lenders, ING (U.S.) Capital LLC (“ING”), forgave \$5,323,000 of outstanding debt and reduced its warrant position by 200,000 warrants. The completion of these two transactions increased the Company’s net worth by \$10,323,000.

The Purchasers purchased 1,000,000 shares of the Company’s Series A Senior Cumulative Participating Convertible Preferred Stock (the “Series A preferred stock”) at a price of \$5.00 per share. Each share of Series A preferred stock is convertible at the option of the holder at any time into shares of common stock at a conversion price of \$.50 per share of common stock, subject to customary anti-dilution adjustments. The Series A preferred stock has a cumulative dividend, payable semi-annually. Until February 15, 2004, dividends are payable in cash and/or additional Series A preferred stock, at the Company’s option, at the rate of 10.0% per annum. Thereafter, dividends will be payable only in cash, at a rate of 10.0% per annum. The dividend rate increases to 15.0% per annum in the event of a qualified public offering, a change of control (each as defined) or the sale of all or substantially all of the assets of the Company. In the event dividends are not declared or paid, the dividends will accumulate on a compounded basis. The Series A preferred stock has a liquidation preference equal to the sum of the stated value of the Series A preferred stock (\$5,000,000 in the aggregate) plus all accrued and unpaid dividends thereon and a participation payment equal to shares of common stock at the conversion price and/or such other consideration that would be payable to holders of the Series A preferred stock if their shares had been converted into shares of the Company’s common stock immediately prior to the liquidation event.

The Series A preferred stock ranks senior to the common stock and any other junior securities with respect to the payment of dividends and liquidating distributions. The Company is prohibited from issuing any capital stock that ranks senior to the Series A preferred stock without the consent of the holders of a majority of the outstanding shares of Series A preferred stock.

Upon the occurrence of a qualified public offering, a change in control, or a sale of the Company (each as defined), the Company may, by decision of the then independent members of the Board of Directors, redeem the outstanding Series A preferred stock in whole but not in part at an aggregate redemption price equal to the \$5,000,000 liquidation preference plus the participation payment.

The holders of the Series A preferred stock will be entitled to vote on an as converted basis with the holders of the common stock as a single class and will have the right to vote as a class on certain specified matters. In the event that the Company fails to pay dividends for either two consecutive semi-annual periods or any four semi-annual periods, the Purchasers are entitled to designate two directors to serve on the Company’s Board of Directors for as long as at least 10% of the shares of the Series A preferred stock remain outstanding. The holders of the Series A preferred stock also have been granted registration rights in respect of the common stock underlying the Series A preferred stock.

As a result of the investment by the Purchasers, which was a condition to an amendment by ING of the Company’s note purchase agreement, the Company believes that it is in compliance with the net worth covenants under its credit agreements.

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The investment by the Purchasers was approved by the Company's board of directors, following the recommendation of a special committee consisting of the Company's independent director formed specifically for the purpose of evaluating and considering the transaction. The special committee was advised by an independent financial advisor and by independent legal counsel.

(b) Termination of Credit Agreement

The Credit and Security Agreement dated as of October 31, 2000 between the Company and CTW Funding, LLC, as amended, terminated on December 31, 2001. No indebtedness was outstanding at the time of such termination.

**Item 7. Financial Statements, Pro Forma Financial Information and Exhibits.**

(a) Financial Statements of Business Acquired. Not applicable.

(b) Pro Forma Financial Information. Not applicable.

(c) Exhibits:

3.1	Certificate of Designation relating to the Series A Senior Cumulative Participating Convertible Preferred Stock
4.1	Specimen of Share Certificate of Series A Senior Cumulative Participating Convertible Preferred Stock
4.2	Purchase Agreement, dated as of February 15, 2002, between MCM Capital Group, Inc. and the several Purchasers listed on Schedule A thereto
4.3	Registration Rights Agreement, dated as of February 15, 2002, between MCM Capital Group, Inc. and the several Purchasers listed on Schedule A thereto
4.4	Warrant issued to ING (U.S.) Capital LLC dated December 31, 2001
10.1	Promissory Note of MCM Capital Group, Inc. in favor of ING (U.S.) Capital LLC dated December 31, 2001
10.2	Amendment No. 2 dated as of December 31, 2001 to the Note Purchase Agreement dated as of January 12, 2000 between MCM Capital Group, Inc. and ING (U.S.) Capital LLC
10.3	Letter Agreement dated February 21, 2002 among ING (U.S.) Capital LLC, MCM Capital Group, Inc., and the purchasers of Series A Senior Cumulative Participating Convertible Preferred Stock

**SIGNATURES**

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

Date: February 25, 2002

MCM CAPITAL GROUP, INC.

By /s/ Carl C. Gregory, III

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Carl C. Gregory, III  
President and  
Chief Executive Officer

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description</b>
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CERTIFICATE OF DESIGNATION

of

Series A Senior Cumulative Participating Convertible Preferred Stock

of

MCM Capital Group, Inc.

Pursuant to Section 151 of  
the General Corporation Law  
of the State of Delaware

MCM Capital Group, Inc., a Delaware corporation (the "Corporation"), certifies that pursuant to the authority conferred upon the Board of Directors of the Corporation (the "Board") by the Restated Certificate of Incorporation of the Corporation (the "Certificate of Incorporation") and Section 151 of the General Corporation Law of the State of Delaware (the "DGCL"), the Board, at a special meeting held on February 13, 2002, duly adopted the following resolution creating a series of Preferred Stock, par value \$.01 per share, designated as Series A Senior Cumulative Participating Convertible Preferred Stock:

RESOLVED, that Series A Senior Cumulative Participating Convertible Preferred Stock, par value \$.01 per share, of the Corporation be, and hereby is, created and that the designation and amount of, and the rights, powers, preferences, privileges, qualifications, limitations and restrictions of the shares of this series are as follows:

Section 1. Designation, Number of Shares and Rank.

(a) There will be one series of Preferred Stock designated as "Series A Senior Cumulative Participating Convertible Preferred Stock" (the "Series A Preferred Stock") and the number of shares constituting such series will be 1,250,000 shares.

(b) The Series A Preferred Stock shall, with respect to dividend rights and rights on liquidation, dissolution and winding up of the affairs of the Corporation, rank senior to (i) all series and classes of Preferred Stock of the Corporation hereafter issued, if any, (ii) all series and classes of Common Stock heretofore or hereafter issued, and (iii) all series and classes of all other Equity Securities of the Corporation heretofore or hereafter issued, if any, in each case, subject to Section 2(b).

## Section 2. Voting Rights.

In addition to the voting powers provided for by law, the holders of Series A Preferred Stock:

(a) are entitled to one vote for each share of Common Stock (as defined below) into which such Series A Preferred Stock may then be converted (as detailed below in Section 5) (or applicable fraction thereof) held on all matters submitted for a vote of the holders of shares of Common Stock, whether pursuant to law or otherwise;

(b) on all such matters will vote together as one class with the holders of Common Stock and the holders of all other shares of stock entitled to vote with the holders of Common Stock, provided that so long as any shares of Series A Preferred Stock are outstanding, the vote or consent of the holders of at least 50% of the outstanding shares of Series A Preferred Stock, voting together as a single class, shall be necessary to (w) increase or decrease the par value of the shares of Series A Preferred Stock or (x) amend this Certificate of Designation, or alter or change the powers, preferences, or special rights of the shares of the Series A Preferred Stock, so as to affect them adversely, either directly or indirectly, or (y) authorize or issue any additional class or series of securities that is pari passu with or senior to the Series A Preferred Stock, or (z) approve any merger or consolidation with respect to the Corporation, unless in connection with any such transaction referred to in this clause (z) which is a bona fide transaction with a third party, Adequate Provision (as defined in Section 10 below) is made for the payment of the Liquidation Preference and the Participation Payment (as each is defined in Section 4(a) below) payable to the holders of the Series A Preferred Stock in connection with such transaction to the extent required pursuant to Section 4 hereof.

## Section 3. Dividends and Distributions.

(a) Base Dividends. In preference to the holders of shares of Common Stock and any other capital stock of the Corporation ranking junior to the Series A Preferred Stock as to payment of dividends and the distribution of assets, whether upon liquidation or otherwise (the "Junior Securities"):

(i) the holders of shares of Series A Preferred Stock are entitled to receive dividends (the "Preferred Dividends") on the Series A Preferred Stock at the rate per annum equal to 10% of the Liquidation Preference per share of Series A Preferred Stock provided that such rate shall increase to 15% per annum from and after any Preferred Dividend Rate Increase Event (as defined in Section 10 below);

(ii) dividends will accrue on a semiannual basis from and including the date of original issuance of the shares of Series A Preferred Stock until the Conversion Date, whether or not earned or declared, and whether or not there are any profits, surplus or other funds of the Corporation legally available for the payment of dividends;

(iii) accrued dividends will be payable in arrears on the 15th day of August and February of each year, commencing August 15, 2002, when and as declared by the Board;

(iv) prior to February 15, 2004, the Corporation may, at its option, pay the Preferred Dividends either in cash, or by issuing additional fully paid and non-assessable shares of Series A Preferred Stock (including fractional shares) valued at the Purchase Price (as defined below) per share (as adjusted for stock splits, stock dividends, recapitalizations, reclassifications and the like);

(v) from and after February 15, 2004, the Preferred Dividends will be paid in cash; and

(vi) at no point will any dividend be declared or paid on the Junior Securities unless and until all accrued and unpaid dividends have been paid on the Series A Preferred Stock and until a like dividend has been declared and paid on the Series A Preferred Stock (based on the number of shares of Common Stock into which the Series A Preferred Stock is convertible on the date such dividend is declared)

(b) Failure to Pay Dividends. If the Corporation shall fail to pay the Preferred Dividends for either two consecutive, semi-annual periods or any four semi-annual periods, or fails to make any other payment due to the holders of the Series A Preferred Stock, then until such time as such failure is cured, and as long as at least 10% of the shares of Series A Preferred Stock initially issued upon the adoption of this Certificate of Designation remain outstanding (as adjusted for stock splits, stock dividends, recapitalizations, reclassifications and the like), the holders of the Series A Preferred Stock (voting as a class) shall have the right to elect two members of the Board, and the remaining members of the Board will be elected by both the holders of the Common Stock and the holders of the Series A Preferred Stock pursuant to the procedure described in Section 2(a).

#### Section 4. Liquidation and Exchange Rights.

(a) If (i) the Corporation adopts a plan of liquidation or of dissolution, or commences a voluntary case under the Federal bankruptcy laws or any other

applicable state or Federal bankruptcy, insolvency or similar law, or consents to the entry of an order for relief in any involuntary case under any such law or to the appointment of a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of the Corporation or of any substantial part of its property, or makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due, or (ii) a decree or order for relief in respect of the Corporation is entered by a court having jurisdiction in the premises in an involuntary case under the Federal bankruptcy laws or any other applicable Federal or state bankruptcy, insolvency or similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Corporation or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and any such decree or order is unstayed and in effect for a period of 90 consecutive days and on account of such event the Corporation liquidates, dissolves or winds up, or upon any other liquidation, dissolution or winding up of the Corporation (any of the events described in the preceding clause (i) or this clause (ii) being referred to herein as a "Liquidation Event"), or (iii) the Corporation consummates a Sale Transaction (as defined below) then, in any such case,

(A) the holders of Series A Preferred Stock will be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, whether such assets are capital, surplus or earnings and before any distribution or payment, or declaration or setting aside for distribution or payment, in relation to any Junior Securities and to receive, (1) an amount per share equal to the Purchase Price (adjusted for stock splits, stock dividends, recapitalizations, reclassifications and the like, plus all accrued and unpaid dividends thereon (if any)) (the "Liquidation Preference"), and (2) shares of Common Stock at the Conversion Price (as defined below) and/or such other consideration that such holder would have received had it converted its shares of Series A Preferred Stock at the Conversion Rate into Common Stock immediately prior to the closing of such Liquidation Event or Sale Transaction (the "Participation Payment"); and

(B) each outstanding share of Series A Preferred Stock shall cease to be outstanding and shall be converted into the right to receive the Liquidation Preference and the Participation Payment, and each holder of Series A Preferred Stock shall surrender the Series A Preferred Stock so converted, duly endorsed, at the office of the Corporation or of any agent of the Corporation authorized for such purpose and shall be entitled to receive, in respect of such holder's Participation Payment, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled or, in the case of a Liquidation Event or any Sale Transaction in which the outstanding shares of Common Stock are converted into the right to receive cash, securities or other property, such cash, securities or property that such holder would have received had such holder converted its shares of Series A Preferred Stock into Common Stock immediately prior to the consummation of such Liquidation Event or Sale Transaction and shall also be entitled to receive cash in the amount of the Liquidation

Preference, except as otherwise provided in Section 4(b) below. Such conversion shall be deemed to have been made automatically, without any further action on the part of the Corporation or holder of Series A Preferred Stock, immediately prior to the consummation of such Liquidation Event or Sale Transaction and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. Notwithstanding the foregoing, the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing the Series A Preferred Stock are either delivered to the Corporation or to its agent or the Corporation or its agent shall have received evidence satisfactory to it evidencing that such certificates have been lost, stolen or destroyed and the holder of such Series A Preferred Stock executes an agreement satisfactory to the Corporation to indemnify the Corporation for any loss incurred by it in connection with such certificates. The issuance of certificates of shares of Common Stock issuable upon conversion of shares of Series A Preferred Stock shall be made without charge to the holder for any tax imposed in respect thereof; provided that the Corporation shall not be required to pay any tax which may be payable with respect to any transfer involved in the issue and delivery of any certificate in a name other than that of the holder of the shares of Series A Preferred Stock being so converted.

(b) The Liquidation Preference shall be paid (i) in the case of a Liquidation Event, in cash on the date fixed for such Liquidation Event and (ii) in the case of a Sale Transaction, in cash on the closing date of such Sale Transaction; provided that if the Sale Transaction is being structured by the Board as a tax-free reorganization and restriction or elimination of the right to receive cash is necessary to preserve the tax-free nature of the reorganization, then the Board may, at its discretion, restrict or eliminate such right, in which event the Liquidation Preference will be paid in cash to the extent permitted by the Board and otherwise in shares of Common Stock or the consideration, if any, received by the holders of Common Stock in such Sale Transaction, with the shares of Common Stock or such other consideration being valued for purposes of determining the number of shares of Common Stock or such other consideration at the Fair Market Value (as defined below) thereof on the closing date of such Sale Transaction.

#### Section 5. Conversion.

Each share of Series A Preferred Stock is convertible as follows:

(a) Conversion Rate. Each share of Series A Preferred Stock is convertible into the number of fully paid and non-assessable shares of Common Stock determined by dividing the Purchase Price by the Conversion Price as in effect at the time of conversion (the "Conversion Rate"), without the payment of any additional consideration by the holder and at the option of the holder, at any time and from time to

time, at the office of the Corporation or any transfer agent for the Series A Preferred Stock.

(b) Stock Dividends, Subdivision or Combination of Common Stock. If the Corporation shall (i) pay a dividend or make a distribution on Common Stock in shares of Common Stock, (ii) subdivide its outstanding shares of Common Stock into a greater number of shares or (iii) combine its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such action shall be adjusted so that the holder of any Series A Preferred Stock thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock which such holder would have been entitled to receive immediately following such action had the holder's Series A Preferred Stock been converted immediately prior thereto. An adjustment made pursuant to this subsection (b) shall become effective immediately after the record date in the case of a dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision or combination.

(c) Additional Common Stock, Options, Rights, Warrants and Convertible Securities. If the Corporation issues any (i) options, rights or warrants entitling the holder to subscribe for or purchase shares of Common Stock, (ii) Convertible Securities or (iii) shares of Common Stock, in any case at a price per share (giving effect to the deemed exercise of any such option, right or warrant and the deemed conversion or exchange of such Convertible Securities on the issuance date and taking account of the aggregate consideration therefor) less than the Conversion Price (as defined below) immediately prior to the issuance thereof, but excluding any Excluded Issuance (as defined below):

(i) the Conversion Price will be reduced, in order to increase the number of shares of Common Stock into which the Series A Preferred Stock is convertible, to a price (calculated to the nearest cent) determined by multiplying the Conversion Price (in effect immediately prior to such issuance) by a fraction (x) the numerator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such issuance, plus (2) the number of shares of Common Stock which the aggregate consideration received (including consideration deemed received pursuant to the parenthetical language included in the first sentence of this Section 5(c)) by the Corporation for the total number of additional shares of Common Stock so issued (or for the issuance and deemed exercise of such options, rights or warrants, if any, or for the issuance and deemed conversion or exchange of such Convertible Securities, if any) would purchase at the Conversion Price immediately prior to such issuance, and (y) the denominator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such issuance, plus (2) the number of such additional shares of

Common Stock so issued (or issuable upon the exercise of such options, rights or warrants, if any, or upon the conversion or exchange of such Convertible Securities, if any);

(ii) the adjustment in the Conversion Price will become effective immediately upon the issuance of such options, rights, warrants, Convertible Securities or shares of Common Stock;

(iii) options, rights or warrants issued by the Corporation to all holders of Common Stock entitling their holders to subscribe for or purchase Equity Securities, which options, rights or warrants (x) are deemed to be transferred with such shares of Common Stock, (y) are not exercisable until the occurrence of a specified event or events (each a "Trigger Event"), and (z) are also issued in respect of future issuances of Common Stock, including shares of Common Stock issued upon conversion of the Series A Preferred Stock, will for purposes of this Section 5(c) not be deemed issued until the occurrence of the earliest Trigger Event; and

(iv) if following any such adjustment in respect of options, warrants or rights or issuance of Convertible Securities, such options, warrants or rights expire unexercised or such Convertible Securities are retired in accordance with their terms without being so converted or exchanged, then the Conversion Price shall be further adjusted as appropriate to reflect the fact that the dilution did not in fact occur.

(d) Reclassification, Exchange and Substitution. If the Common Stock issuable upon the conversion of the Series A Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (except pursuant to any Sale Transaction), each holder of Series A Preferred Stock will have the right to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change, that would have been received by holders of the number of shares of Common Stock into which such shares of Series A Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided in this Section 5.

(e) Further Adjustment. If any event occurs as to which Sections 5(a) through Section 5(d) are not strictly applicable or, if strictly applicable, would not fairly and adequately protect the conversion rights of the Series A Preferred Stock in accordance with the essential intent and principles of such provisions, then such adjustments will be made in the application of such provisions, in accordance with such essential intent and principles, as may be reasonably necessary to protect such conversion rights. In particular but in no way limiting the foregoing, if the Corporation effects a

subdivision or combination of its outstanding Common Stock or in the event of a reclassification, recapitalization, stock split, stock dividend or other distribution payable in securities of the Corporation or any other person, the then Conversion Rate of the Series A Preferred Stock will be subject to proportional adjustment to prevent dilution.

(f) When Adjustment Not Required. If the Corporation takes a record of the holders of its Common Stock for purposes of taking any action that requires an adjustment of the Conversion Price under this Section 5, and, thereafter and before the effective date of such action, legally abandons its plan to take such action, no adjustment will be required by reason of the taking of such record, and any adjustment previously made in respect of such action will be rescinded and annulled.

(g) Fractional Shares. Fractional shares of Common Stock otherwise issuable upon conversion of shares of Series A Preferred Stock held by a single holder will be aggregated into whole shares and issued to such holder. Otherwise, no fractional shares of Common Stock will be issued upon conversion of the Series A Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation will pay cash equal to the product of such fraction multiplied by the Common Stock's Fair Market Value on the Conversion Date.

(h) Certificate of Adjustment.

(i) Upon the occurrence of each adjustment or readjustment of the Conversion Price under this Section 5, the Corporation will promptly compute such adjustment or readjustment in accordance with the provisions of this Section 5 and prepare and mail a certificate executed by the chief executive officer or chief financial officer of the Corporation setting forth the adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment was based to each registered holder of the Series A Preferred Stock at the holder's address as shown in the Corporation's books, by first class mail, postage prepaid.

(ii) The Corporation will, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a certificate setting forth (1) the applicable Conversion Price at the time in effect, and showing how it was calculated, and (2) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Series A Preferred Stock.

(i) Notices of Record Date. In the event:

(i) that the Corporation takes a record of the holders of any class of securities for the purpose of determining their holders who are entitled to receive any dividend or other distribution, or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right; or

(ii) of any capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation with or into any other corporation, or any transfer of all or substantially all of the assets of the Corporation to any other person or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation:

the Corporation will mail to each holder of Series A Preferred Stock a notice specifying (1) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (2) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (3) the date, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) will be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up, at least 30 days prior to the record date or other date specified in the notice.

(j) Common Stock Reserved. The Corporation will, at all times, reserve and keep available out of its authorized but unissued Common Stock such number of shares of Common Stock as may be sufficient to effect conversion of the Series A Preferred Stock from time to time, and if at any time the number of authorized but unissued shares of Common Stock is insufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as may be sufficient for such purpose.

(k) Payment of Taxes. The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Stock, but excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series A Preferred Stock so converted were registered.

## Section 6. Optional Redemption.

(a) The Corporation may, at its sole option, elect to redeem all, but not less than all, of the outstanding shares of Series A Preferred Stock on any date from and after the occurrence of a Preferred Dividend Rate Increase Event (the "Redemption Date"), provided that such election is made based on the recommendation of a majority of the Independent Directors then serving on the Board, upon payment of the Liquidation Preference and the Participation Payment as of the applicable Redemption Date; provided, further, that any such optional redemption, regardless of when it shall occur, shall be subject to the prior satisfaction of the conditions set forth in Sections 6(b) and 6(c).

(b) In the case of a redemption pursuant to Section 6(a) above, the Corporation shall give written notice to each holder of Series A Preferred Stock at least 60 days and no more than 90 days prior to the scheduled Redemption Date, stating that it will redeem Series A Preferred Stock as provided herein, such notice to specify the Redemption Date, the Liquidation Preference and Participation Payment to be paid by the Company on the Redemption Date, and that the Corporation will redeem Series A Preferred Stock as provided herein on such date; provided that it shall be a condition of the Company's giving such notice that it then have sufficient cash and securities legally available to effect such redemption with respect to each then outstanding share of Series A Preferred Stock.

(c) On or after the Redemption Date, unless postponed or waived as provided below, and subject to payment by the Corporation of the redemption payment specified in this Section 6, each holder of Series A Preferred Stock shall surrender to the Corporation or its agent a certificate or certificates representing the shares of the Series A Preferred Stock held by such holder or the Corporation or its agent shall have received evidence satisfactory to it evidencing that such certificates have been lost, stolen or destroyed and the holder of such Series A Preferred Stock executes an agreement satisfactory to the Corporation to indemnify the Corporation for any loss incurred by it in connection with such certificates; provided, however, the failure of a holder of Series A Preferred Stock to so surrender such certificate or certificates shall not affect the effectiveness of the optional redemption provided for in this Section 6.

## Section 7. Notices.

Any notice required or permitted by Section 5 or 6 or any other provision of this Certificate of Designation to be given to a holder of Series A Preferred Stock or to the Corporation must be in writing and will be deemed given upon the earlier of actual receipt or three days after the notice was deposited in the United States mail, by certified or registered mail, return receipt requested, postage prepaid, and addressed (i) to each holder of record at the address of such holder appearing on the books of the Corporation,

(ii) to the Corporation at 5775 Roscoe Court, San Diego, CA 92123, Attention: Corporate Secretary, or (iii) to the Corporation or any holder, at any other address specified in a written notice given to the other for the giving of notice.

#### Section 8. No Dilution or Impairment.

The Corporation will not amend its certificate of incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed under by the Corporation under this Certificate of Designation, but will at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series A Preferred Stock against dilution or other impairment. Without limiting the generality of the foregoing, the Corporation:

(i) will not permit the par value of any shares of stock at the time receivable upon the conversion of the Series A Preferred Stock to exceed the applicable Conversion Price then in effect;

(ii) will take all such action as may be necessary or appropriate in order that the Corporation may validly and legally issue fully paid nonassessable shares of stock on the conversion of the Series A Preferred Stock; and

(iii) will not take any action which results in any adjustment of the applicable Conversion Price if after such action the total number of shares of Common Stock issuable upon the conversion of all of the Series A Preferred Stock will exceed the total number of shares of Common Stock then authorized by the Corporation's Restated Certificate of Incorporation and available for the purpose of issue upon such conversion.

#### Section 9. No Reissuance of Series A Preferred Stock.

No share or shares of Series A Preferred Stock acquired by the Corporation by reason of purchase, conversion, redemption or otherwise will be sold or reissued, and, upon such event, all such shares will resume the status of authorized but unissued shares of Series A Preferred Stock.

#### Section 10. Definitions and Interpretation.

(a) Definitions. In this Certificate of Designation, the following terms have the meanings specified below:

"Adequate Provision" means (i) the adoption by the Board of a plan of merger or consolidation that provides by its express terms for the receipt by the holders of Series A Preferred Stock of both their Liquidation Preference and Participation Payment upon consummation of such merger or consolidation, and which plan shall not have been amended so as to alter the right of the holders of Series A Preferred Stock to receive the same, whether before or after the approval of such plan by the stockholders of the Corporation, and (ii) the determination, in good faith, of the Board that upon consummation of such transaction, the Corporation will have sufficient cash, securities and other property, as applicable, to permit the payment of the Liquidation Preference and the Participation Payment with respect to each outstanding share of Series A Preferred Stock.

"Board" has the meaning specified in the preamble.

"Business Day" means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required to close.

"Certificate of Incorporation" has the meaning specified in the preamble.

"Change in Control Transaction" means any (i) merger, consolidation, reorganization, (ii) sale of stock representing at least 50% of the outstanding stock (other than a Qualified Public Offering), (iii) tender offer or (iv) other business combination in which, in the case of clause (i), (ii), (iii) or (iv), the stockholders owning a majority of the voting securities of the Corporation prior to such transaction do not own a majority of the voting securities of the surviving entity.

"Common Stock" means the common stock, par value \$.01 per share, of the Corporation.

"Conversion Date" means the date upon which a share of Series A Preferred Stock is converted (or deemed to be converted) into shares of Common Stock or other property.

"Conversion Price" means, initially, \$0.50, as adjusted from time to time in accordance with Section 5 and 8.

"Conversion Rate" has the meaning specified in Section 5(a).

"Convertible Securities" shall mean any evidences of indebtedness, shares (other than shares of Common Stock and shares of Series A Preferred Stock) or other securities directly or indirectly convertible into or exchangeable for additional shares of Common Stock.

"Corporation" has the meaning specified in the preamble.

"DGCL" has the meaning specified in the preamble.

"Equity Security" means any stock or similar security of the Corporation or any security (including indebtedness for borrowed money) convertible or exchangeable, with or without consideration, into or for any such stock or similar security, or any security (including indebtedness for borrowed money) carrying any warrant or right to subscribe to or purchase any such stock or similar security, or any such warrant or right.

"Excluded Issuance" means issuances (i) to directors, officers, employees or consultants of the Corporation pursuant to stock option plans existing on February 15, 2002 or approved by the Board or the stockholders of the Corporation pursuant to Section 2 hereof, (ii) in connection with bona fide arm's length mergers or acquisitions by the Corporation that are approved by the Board, (iii) to commercial banks, lessors and licensors in non-equity financing transactions (provided that the foregoing will not include any issuances to private equity or venture capital firms or any private equity division of any investment bank or commercial bank) not exceeding more than 2% in the aggregate of the outstanding shares on a fully diluted basis in transactions approved by the Board, (iv) to the public in an underwritten public offering pursuant to an effective registration statement filed under the U.S. Securities Act of 1933, (v) upon exercise, exchange or conversion of options, warrants and other convertible securities outstanding as of February 15, 2002 in accordance with their terms as in effect on such date, and (vi) in connection with any dividend or distribution on the Series A Preferred Stock or the conversion of the Series A Preferred Stock.

"Fair Market Value " means, as of any date, and in relation to any securities or assets:

(i) if the securities are listed on a national securities exchange, the volume weighted average of the closing prices as reported for composite transactions during the 20 consecutive trading days preceding the trading day immediately prior to such date or, if no sale occurred on a trading day, then the mean between the closing bid and asked prices on such exchange on such trading day, in each case, eliminating, for purposes of such calculation, the trading day during such period with the highest bid price and the trading day during such period with the lowest asked price as of the close of business;

(ii) if the securities are traded on NASDAQ, the volume weighted average of the closing prices as reported on NASDAQ during the 20 consecutive trading days preceding the trading day immediately prior to such date, in each case, eliminating, for purposes of such calculation, the trading day during such period with the highest bid price and the trading day during such period with the lowest asked price as of the close of business, or, if no sale occurred on a trading

day, then the mean between the highest bid and lowest asked prices as of the close of business on such trading day, as reported on NASDAQ;

(iii) if the securities are not traded on a national securities exchange or NASDAQ but are otherwise traded over-the-counter, the volume weighted average of the mean between the highest bid and lowest asked prices as of the close of business during the 20 consecutive trading days preceding the trading day immediately prior to such date, in each case, eliminating, for purposes of such calculation, the trading day during such period with the highest bid price and the trading day during such period with the lowest asked price as of the close of business as quoted on the National Association of Securities Dealers Automated Quotation system or an equivalent generally accepted reporting service; or

(iv) if there is no active market for the assets or securities, the fair market value of the assets or securities as determined in good faith by the Board.

"Independent Director" means any member of the Board who has not been, is not then, and is not anticipated to be affiliated in any manner, whether as an employee, officer, director, stockholder, owner, consultant, agent, counsel or otherwise (a "representative") to, of or with any holder of the Convertible Preferred Stock or Affiliate (as defined in the Securities Exchange Act of 1934, as amended) of any holder (other than the Company or any of its subsidiaries).

"Junior Securities" has the meaning specified in Section 3(a).

"Liquidation Event" has the meaning specified in Section 4(a).

"Liquidation Preference" has the meaning specified in Section 4(a).

"NASDAQ" means the NASDAQ National Market.

"Participation Payment" has the meaning specified in Section 4(a).

"Preferred Dividends" has the meaning specified in Section 3(a)(ii).

"Preferred Dividend Rate Increase Event" means any (i) Qualified Public Offering, (ii) Change in Control Transaction or (iii) sale of all or substantially all the assets of the Corporation.

"Purchase Price" means the amount per share, equal to \$5.00, representing the initial purchase price per share paid for the Series A Preferred Stock; provided that if, immediately prior to any Conversion Date, Redemption Date, Liquidation Event or Sale Transaction, there are any Preferred Dividends accrued and unpaid on any share of Series A Preferred Stock, whether or not such Preferred Dividends have been declared, the

Purchase Price of such Series A Preferred Stock, for purposes of determining the Conversion Rate pursuant to Section 5(a), shall be deemed increased by the amount of all accrued and unpaid Preferred Dividends on such Series A Preferred Stock.

"Qualified Public Offering" means an underwritten public offering by the Corporation of Common Stock at a price of not less than \$5.00 per share yielding aggregate gross proceeds to the Corporation of not less than \$15 million.

"Redemption Date" has the meaning specified in Section 6(a).

"Sale Transaction" means a (i) sale of all or substantially all of the assets of the Corporation in contemplation of a liquidating distribution to the stockholders of the Corporation or (ii) any sale of all or substantially all of the outstanding stock of the Corporation (including, without limitation, any such sale effected directly or indirectly by any merger, consolidation, reorganization or otherwise in a bona fide transaction with a third party) in which all of such sold stock of the Corporation is liquidated, redeemed or converted into or sold or exchanged for the right to receive securities of another Person, cash or other property.

"Series A Preferred Stock" has the meaning specified in Section 1.

"Trigger Event" has the meaning specified in Section 5(c)(iii).

(b) Interpretation. In this Certificate of Designation, the following rules of interpretation apply:

(i) the section and other headings contained in this Certificate of Designation are for reference purposes only and do not affect the meaning or interpretation of this Certificate of Designation;

(ii) references to any law, regulation or statutory provision include references to such law or regulation or provision as modified, codified, re-enacted or replaced;

(iii) words importing the singular include the plural and vice versa;

(iv) words importing one gender include the other genders;

(v) references to the word "including" do not imply any limitation; and

(vi) references to months are to calendar months.

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IN WITNESS WHEREOF, the undersigned hereby executes this document and affirms that the facts set forth herein are true under penalty of perjury this 21 day of February, 2002.

MCM CAPITAL GROUP, INC.

By: /s/ Carl C. Gregory, III

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Name: Carl C. Gregory, III  
Title: President and CEO

ATTEST:

By: /s/ Robin R. Pruitt

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Name: Robin R. Pruitt  
Title: Secretary

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Specimen

February , 2002

Original Issue

#

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February, 2002

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INCORPORATED UNDER THE LAWS OF THE  
STATE OF DELAWARE

MCM CAPITAL GROUP, INC.

Authorized 5,000,000 Preferred Shares

SPECIMEN

\*\*\* Series A Senior Cumulative Participating Convertible Preferred

MCM CAPITAL GROUP, INC., fully paid and nonassessable

February 2002

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President

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Secretary

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THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR ANY APPLICABLE STATE LAW, AND NO INTEREST THEREIN MAY BE SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF SUCH REGISTRATION AND QUALIFICATION WITHOUT AN OPINION OF LEGAL COUNSEL FOR THE HOLDER ACCEPTABLE TO LEGAL COUNSEL FOR THE COMPANY THAT SUCH REGISTRATION AND QUALIFICATION ARE NOT REQUIRED.

THE COMPANY WILL FURNISH TO THE HOLDER HEREOF UPON WRITTEN REQUEST AND WITHOUT CHARGE A STATEMENT AS TO THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE, PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF THE APPLICABLE CLASS OR SERIES OF STOCK OF THE COMPANY AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND/OR RIGHTS

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MCM CAPITAL GROUP, INC.

SPECIMEN

February , 2002

## PURCHASE AGREEMENT

This PURCHASE AGREEMENT (this "Agreement") is made and entered into this 21st day of February, 2002, by and between MCM Capital Group, Inc., a Delaware corporation (the "Company"), and the purchasers listed in Schedule A hereto (collectively the "Purchasers").

## RECITALS

WHEREAS, the Company proposes to issue and sell, and the Purchasers are willing to purchase, shares of Series A Senior Cumulative Participating Convertible Preferred Stock of the Company having the preferences, rights and privileges set forth in the Certificate of Designation attached as Exhibit A hereto (the "Convertible Preferred Stock") at a per share price of \$5.00 (the "Purchase Price"); and

WHEREAS, subject to the terms and conditions hereof, each of the Purchasers is willing to purchase the number of shares of Convertible Preferred Stock indicated opposite its name on Schedule A (collectively, the "Purchaser Shares");

NOW, THEREFORE, in consideration of the several and mutual promises, agreements, covenants, understandings, undertakings, representations and warranties hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. PURCHASE AND SALE.

Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth below, at the Closing (as defined below), the Company agrees to sell to the Purchasers, and each of the Purchasers, severally and not jointly, agrees to purchase from the Company at the Purchase Price the aggregate number of Purchaser Shares set forth opposite the name of such Purchaser in Schedule A attached hereto.

2. CLOSING; DELIVERY.

(a) The closing of the transactions contemplated under this Agreement (the "Closing") shall take place at the offices of Debevoise & Plimpton, 919 Third Avenue, New York, New York, at 10:00 a.m. on a date mutually agreed to by the Purchasers and the Company, but in any event not later than February 22, 2002, unless otherwise mutually agreed to by the Purchasers and the Company (the "Closing Date").

(b) At the Closing, the Company will deliver to each Purchaser a certificate or certificates in definitive form in such denominations and registered in such Purchaser's name (or the name of its nominee), representing the Purchaser Shares to be purchased by such Purchaser against payment by such Purchaser of the Purchase Price therefor. All such Purchase Price payments shall be made by the applicable Purchaser by wire transfer of immediately available funds to the account of the Company at such bank and to such account may be specified by the Company by written notice to the Purchasers not less than three Business Days prior to the Closing.

3. REPRESENTATIONS AND WARRANTIES.

(a) The Company hereby represents and warrants to each of the Purchasers as follows:

(i) The Company, and each of its subsidiaries, has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation.

(ii) The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby have been duly authorized by all necessary corporate action of the Company, and this Agreement, when duly executed and delivered by the Purchasers, will constitute a valid and legally binding obligation of the Company enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(iii) The authorized capital stock of the Company consists of 50,000,000 shares of common stock, par value \$0.01 per share (the "Common Stock"), and 5,000,000 shares of preferred stock, par value \$0.01 per share. As of the close of business on the date immediately preceding the date hereof, 7,161,131 shares of Common Stock were issued and outstanding and no shares of preferred stock were issued or outstanding. Except as set forth in Schedule B attached hereto, there are no outstanding options, warrants, rights or securities convertible into or exchangeable for any class of capital stock of the Company, and no authorization therefor has been given, except as contemplated hereby. All outstanding shares of capital stock and other equity or voting securities of the Company are duly authorized, validly issued, fully paid and nonassessable and not subject to, or issued in violation of any preemptive right or any similar right.

(iv) The Purchaser Shares have been duly authorized by all necessary corporate action of the Company, and when issued and paid for in accordance herewith, will be duly and validly issued, fully paid and nonassessable and not subject to or issued in violation of any preemptive rights or any similar right. The Company has duly reserved for issuance upon conversion or other exercise of rights under the Purchaser Shares from its authorized but unissued shares of Common Stock such number of shares of Common Stock as is necessary to permit the conversion or other exercise of the Purchaser Shares in full.

(v) Except as set forth in Schedule 3(a)(v) of the Disclosure Schedules attached hereto, the execution and delivery of this Agreement and the Registration Rights Agreement attached hereto as Exhibit B (the "Registration Rights Agreement"), the adoption by the Board of Directors of the Company of the certificate of designation attached hereto as Exhibit A (the "Certificate of Designation"), the consummation by the Company of the transactions herein and therein contemplated and the compliance by the Company with the terms hereof and thereof do not and will not conflict with, or result in

a breach or violation of any of the terms or provisions of, or constitute a default under, the Certificate of Incorporation or Bylaws of the Company, or any indenture, mortgage, deed or trust, loan agreement or other agreement or instrument to which the Company is a party or by which any of its properties or assets are bound, or any applicable law, rule, regulation, judgment, order or decree of any government, governmental instrumentality or court having jurisdiction over the Company or any of its properties or assets; and will not result in any anti-dilution adjustment pursuant to the terms of any outstanding options, warrants, rights or convertible debentures; and no consent, approval, authorization, order, registration or qualification of or with any such governmental instrumentality or court is required for the valid authorization, execution, delivery and performance by the Company of this Agreement, the Registration Rights Agreement, the Certificate of Designation, the issuance and sale of the Purchaser Shares, or the issuance of shares of Common Stock upon conversion or other exercise of the Convertible Preferred Stock, except for the filing of the Certificate of Designation with the Secretary of State of Delaware, a Form D with the U.S. Securities and Exchange Commission (the "Commission") and any necessary State blue sky or similar filings.

(vi) The Company has filed with the Commission all forms, reports, schedules, registration statements, definitive proxy statements and other documents required to be filed by the Company with the Commission under the Securities Act of 1933 (the "Securities Act") or the Securities Exchange Act of 1934 (the "Exchange Act") since January 1, 2001 (as they have been amended or superseded by subsequent filings under the Securities Act or Exchange Act since the time of their filing, and including any documents filed as exhibits thereto and all financial statements or schedules included or incorporated by reference therein, collectively, the "SEC Reports"). The SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and the rules and regulations of the Commission promulgated thereunder. As of their respective dates, as of the date they were filed or, if amended or superseded by subsequent filings under the Securities Act or Exchange Act, as of the date of such amendment or superseding filing, none of the SEC Reports contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(vii) Each of the consolidated financial statements (including, in each case, any notes thereto) contained in the SEC Reports (as such financial statements have been amended or restated since the time of that filing) was prepared in accordance with United States generally accepted accounting principles (except, in the case of unaudited quarterly statements, as permitted by Form 10-Q of the Exchange Act and subject to normal year-end audit adjustments which are not individually or in the aggregate material) applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto) and each fairly presents, in all material respects, the consolidated financial position, results of operations and cash flows of the Company and its consolidated subsidiaries as at the respective dates thereof and for the respective periods indicated therein (except as otherwise noted therein). The Company has not incurred any material liability or contingent liability since September 30, 2001, except for liabilities incurred in the ordinary course of business, none of which, individually or in

the aggregate, has had or would reasonably be expected to have a material adverse effect on the condition (financial or otherwise), business, properties, results of operations or prospects of the Company and its subsidiaries taken as a whole.

(viii) Except as set forth in Schedule C hereto, no stockholder of the Company or any other third party has the contractual right to require the Company to register for public resale any securities issued by the Company.

(b) Each of the Purchasers hereby represents and warrants severally and not jointly to the Company with respect to such Purchaser as follows:

(i) To the extent such Purchaser is an entity, it has been duly organized and is validly existing in good standing under the laws of the jurisdiction of its organization.

(ii) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action, and this Agreement, when duly executed and delivered by such Purchaser, will constitute a valid and legally binding instrument, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(iii) Such Purchaser has or will not later than the Closing Date have sufficient cash resources on hand to purchase the Purchaser Shares to be purchased by such Purchaser on the terms and conditions contained in this Agreement.

(iv) No state, federal or foreign regulatory approvals, permits, licenses, or consents or other contractual or legal obligations are required to be obtained by such Purchaser in order to enter into this Agreement or purchase its Purchaser Shares.

(v) The execution and delivery of this Agreement, the consummation of the transactions herein contemplated and the compliance with the terms hereof do not and will not conflict with, or result in a breach or violation of any of the terms or provisions of, or constitute a default under, the certificate of incorporation or bylaws of such Purchaser, or any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which such Purchaser is a party or by which any of such Purchaser's properties or assets are bound, or any applicable law, rule, regulation, judgment, order or decree of any government, governmental jurisdiction over such Purchaser or any of such Purchaser's properties or assets; and no consent, approval or authorization of any government, governmental instrumentality or court, domestic or foreign, is required for the valid authorization, execution, delivery and performance by such Purchaser of this Agreement or the consummation of the transactions contemplated by this Agreement.

(vi) Such Purchaser is acquiring its Purchaser Shares, and any underlying Common Stock issuable upon conversion or other exercise thereof, for its own account for investment only and not with a view towards, or for resale in connection

with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the Securities Act.

(vii) The Purchaser is an "accredited investor" as that term is defined in Rule 501(a)(3) of Regulation D of the Securities Act.

(viii) The Purchaser acknowledges that the offer and sales of the Purchaser Shares is being made in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Purchaser's compliance with, the representations, warranties, agreements, acknowledgements and understandings of the Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of the Purchaser to acquire such Purchaser Shares.

(ix) The Company has made available to each Purchaser and its respective advisors, if any, all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Purchaser Shares which have been requested by such Purchaser. Each Purchaser and its advisors, if any, have been afforded the opportunity to ask questions of the Company.

(x) Each Purchaser understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Purchaser Shares or the fairness or suitability of the investment in the Purchaser Shares nor have such authorities passed upon or endorsed the merits of the offering of the Purchaser Shares.

#### 4. COVENANTS.

The Company agrees with the Purchasers as follows:

(a) The Company will promptly advise the Purchasers of and consult with the Purchasers and their counsel if any of the representations and warranties contained in Section 3(a) hereof were inaccurate in any material respect when made.

(b) The Company shall at all times reserve and keep available for issue upon conversion or other exercise of the Purchaser Shares such number of authorized but unissued shares of Common Stock deliverable upon the conversion of or other exercise of rights under the Purchaser Shares (including Convertible Preferred Stock issued in lieu of cash dividends, to the extent permitted under the Certificate of Designation) as will be sufficient to permit the conversion or other exercise thereof in full.

(c) The Company shall, as long as 10% or more of the Purchaser Shares shall remain outstanding or any Purchaser nominee elected pursuant to the provisions of Section 3(b) of the Certificate of Designation remains a member of the Board, maintain the Company's current directors' and officers' insurance policy or in replacement thereof, with a reputable and creditworthy insurer acceptable to Triarc Companies, Inc. and C.P. International Investments Limited and in providing substantially equivalent coverage to that provided under the Company's current directors' and officers' insurance policy.

(d) Prior to the Closing Date, the Company and each Purchaser agrees that it shall make no written or other public disclosure or announcement regarding this Agreement or discuss the terms hereof with any person without the prior written consent of the other parties, except for disclosures to the professional advisors, employees and directors of the parties or as otherwise required by law or the rules and regulations of the Commission or any applicable stock exchange; provided that any proposed press release or other disclosure with respect to this Agreement shall be provided in advance by the disclosing party to Triarc Companies, Inc. and C.P. International Investments Limited subject to their approval, such approval not to be unreasonably withheld (it being agreed that the failure of such parties to respond within two Business Days to any proposed press release or other disclosure provided to them shall constitute their approval thereof).

(e) The Company acknowledges that it shall, to the extent permitted by law, treat the Convertible Preferred Stock as "common stock" under U.S. federal income tax principles and not "preferred stock" within the meaning of Section 1.305-5(a) of the Treasury Regulations. The Company agrees, to the extent permitted by law, to treat any dividend paid on the Convertible Preferred Stock in the form of additional Convertible Preferred Stock as a tax-free stock dividend pursuant to Section 305(a) of the U.S. Internal Revenue Code and will not take any position inconsistent therewith for U. S. federal income tax reporting purposes. The Company and the Purchasers acknowledge that the determination of whether the Convertible Preferred Stock constitutes "preferred stock" for purposes of Section 305 of the Code is determined at the time a distribution is made, based upon all of the facts and circumstances which indicate whether such Convertible Preferred Stock has little or no likelihood of actually participating currently and upon liquidation in the earnings and growth of the Company.

(f) The Company will furnish the following reports to each Purchaser so long as such Purchaser beneficially owns at least 10% of the shares of Convertible Preferred Stock purchased by it:

(i) Copies of its annual reports on Form 10-K and its quarterly reports on Form 10-Q, respectively, promptly upon filing thereof with the Commission; and

(ii) Copies of any current reports on Form 8-K, promptly upon filing thereof with the Commission.

(g) The Company will prepare and furnish, upon written request which refers to this provision, to any Purchaser so long as such Purchaser beneficially owns at least 10% of the share of Convertible Preferred Stock purchased by it:

(i) As soon as practicable after the end of each month and in any event within thirty days thereafter, a consolidated balance sheet of the Company and its subsidiaries, if any, as at the end of such month, and consolidated statements of operations and of cash flows of the Company and its subsidiaries, for each month and for the current fiscal year of the Company to date, prepared in accordance with United States generally accepted accounting principles consistently applied, together with a comparison of such statements to the Company's operating plan then in effect and approved by its

Board of Directors (the "Board"), or the Executive Committee thereof, and a comparison of such statements to the statements for the corresponding periods of the Company's previous fiscal year, and certified, subject to changes resulting from year-end audit adjustments, by the principal financial or accounting officer of the Company; and

(ii) As soon as available (but in any event within sixty days prior to the commencement of its fiscal year) a summary of the business plan and financial plan of the Company for the next fiscal year, as contained in its operating plan approved by the Board. Any material changes in such financial plan shall be submitted as promptly as practicable after such changes have been approved by the Board;

provided that the Company shall be required to furnish to any Purchaser any of the information referred to in this Section 4(g) only at the same time and to the same extent it is required to furnish such information to its banks or other lenders pursuant to any of the Company's financing arrangements; and provided further, that each Purchaser agrees to keep all non-public information furnished to it pursuant to this Agreement confidential and not to take any actions with respect thereto which violate any applicable laws.

(h) So long as any Purchaser beneficially owns at least 10% of the shares of Convertible Preferred Stock purchased by it, the Company will permit such Purchaser to visit and inspect any of the properties of the Company, including its books of account, and to discuss its affairs, finances and accounts with the Company's officers and its independent public accountants on reasonable notice, all at such reasonable times during normal business hours and as often as any such person may reasonably request.

## 5. CLOSING CONDITIONS.

(a) The respective obligations of the Purchasers and the Company to consummate the purchase and sale of the Purchaser Shares shall be subject in the discretion of the Company or the Purchasers, as the case may be, to the conditions that (i) all representations and warranties and other statements of the other party were true and correct in all material respects when made and shall be repeated and be true and correct in all material respects at and as of the Closing (other than those qualified by materiality, which shall be true and correct in all respects), and (ii) the other party or parties shall have performed all of its obligations hereunder theretofore to be performed at or prior to the Closing in all material respects.

(b) The obligations of the Purchasers to consummate the purchase of the Purchaser Shares shall be subject to the following additional conditions precedent:

(i) The Purchasers shall have received a certificate, dated such Closing Date, of the president or any vice president and a principal financial or accounting officer of the Company in which such officers, to the best of their knowledge after reasonable investigation, shall state that: the representations and warranties of the Company in this Agreement are true and correct in all material respects when made and as of the Closing (other than those qualified by materiality, which shall be true and correct in all respects), the Company has complied with all agreements and satisfied all

conditions on its part to be performed or satisfied hereunder at or prior to such Closing Date; and, except as set forth in Schedule 5(b)(i) of the Disclosure Schedules attached hereto, subsequent to September 30, 2001, there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition (financial or other), business, properties, results of operations or prospects of the Company and its subsidiaries taken as a whole;

(ii) The Purchasers shall have received an opinion of Snell & Wilmer, L.L.P., counsel to the Company, in form and substance satisfactory to the Purchasers;

(iii) The Purchasers shall have received an opinion from BDO Seidman, LLP, with respect to certain matters relating to Section 382 of the U.S. Internal Revenue Code, in form and substance reasonably satisfactory to the Purchasers;

(iv) The Purchasers shall have received evidence of such amendments, consents and waivers to the existing registration rights agreements to which the Company is a party as shall be necessary to give effect to the Registration Rights Agreement;

(v) The Purchasers shall have received evidence of the restructuring of the terms and amount of the Company's outstanding indebtedness to ING (U.S.) Capital LLC ("ING"), as well as relief from restricted payments covenants sufficient to permit payments on the Convertible Preferred Stock as provided in the Certificate of Designation, and the surrender by ING of warrants to purchase 200,000 shares of Common Stock, in form and substance satisfactory to the Purchasers;

(vi) The Purchasers shall have received evidence of the qualification under applicable Blue Sky laws or exemption therefrom the shares of Convertible Preferred Stock to be issued and sold hereunder and the shares of Common Stock to be issued upon conversion or other exercise of the Convertible Preferred Stock;

(vii) The Certificate of Designation establishing the rights and preferences of the Convertible Preferred Stock, shall have been filed in the Secretary of State of Delaware and become effective;

(viii) No actions, suits or proceedings of any governmental authority or other Person relating to the transactions contemplated hereby shall be pending or threatened;

(ix) The Company shall have entered into the Registration Rights Agreement with the Purchasers; and

(x) The Purchasers shall have received evidence, satisfactory to them, of the waiver by Cargill of the application of the antidilution provision of the warrants issued to it with respect of the issuance and exercise of the Convertible Preferred Stock.

6. INDEMNIFICATION.

(a) The Company shall indemnify and hold harmless the Purchasers from and against any and all loss, damage, liability, or expense including costs and reasonable attorneys' fees, that the foregoing may incur by reason of, or in connection with any breach of any of its representations and warranties or any failure on its part to fulfill any of the Company's covenants, agreements or obligations set forth herein.

(b) The Purchasers shall indemnify and hold harmless the Company from and against any and all loss, damage, liability, or expense including costs and reasonable attorneys' fees, that the foregoing may incur by reason of, or in connection with any breach of any of the respective Purchasers' representations and warranties or any failure on the respective Purchasers' part to fulfill any of the respective Purchasers' covenants, agreements or obligations set forth herein.

(c) The Company shall defend, hold harmless and indemnify each Purchaser, its respective affiliates and controlling persons and each of the foregoing's respective shareholders, officers, directors and employees (each, an "Indemnitee" and collectively, the "Indemnitees") from and against any and all claims, actions, suits, judgments, demands, damages, losses, liabilities (including liabilities for penalties), fines, amounts paid in settlement, and all other costs or expenses of any nature or kind whatsoever, including reasonable fees and disbursements of counsel and other professional advisers, arising out of or resulting from any claim, action, investigation or Proceeding (as defined in Section 12 below) in connection with or relating to the execution, delivery or performance of this Agreement (excluding, however, any claim to enforce the performance by such Purchaser of its express representations, warranties or obligations under this Agreement) or the consummation of the transactions contemplated hereby (the "Transactions ") including, without limitation:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 10 below) any such settlement is effected with the written consent of the Company; and

(ii) against any and all expense whatsoever, as incurred, including the fees and disbursements of counsel and other professional advisers chosen by the Purchasers, reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under any of the foregoing provisions of this Section 6(c).

(collectively, all such amounts are herein called "Losses").

(d) In furtherance of the foregoing indemnification and without limiting the generality thereof, each Indemnitee shall be entitled to the rights of indemnification provided in Section 6(c) if such Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding. Pursuant to this Section 6(d), each Indemnitee shall be indemnified by the Company against all Losses arising in connection with such Proceeding.

7. INDEMNIFICATION FOR EXPENSES OF INDEMNITEE AS A WITNESS.

Notwithstanding any other provision of this Agreement, to the extent that any Indemnitee is a witness in any Proceeding, such Indemnitee shall be indemnified against all Losses incurred by it or on its behalf in connection with its service as a witness.

8. ADVANCEMENT OF EXPENSES.

Notwithstanding any other provision of this Agreement, the Company shall advance all expenses incurred by or on behalf of any Indemnitee in connection with any Proceeding within ten days after the receipt by the Company of a statement from such Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Each such statement shall reasonably evidence expenses addressed therein. Any advances pursuant to this Section 8 shall be unsecured and interest free. Each Purchaser hereby agrees to repay any amount so advanced if and to the extent that it shall ultimately be determined that any Indemnitee affiliated with such Purchaser was not entitled to indemnification or contribution with respect to such matter.

9. ACTIONS AGAINST PARTIES; NOTIFICATION.

Each Indemnitee shall give notice as promptly as reasonably practicable to the Company of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify the Company shall not relieve the Company from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this Agreement. Counsel to the Indemnitee shall be selected by the Company, and shall be reasonably acceptable to the relevant Purchaser. The relevant Purchaser may participate at its own expense in the defense of any such action. In no event shall the Company be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from its own counsel for all Indemnitees in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. The Company shall not, without the prior written consent of the Purchasers, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification could be sought under Section 6 hereof (whether or not the Indemnitees are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each Indemnitee from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a

failure to act by or on behalf of any Indemnitee.

10. SETTLEMENT WITHOUT CONSENT IF FAILURE TO REIMBURSE.

Subject to the provisions of Section 8, if at any time an Indemnitee shall have requested the Company to reimburse the Indemnitee for fees and expenses of counsel, the Company agrees that it shall be liable for any settlement of the nature contemplated by Section 9 effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by the Company of the aforesaid request, (ii) the Company shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into, and (iii) the Company shall not have reimbursed such Indemnitee in accordance with such request prior to the date of such settlement.

11. NON-EXCLUSIVITY; SURVIVAL OF RIGHTS; SUBROGATION.

(a) The rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitees may at any time be entitled under applicable law, the Certificate of Incorporation of the Company, the Bylaws of the Company, any other agreement, a vote of shareholders or a resolution of directors, or otherwise. No amendment or termination of this Agreement or of any provision hereof shall limit or restrict any right of an Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee prior to such amendment or termination. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) Upon payment in full of all Losses in respect of any matter that is the subject of indemnification under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitees against third parties, who shall execute all papers required and take all action, at the Company's request and expense, necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

12. DEFINITION.

(i) "Business Day" means any day other than a Saturday, a Sunday or a day on which banking institutions in New York, New York are authorized or required by law to be closed.

(ii) "Person" means any individual, corporation, company, association, partnership, limited liability company, joint venture, trust, unincorporated organization or government or other entity.

(iii) "Proceeding" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry,

administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal administrative or investigative, in which any Indemnitee was, is or will be involved as a party or otherwise, arising out of or in connection with the execution, delivery or performance of any of the this Agreement or the consummation of the transaction contemplated hereby.

13. TERMINATION.

Notwithstanding any other provision of this Agreement, this Agreement shall terminate upon the occurrence of one of the following events:

(a) at any time upon the mutual written agreement of all parties; or

(b) by any party if the Transactions are not consummated by February 22, 2002, other than as a result of the breach of this Agreement by the party seeking to terminate this Agreement.

14. ATTORNEYS' FEES.

If any Proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover, without duplication of anything provided for elsewhere herein, reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

15. SUCCESSORS AND ASSIGNS.

Except as expressly provided in Sections 6, 7, 8, 9, 10, and 11 hereof, nothing in this Agreement, express or implied, is intended to confer upon any party other than the signatories hereto any rights, remedies, obligations, or liabilities under or by reason of this Agreement. This Agreement shall be binding on the parties hereto and their respective successors and permitted assigns. The rights and obligations of the parties hereunder shall not be assignable without the prior written consent of the other parties hereto and any attempt so to assign such rights or obligations without such consent shall be void and of no effect, provided, that a Purchaser may assign its rights hereunder to any majority-owned subsidiary of such Purchaser, but shall not thereby be released from its obligations hereunder.

16. EXPENSES.

The Company shall pay or reimburse the Purchasers for their reasonable out-of-pocket costs and expenses (including the reasonable fees and expenses of counsel) incurred in connection with the preparation and negotiation of this Agreement and the consummation of the transactions contemplated hereby (other than the Purchase Price for the purchase of the Purchaser Shares).

17. GOVERNING LAW.

This Agreement shall be governed by and construed under the law of the State of New York, disregarding any principles of conflicts of law that would otherwise provide for the application of the substantive law of another jurisdiction.

18. COUNTERPARTS.

This Agreement may be executed at different times and in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19. TITLES AND SUBTITLES.

The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

20. NOTICES.

All communications hereunder shall be in writing and, if to the Company, shall be mailed, delivered or telecopied and confirmed to it at:

5775 Roscoe Court  
San Diego, California 92123  
Attention: Barry R. Barkley, Chief Financial Officer  
cc: Robin R. Pruitt, General Counsel  
Facsimile No.: (858) 309-6977

with a copy to:

Snell & Wilmer L.L.P.  
One Arizona Center  
Phoenix, Arizona 85004  
Attention: Steven D. Pidgeon, Esq.  
Facsimile No.: (602) 382-6070

and to:

Fulbright & Jaworski L.L.P.  
666 Fifth Avenue  
New York, NY 10103  
Attention: Sheldon G. Nussbaum, Esq.  
Facsimile No.: (212) 318-3400

And if to the Purchasers, shall be mailed, delivered or telecopied and confirm to them at the address provided in Schedule D hereto with a copy to:

Debevoise & Plimpton  
919 Third Avenue  
New York, New York 10022  
Attention: Steven Ostner, Esq.  
Facsimile No.: (212) 909-6386

and to:

Triarc Companies, Inc.  
280 Park Avenue  
New York, NY 10017  
Attention: General Counsel  
Facsimile No.: (212) 451-3216

21. ENTIRE AGREEMENT; AMENDMENTS AND WAIVERS.

This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the subjects hereof. Any term of this Agreement may be amended, and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of each of the parties; provided that no amendment, modification or supplement to this Agreement, or any decision in respect of this Agreement by the Company, shall be effective unless approved by a majority of the directors then serving on the Board of Directors who have not been, are not then, and are not anticipated to be affiliated in any manner, whether as an employee, officer, director, stockholder, owner, consultant, agent, counsel or otherwise (a "representative") to, of or with any holder of the Convertible Preferred Stock.

22. SEVERABILITY.

If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement, and the balance of the Agreement shall be interpreted as if such provision was so excluded and shall be enforceable in accordance with its terms. In addition, if any such provision, or any part thereof, is held to be unenforceable, the parties agree that the court, regulatory agency or other governmental body making such determination shall have the power to delete or add specific words or phrases, so that such provision shall then be enforceable to the fullest extent permitted by law.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, and intending to be legally bound thereby, each of the Purchasers and the Company has signed or caused to be signed its name as of the day and year first above written.

COMPANY:

MCM CAPITAL GROUP, INC.

By: /s/ Carl C. Gregory, III

-----  
Name: Carl C. Gregory, III

Its: President and CEO

PURCHASERS:

MADISON WEST ASSOCIATES CORP.

By: /s/ Francis T. McCarron

-----  
Name: Francis T. McCarron

Its: Senior Vice President and CFO

C.P. INTERNATIONAL INVESTMENTS LTD.

By: /s/ David Barnett

-----  
Name: David Barnett

Its: Director

ROBERT MICHAEL WHYTE

/s/ Neville Joel Katz

-----  
Signed by Neville Joel Katz, Power of  
Attorney for Robert Michael Whyte

THE PELTZ FAMILY LIMITED PARTNERSHIP

By: /s/ Nelson Peltz

-----  
Name: Nelson Peltz

Title: General Partner

JONATHAN P. MAY 1998 TRUST

By: /s/ Peter W. May

-----  
Name: Peter W. May

Title: Co-Trustee

LESLIE A. MAY 1998 TRUST

By: /s/ Peter W. May

-----  
Name: Peter W. May  
Title: Co-Trustee

ERIC D. KOGAN

/s/ Eric D. Kogan

JOHN L. BARNES, JR.

/s/ John L. Barnes, Jr.

JARRETT POSNER

/s/ Jarrett Posner

BRIAN L. SCHORR

/s/ Brian L. Schorr

STUART I. ROSEN

/s/ Stuart I. Rosen

ALEX LEMOND

/s/ Alex Lemond

REGISTRATION RIGHTS AGREEMENT

MCM CAPITAL GROUP, INC.

Dated as of February 21, 2002

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## REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this "AGREEMENT") is dated as of the 21st day of February, 2002, among MCM Capital Group, Inc., a Delaware corporation (the "COMPANY"), and each of the Persons (as defined in Section 11 hereof) whose names are listed on Schedule A hereto (together with their Affiliated Stockholders (as herein defined), if any (the "INITIAL STOCKHOLDERS")). Capitalized terms used but not otherwise defined herein have their respective meanings set forth in Section 11.

WHEREAS, the Company, desires to enter into that certain Purchase Agreement, dated as of February 21, 2002 (the "PURCHASE AGREEMENT"), between the Company and the Initial Stockholders, pursuant to which the Company will sell to the Initial Stockholders 1,000,000 shares of Series A Senior Cumulative Participating Convertible Preferred Stock, par value \$0.01 per share (the "PREFERRED STOCK"); and

WHEREAS, to induce the Initial Stockholders to enter into the Purchase Agreement, the Company has agreed to grant certain registration rights to the Stockholders with respect to the Common Stock issuable upon the conversion or other exercise of the Preferred Stock; and

WHEREAS, a Registration Rights Agreement (the "ING REGISTRATION RIGHTS AGREEMENT") was entered into as of January 12, 2000, by the Company and ING (U.S.) Capital LLC; and

WHEREAS, an Amended and Restated Registration Rights Agreement (the "CTW REGISTRATION RIGHTS AGREEMENT") was entered into as of October 31, 2000, among the Company, C.P. International Investments Limited, a Bahamian company, CTW Funding, LLC, a Delaware limited liability company, MCM Holding Company LLC, a New York limited liability company, and the MCM Holding Distributees (as defined in the CTW Registration Rights Agreement); and

WHEREAS, a Registration Rights Agreement was entered into as of December 20, 2000, by the Company and CFSC Capital Corp. VIII, a Delaware corporation (the "CARGILL REGISTRATION RIGHTS AGREEMENT" and, collectively with the ING Registration Rights Agreement and the CTW Registration Rights Agreement, the "EXISTING REGISTRATION RIGHTS AGREEMENTS"); and

WHEREAS, it is a condition of the execution and delivery by the Initial Stockholders of the Purchase Agreement, that the Company enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to and on the terms and conditions herein set forth, the parties hereto agree as follows:

1. Registrations Upon Request.

1.1. Requests by Stockholders. At any time, the Requisite Stockholders shall have the right to make requests that the Company effect up to two separate registrations under the Securities Act (each a "DEMAND REGISTRATION") of all or part of the Registrable Securities owned by them.

A request made by the Requisite Stockholders pursuant to the immediately preceding sentence (in any such case, the "REQUESTING PARTY") shall not be counted for purposes of the request limitations set forth above if (a) the Requesting Party determines in its good faith judgment to withdraw the proposed registration of any Registrable Securities requested to be registered pursuant to this Section 1.1 due to marketing or regulatory reasons, (b) the registration statement relating to any such request is not declared effective within 90 days of the date such registration statement is first filed with the Commission and the Requesting Party determines to withdraw the proposed registration, (c) within 180 days after the registration relating to any such request has become effective, such registration is interfered with by any stop order, injunction or other order or requirement of the Commission or other governmental agency or court for any reason and the Company fails to have such stop order, injunction or other order or requirement removed, withdrawn or resolved to the Requesting Party's reasonable satisfaction within 30 days, (d) more than 10% of the Registrable Securities requested by the Requesting Party to be included in the registration are not so included pursuant to Section 1.4, (e) the conditions to closing specified in the underwriting agreement or purchase agreement entered into in connection with the registration relating to any such request are not satisfied (other than as a result of a default or breach thereunder by the Requesting Party), (f) the registration relating to such request is preempted by a proposed Company registration, notice of which is given by the Company to the Requesting Party pursuant to Section 1.5(b)(iii), and the Requesting Party determines to withdraw its registration request prior to a registration statement relating thereto becoming effective or (g) the registration statement used pursuant to such request is a Form S-3 (or any other comparable form hereinafter adopted).

Upon any such registration request, the Company will promptly, but in any event within 10 days, give written notice of such request to all holders of Registrable Securities and thereupon the Company will, subject to Sections 1.4 and 1.5, use its best efforts to effect the prompt registration under the Securities Act of:

(i) the Registrable Securities which the Company has been so requested to register by the Requesting Party, and

(ii) all other Registrable Securities which the Company has been requested to register by the holders thereof by written request given to the

Company by such holders within 10 days after the giving of such written notice by the Company to such holders,

all to the extent required to permit the disposition of the Registrable Securities so to be registered in accordance with the intended method or methods of disposition of each seller of such Registrable Securities.

1.2. Short Form Registration.

(a) A registration requested pursuant to Section 1.1 shall be effected by the filing of a registration statement on a form reasonably acceptable to the Requesting Party, it being understood that the Company shall, where permitted under the Securities Act, seek to qualify for registration on Form S-3 (or any other comparable form hereinafter adopted).

(b) Subject to Section 1.5(b) below, in addition to the Demand Registrations provided pursuant to Section 1.1 above, Requisite Stockholders will also be entitled to request at any time and from time to time an unlimited number of registrations on Form S-3; provided not less than \$200,000 in value of Registrable Securities (computed at the date of the initial filing of the applicable Form S-3) are included therein.

1.3. Expenses. The Company will pay all Registration Expenses in connection with any registration requested under Section 1.1 or Section 1.2(b); provided that (a) each seller of Registrable Securities shall pay all Registration Expenses to the extent required to be paid by such seller under applicable law and all underwriting discounts and commissions and transfer taxes, if any, and (b) if, pursuant to clause (a) of Section 1.1, a Requesting Party determines in its good faith judgment to withdraw the proposed registration of any Registrable Securities requested to be registered pursuant to Section 1.1 due to marketing reasons after the filing of a registration statement with respect to such Registrable Securities, the Requesting Party shall reimburse the Company for its reasonable out-of-pocket expenses incurred in connection with the preparation and filing of such registration statement unless the Requesting Party agrees in writing to have the withdrawn registration treated as one of its two registration requests permitted pursuant to Section 1.1.

1.4. Priority in Demand Registrations. If a registration pursuant to Section 1.1 or 1.2(b) involves an underwritten offering, and the managing underwriter (or, in the case of an offering which is not underwritten, a nationally recognized investment banking firm) shall advise the Company in writing (with a copy to each Person requesting registration of Registrable Securities) that, in its opinion, the number of securities requested and otherwise proposed to be included in such registration exceeds the number which can be sold in such offering without materially and adversely affecting the offering price or the market price of the Common Stock or would otherwise jeopardize the

offering, the Company will include in such registration to the extent of the number which the Company is so advised can be sold in such offering without such material adverse effect, first, the Registrable Securities of all Stockholders (including the Requesting Party), on a pro rata basis (based on the number of shares of Registrable Securities owned by each such Stockholder), second, the securities, if any, being sold by the Company, and third, the securities, if any, of any other securities holder of the Company entitled to incidental registration rights with respect thereto, subject to the limitations of Section 7.

1.5. No Company or Other Stockholder Initiated Registration; Deferral of Registration.

(a) After receipt of notice of a requested registration pursuant to Sections 1.1 or 1.2(b), neither the Company nor any other Stockholder shall initiate, without the consent of the Requesting Party, a registration of any Company securities for its own account until 90 days after such registration has been effected or such registration has been terminated.

(b) Notwithstanding the foregoing, the Company shall have the right to delay the filing or effectiveness, but not the preparation, of a registration statement for any requested registration pursuant to Sections 1.1 or 1.2(b) during one or more periods aggregating not more than 90 days in any 12-month period during the term of this Agreement in the event that (i) the Company would, in accordance with the written advice of its counsel, be required to disclose in the prospectus contained in such registration statement information not otherwise required by law to be publicly disclosed and (ii) the Company has pending or in process a material transaction, the disclosure of which would, in the good faith judgment of the Board, materially and adversely affect the Company or the transaction, or (iii) at the time of receipt of notice of a requested registration pursuant to Sections 1.1 or 1.2(b) the Company was in the process of contemplating a registration of equity securities for its own account and (A) the Company gives written notice thereof to the Requesting Party within 10 days after receipt of such registration request and (B) a registration statement with respect to such Company initiated offering is filed within 60 days of receipt of such notice from the Requesting Party.

2. Incidental Registrations. If the Company at any time proposes to register any of its equity securities under the Securities Act whether or not for sale for its own account (other than pursuant to a registration on Form S-4 or S-8 or similar or any successor form) it shall give written notice thereof to each Stockholder. If within 10 days after the receipt of any such notice, any Stockholder requests that the Company include all or any portion of the Registrable Securities owned by such Stockholder in such registration (for purposes of this Section 2, each holder of Preferred Stock shall be deemed the owner and holder of the Registrable Securities issuable upon the conversion or other exercise thereof), then, subject to subsection (a) below, the Company will give

prompt written notice to all Stockholders. Upon the written request of any Stockholder made within 10 days after the receipt of any such notice (which request shall specify the number of Registrable Securities intended to be disposed of by such holder and the intended method or methods of disposition thereof), the Company will use its best efforts to effect the registration under the Securities Act of such Registrable Securities on a pro rata basis (based on the number of shares of Registrable Securities owned by each such requesting Stockholder) in accordance with such intended method or methods of disposition; provided that:

(a) without the prior written consent of the Stockholders holding at least 50% of the then outstanding Registrable Securities, and subject to Section 2(c), the Company shall not include any registrable securities of holders of Other Registrable Securities in such proposed registration if it believes in good faith that inclusion of such securities would not be in the best interests of the Company, provided that the Company will include in such registration that number of Registrable Securities of the holders of Registrable Securities that such managing underwriter and the Company determine would not be adverse to the best interests of the Company and, provided further that the Company shall give the holders of Registrable Securities prompt notice after any such determination has been made (in lieu of the notice otherwise required under the second sentence of this Section 2);

(b) if, at any time after giving written notice (pursuant to this Section 2) of its intention to register equity securities and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register such equity securities, the Company may, at its election, give written notice of such determination to each holder of Registrable Securities and, thereupon, shall not be obligated to register any Registrable Securities in connection with such registration (but shall nevertheless pay the Registration Expenses in connection therewith), without prejudice, however, to the rights of the Stockholders to request that a registration be effected under Sections 1.1 or 1.2(b); and

(c) if in connection with a registration pursuant to this Section 2, the managing underwriter of such registration (or, in the case of an offering that is not underwritten, a nationally recognized investment banking firm) shall advise the Company in writing (with a copy to each holder of Registrable Securities requesting registration thereof) that, in its opinion, the number of securities requested and otherwise proposed to be included in such registration exceeds the number which can be sold in such offering without materially and adversely affecting the offering price or the market price of the Common Stock or would otherwise jeopardize the offering, then in the case of any registration pursuant to this Section 2, the Company will include in such registration to the extent of the

number which the Company is so advised can be sold in such offering without such material adverse effect, first the securities, if any, being sold by the Company or by any other holder of securities of the Company pursuant to a demand registration right of such holder, second, the Registrable Securities of the Stockholders and any securities registrable pursuant to the Existing Incidental Registration Rights ("OTHER REGISTRABLE SECURITIES") to be sold by any member of the Existing Stockholder Group, on a pro rata basis (based on the number of shares of Registrable Securities or Other Registrable Securities owned by each such holder), and third, the securities, if any, of any other securities holder of the Company entitled to incidental registration rights with respect thereto, subject to the limitations of Section 7.

The Company will pay all Registration Expenses in connection with each registration of Registrable Securities requested pursuant to this Section 2; provided that each seller of Registrable Securities shall pay all Registration Expenses to the extent required to be paid by such seller under applicable law and all underwriting discounts and commissions and transfer taxes, if any. No registration effected under this Section 2 shall relieve the Company from its obligation to effect registrations under Sections 1.1 or 1.2(b).

3. Registration Procedures. If and whenever the Company is required to use its best efforts to effect the registration of any Registrable Securities under the Securities Act as provided in Sections 1.1, 1.2(b) and 2, the Company will promptly:

(a) prepare, and as soon as practicable, but in any event within 60 days thereafter, file with the Commission, a registration statement with respect to such Registrable Securities, make all required filings with the NASD and use its reasonable best efforts to cause such registration statement to become effective as soon as practicable;

(b) prepare and promptly file with the Commission such amendments and post-effective amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for so long as is required to comply with the provisions of the Securities Act and to complete the disposition of all securities covered by such registration statement in accordance with the intended method or methods of disposition thereof, but in no event for a period of more than six months after such registration statement becomes effective;

(c) furnish copies of all documents proposed to be filed with the Commission in connection with such registration to counsel selected by Stockholders holding a majority of the Registrable Securities requested for inclusion in such registration, and such documents shall be subject to the review

of such counsel and the Stockholders, and the Company shall not file any registration statement or amendment or post-effective amendment or supplement to such registration statement or the prospectus used in connection therewith to which either such counsel or the Stockholders shall have reasonably objected in writing on the grounds that such amendment or supplement does not comply (explaining why) in all material respects with the requirements of the Securities Act or of the rules or regulations thereunder;

(d) furnish to each seller of Registrable Securities, without charge, such number of conformed copies of such registration statement and of each such amendment and supplement thereto (in each case including all exhibits and documents filed therewith) and such number of copies of the prospectus included in such registration statement (including each preliminary prospectus and any summary prospectus) and any other prospectus filed under Rule 424 under the Securities Act, in conformity with the requirements of the Securities Act, and such other documents, as such seller may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such seller in accordance with the intended method or methods of disposition thereof;

(e) use its reasonable best efforts to register or qualify such Registrable Securities covered by such registration statement under the securities or blue sky laws of such jurisdictions as each seller shall reasonably request, and do any and all other acts and things which may be necessary or advisable to enable such seller to consummate the disposition of such Registrable Securities in such jurisdictions in accordance with the intended method or methods of disposition thereof; provided that the Company shall not for any such purpose be required to qualify generally to do business as a foreign corporation in any jurisdiction wherein it is not so qualified, subject itself to taxation in any jurisdiction wherein it is not so subject, or take any action which would subject it to general service of process in any jurisdiction wherein it is not so subject;

(f) use its reasonable best efforts to cause all Registrable Securities covered by such registration statement to be registered with or approved by such other governmental agencies, authorities or self-regulatory bodies as may be necessary by virtue of the business and operations of the Company to enable the seller or sellers thereof to consummate the disposition of such Registrable Securities in accordance with the intended method or methods of disposition thereof;

(g) furnish to each seller of Registrable Securities a signed counterpart, addressed to the sellers, of

(i) an opinion of outside counsel for the Company experienced in securities law matters, dated the effective date of the registration statement (or, if such registration includes an underwritten public offering, the date of the closing under the underwriting agreement), and

(ii) a "comfort" letter (unless the registration is pursuant to Section 2 and such a letter is not otherwise being furnished to the Company), dated the effective date of such registration statement (and if such registration includes an underwritten public offering, dated the date of the closing under the underwriting agreement), signed by the independent public accountants who have issued an audit report on the Company's financial statements included in the registration statement, covering such matters as are customarily covered in opinions of issuer's counsel and in accountants' letters delivered to the underwriters in underwritten public offerings of securities, subject to such qualifications as are customary in opinions and accountants' letters delivered in such circumstances;

(h) notify each seller of any Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event or existence of any fact as a result of which the prospectus included in such registration statement as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, and, as promptly as is practicable, prepare and furnish to such seller a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing;

(i) otherwise comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable, an earnings statement of the Company (in form complying with the provisions of Rule 158 under the Securities Act) covering the period of at least 12 months, but not more than 18 months, beginning with the first month after the effective date of such registration statement;

(j) notify each seller of any Registrable Securities covered by such registration statement (i) when the prospectus or any prospectus supplement or post-effective amendment has been filed, and, with respect to such registration statement or any post-effective amendment, when the same has become effective,

(ii) of any request by the Commission for amendments or supplements to such registration statement or to amend or to supplement such prospectus or for additional information, (iii) of the issuance by the Commission of any stop order suspending the effectiveness of such registration statement or the initiation of any proceedings for that purpose and (iv) of the suspension of the qualification of such securities for offering or sale in any jurisdiction, or of the institution of a any proceedings for any of such purposes;

(k) use every reasonable effort to obtain the lifting of any stop order that might be issued suspending the effectiveness of such registration statement as soon as practicable;

(l) use its reasonable best efforts (i) (A) to list such Registrable Securities on any securities exchange on which the equity securities of the Company are then listed or, if no such equity securities are then listed, on an exchange selected by the Company if such listing is then permitted under the rules of such exchange, or (B) if such listing is not practicable, to secure designation of such securities as a NASDAQ "national market system security" within the meaning of Rule 11Aa2-1 under the Exchange Act or, failing that, to secure NASDAQ authorization for such Registrable Securities, and, without limiting the foregoing, to arrange for at least two market makers to register as such with respect to such Registrable Securities with the NASD, and (ii) to provide a transfer agent and registrar for such Registrable Securities not later than the effective date of such registration statement and to instruct such transfer agent (A) to release any stop transfer order with respect to the certificates with respect to the Registrable Securities being sold and (B) to furnish certificates without restrictive legends representing ownership of the shares being sold, in such denominations requested by the sellers of the Registrable Securities or the lead underwriter;

(m) enter into such agreements and take such other actions as the sellers of Registrable Securities or the underwriters reasonably request in order to expedite or facilitate the disposition of such Registrable Securities, including, without limitation, preparing for, and participating in, such number of "road shows" and all such other customary selling efforts as the underwriters reasonably request in order to expedite or facilitate such disposition;

(n) furnish to any holder of such Registrable Securities such information and assistance as such holder may reasonably request in connection with any "due diligence" effort which such seller deems appropriate; and

(o) use its best efforts to take all other steps necessary to effect the registration of such Registrable Securities contemplated hereby.

As a condition to its registration of Registrable Securities of any prospective seller, the Company may require such seller of any Registrable Securities as to which any registration is being effected to furnish to the Company such information regarding such seller, its ownership of Registrable Securities and the disposition of such Registrable Securities as the Company may from time to time reasonably request in writing and as shall be required by law in connection therewith, together with such certificates, if any, as may be required to permit the delivery of the opinions and comfort letters contemplated by Section 3(g) and the execution of the underwriting agreement and the delivery of the documents required to be delivered thereunder. Each such holder agrees to furnish promptly to the Company all information required to be disclosed in order to make the information previously furnished to the Company by such holder not materially misleading.

The Company agrees not to file or make any amendment to any registration statement with respect to any Registrable Securities, or any amendment of or supplement to the prospectus used in connection therewith, which refers to any seller of any Registrable Securities covered thereby by name, or otherwise identifies such seller as the holder of any Registrable Securities, without the consent of such seller, such consent not to be unreasonably withheld or delayed, unless such disclosure is required by law.

By acquisition of Registrable Securities, each holder of such Registrable Securities shall be deemed to have agreed that upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(h), such holder will promptly discontinue such holder's disposition of Registrable Securities pursuant to the registration statement covering such Registrable Securities until such holder's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(h). If so directed by the Company, each holder of Registrable Securities will deliver to the Company (at the Company's expense) all copies, other than permanent file copies, in such holder's possession of the prospectus covering such Registrable Securities at the time of receipt of such notice. In the event that the Company shall give any such notice, the period mentioned in Section 3(b) shall be extended by the number of days during the period from and including the date of the giving of such notice to and including the date when each seller of any Registrable Securities covered by such registration statement shall have received the copies of the supplemented or amended prospectus contemplated by Section 3(h).

#### 4. Underwritten Offerings.

4.1. Underwriting Agreement. If requested by the underwriters for any underwritten offering pursuant to a registration requested under Sections 1.1, 1.2(b) or 2, the Company shall enter into an underwriting agreement with the underwriters for such offering, such agreement to be reasonably satisfactory in substance and form to the underwriters and to the Stockholders holding a majority of the Registrable Securities

requested for inclusion in such registration. Any such underwriting agreement shall contain such representations and warranties by the Company and such other terms and provisions as are customarily contained in agreements of this type, including, without limitation and unless waived by all Stockholders participating in such registration, indemnities to the effect and to the extent provided in Section 9. The holders of Registrable Securities to be distributed by such underwriter shall be parties to such underwriting agreement and may, at their option, require that any or all of the representations and warranties by, and the agreements on the part of, the Company to and for the benefit of such underwriters be made to and for the benefit of such holders of Registrable Securities and that any or all of the conditions precedent to the obligations of such underwriters under such underwriting agreement shall also be conditions precedent to the obligations of such holders of Registrable Securities. No underwriting agreement (or other agreement in connection with such offering) shall require any Stockholder, in its capacity as stockholder or controlling Person, to make any representations or warranties to, or agreements with, the Company or the underwriters other than representations, warranties or agreements regarding such holder, the ownership of such holder's Registrable Securities and such holder's intended method or methods of disposition and any other representation required by law or to furnish any indemnity to any Person which is broader than the indemnity furnished by such holder pursuant to Section 9.2.

4.2. Selection of Underwriters. If the Company at any time proposes to register any of its securities under the Securities Act for sale for its own account pursuant to an underwritten offering in which holders of Registrable Securities are participants, the Company will have the right to select the managing underwriter (which shall be of nationally recognized standing) to administer the offering; provided that the Company must obtain the prior approval of its selection of a managing underwriter, such approval not to be unreasonably withheld, from any Stockholder who, individually or acting with a group, owns at least 20% of the aggregate number of shares (or rights to acquire shares) of Registrable Securities proposed to be registered in the registration.

Notwithstanding the foregoing sentence, whenever a registration requested pursuant to Sections 1.1 or 1.2(b) is for an underwritten offering, the Requesting Party will have the right to select the managing underwriter (which shall be of nationally recognized standing) to administer the offering, but only with the approval of the Company, such approval not to be unreasonably withheld.

#### 5. Holdback Agreements.

(a) If and whenever the Company proposes to register any of its equity securities under the Securities Act for its own account (other than on Form S-4 or S-8 or any successor form) or is required to use its best efforts to effect the registration of any Registrable Securities under the Securities Act pursuant to Sections 1.1, 1.2(b) or 2, each holder of Registrable Securities agrees by acquisition of such Registrable Securities not

to request registration under Section 1.1 or 1.2(b) of any Registrable Securities and, if it is then an officer, director or the beneficial owner (determined in accordance with Rule 13d-3 under the Exchange Act) of more than 5% of any class of the Company's equity securities (or any securities convertible into or exchangeable or exercisable for any of such securities), not to effect any public sale or distribution of the Company's equity securities (other than pursuant to such registration), within seven days prior to and 90 days (unless advised in writing by the managing underwriter that a longer period, not to exceed 180 days, is required, or such shorter period as the managing underwriter for any underwritten offering may agree) after the effective date of the registration statement relating to such registration, except its part of such registration.

(b) The Company agrees not to effect any public sale or distribution of its equity securities or securities convertible into or exchangeable or exercisable for any of such securities within seven days prior to and 90 days (unless advised in writing by the managing underwriter that a longer period, not to exceed 180 days, is required, or such shorter period as the managing underwriter for any underwritten offering may agree) after the effective date of any registration statement filed pursuant to Section 1.1 or 1.2(b) (except as part of such registration or pursuant to a registration on Form S-4 or S-8 or any successor form). In addition, upon the request of the managing underwriter, the Company shall use its reasonable best efforts to cause each officer, director or beneficial owner (determined in accordance with Rule 13d-3 under the Exchange Act) of more than 5% of any class of the Company's equity securities (or any securities convertible into or exchangeable or exercisable for any of such securities), other than any such securities acquired in a public offering, to agree not to effect any such public sale or distribution of such securities during such period, except as part of any such registration if permitted, and to cause each such officer, director and beneficial holder to enter into a similar agreement to such effect with the Company.

6. Preparation; Reasonable Investigation. In connection with the preparation and filing of each registration statement registering Registrable Securities under the Securities Act, the Company will give the holders of such Registrable Securities so to be registered and their underwriters, if any, and their respective counsel and accountants the opportunity to participate in the preparation of such registration statement, each prospectus included therein or filed with the Commission, and each amendment thereof or supplement thereto, and will give each of them such access to the financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries and such opportunities to discuss the business of the Company with its officers and the independent public accountants who have issued audit reports on its financial statements as shall be reasonably requested by such holders in connection with such registration statement.

7. No Grant of Future Registration Rights. The Company shall not, during the term of this Agreement, grant to any Person (a) any other demand registration rights,

or (b) any incidental registration rights that are of a higher priority to the rights granted to the holders of Registrable Securities under Section 2 hereof, in each case, without the prior written consent of the Principal Stockholders, so long as they continue to own at least 10% of the number of shares of Registrable Securities represented by ownership of the Preferred Stock held by such Stockholder on the date hereof.

8. [Reserved]

9. Indemnification.

9.1. Indemnification by the Company. In the event of any registration of any Registrable Securities pursuant to this Agreement, the Company agrees to indemnify, defend and hold harmless (a) each seller of such Registrable Securities, (b) the directors, members, stockholders, officers, partners, employees, agents and Affiliates of such seller, (c) each Person who participates as an underwriter in the offering or sale of such securities, and (d) each person, if any, who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) any of the foregoing, against any and all losses, claims, damages, expenses or other liabilities (or actions or proceedings in respect thereof), jointly or severally, directly or indirectly, based upon or arising out of (i) any untrue statement or alleged untrue statement of a fact contained in any registration statement under which such Registrable Securities were registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained therein or used in connection with the offering of securities covered thereby, or any amendment or supplement thereto, or (ii) any omission or alleged omission to state a fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as any such loss, claim, damage, liability, action, proceeding or expense arises out of or is based upon (A) an untrue statement or omission made in such registration statement, any such preliminary prospectus, final prospectus, summary prospectus, amendment or supplement in reliance upon and in conformity with written information furnished to the Company by such seller expressly for use in the preparation thereof, or (B) any preliminary prospectus to the extent that any such loss claim, damage, liability, action or proceeding results solely from the fact that the seller sold Registrable Securities to a person as to whom the Company shall establish that there was not sent by commercially reasonable means, at or prior to the written confirmation of such sale, a copy of the final prospectus in any case where such delivery is required by the Securities Act, if the Company has previously furnished copies thereof in sufficient quantity to the seller or the underwriters for such offering and the loss, claim, damage, liability, action or proceeding results from an untrue statement or omission of a material fact contained in the preliminary prospectus that was corrected in the final prospectus or (C) any untrue statement or omission made in such registration statement, preliminary prospectus, final prospectus, summary prospectus, amendment or supplement and the Company has provided seller sufficient copies of updates of the aforementioned documents correcting such untrue statement or omission, or otherwise notified in writing the seller of such

untrue statement or omission and expressly advised the seller not to sell the Registrable Securities until such untrue statement or omission was corrected, in each case only to the extent that loss, claim, damage, liability, action, proceeding or expense results solely from the fact that the seller did not take reasonable steps to halt the sale of such Registrable Securities within a reasonable time after having actually received such written notice of such untrue statement or omission and advice or sold such Registrable Securities after having been furnished with such correcting update but without sending such correcting update to a person by commercially reasonable means at or prior to written confirmation of sale. The Company will reimburse each such indemnified party for any legal or any other expenses reasonably incurred by them in connection with enforcing its rights hereunder or under the underwriting agreement entered into in connection with such offering or investigating, preparing, pursuing or defending any such loss, claim, damage, liability, action or proceeding. Such indemnity shall remain in full force and effect regardless of any investigation made by such indemnified party and shall survive the transfer of such Registrable Securities by such seller. If the Company is entitled to, and does, assume the defense of the related action or proceedings provided herein, then the indemnity agreement contained in this Section 9.1 shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, action or proceeding if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld or delayed). The Company shall also indemnify any underwriters of the Registrable Securities, their officers, directors and employees, and each person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) to the same extent as provided above with respect to indemnification of the seller of Registrable Securities.

9.2. Indemnification by the Sellers. The Company may require, as a condition to including any Registrable Securities in any registration statement filed pursuant to Sections 1.1, 1.2(b) or 2 that the Company shall have received an undertaking reasonably satisfactory to it from each of the prospective sellers of such Registrable Securities to indemnify and hold harmless, severally, not jointly, in the same manner and to the same extent as set forth in Section 9.1, the Company, its directors, officers, employees, agents and each person, if any, who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) the Company, but only with respect to any written information furnished to the Company by such seller expressly for use in the preparation of such registration statement, preliminary prospectus, final prospectus, summary prospectus, amendment or supplement. (The Company and the holders of the Registrable Securities hereby acknowledge and agree that unless otherwise expressly agreed to in writing by such holders, the only information furnished or to be furnished to the Company for use in any registration statement or prospectus relating to the Registrable Securities or in any amendment, supplement or preliminary materials associated therewith are statements specifically relating to (a) transactions between such holder and its Affiliates, on the one hand, and the Company, on the other hand, (b) the beneficial ownership of shares of Common Stock by such holder and its Affiliates and

(c) the name and address of such holder. If any additional information about such holder or the plan of distribution (other than for an underwritten offering) is required by law to be disclosed in any such document, then such holder shall not unreasonably withhold its agreement referred to in the immediately preceding sentence of this Section 9.2.) Such indemnity shall remain in full force and effect, regardless of any investigation made by or on behalf of the Company or any such director, officer or controlling Person and shall survive the transfer of such Registrable Securities by such seller. The indemnity agreement contained in this Section 9.2 shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, action or proceeding if such settlement is effected without the consent of such seller (which consent shall not be unreasonably withheld or delayed). The indemnity provided by each seller of Registrable Securities under this Section 9.2 shall be limited in amount to the net amount of proceeds actually received by such seller from the sale of Registrable Securities pursuant to such registration statement giving rise to such liability.

9.3. Notices of Claims, etc. Promptly after receipt by an indemnified party of notice of the commencement of any action or proceeding involving a claim referred to in the preceding paragraphs of this Section 9, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party, give written notice to the indemnifying party of the commencement of such action or proceeding, provided that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations under the preceding paragraphs of this Section 9, except to the extent that the indemnifying party is materially prejudiced by such failure to give notice. In case any such action is brought against an indemnified party, the indemnifying party will be entitled to participate therein and to assume the defense thereof jointly with any other indemnifying party similarly notified, to the extent that it may wish, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party for any legal or other expenses subsequently incurred by the latter in connection with the defense thereof except for the reasonable fees and expenses of any counsel retained by such indemnified party to monitor such action or proceeding. Notwithstanding the foregoing, if such indemnified party reasonably determines, based upon advice of counsel, that either a conflict of interest may exist between the indemnified party and the indemnifying party with respect to such action and that it is advisable for such indemnified party to be represented by separate counsel or that there may be one or more legal defenses available to it which are different from or additional to those available to the indemnifying party, such indemnified party may retain other counsel, reasonably satisfactory to the indemnifying party, to represent such indemnified party, and the indemnifying party shall pay all reasonable fees and expenses of such counsel. No indemnifying party, in the defense of any such claim or litigation, shall, except with the consent of such indemnified party, which consent shall not be unreasonably withheld, consent to entry of any judgment or enter into any settlement which does not include as

an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation. The rights accorded to any indemnified party hereunder shall be in addition to any rights that such indemnified party may have at common law, by separate agreement or otherwise.

9.4. Other Indemnification. Indemnification similar to that specified in the preceding paragraphs of this Section 9 (with appropriate modifications) shall be given by the Company and each seller of Registrable Securities with respect to any required registration (other than under the Securities Act) or other qualification of such Registrable Securities under any federal or state law or regulation of any governmental authority.

9.5. Indemnification Payments. Any indemnification required to be made by an indemnifying party pursuant to this Section 9 shall be made by periodic payments to the indemnified party during the course of the action or proceeding, as and when bills are received by such indemnifying party, with respect to an indemnifiable loss, claim, damage, liability or expense incurred by such indemnified party.

9.6. Other Remedies. If for any reason the foregoing indemnity is unavailable, or is insufficient to hold harmless an indemnified party, other than by reason of the exceptions provided therein, then the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such losses, claims, damages, liabilities, actions, proceedings or expenses in such proportion as is appropriate to reflect the relative benefits to and faults of the indemnifying party on the one hand and the indemnified party on the other in connection with the offering of Registrable Securities and the statements or omissions or alleged statements or omissions which resulted in such loss, claim, damage, liability, action, proceeding or expense, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statements or omissions. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. No party shall be liable for contribution under this Section 9.6 except to the extent as such party would have been liable to indemnify under this Section 9 if such indemnification were enforceable under applicable law.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 9.6 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph.

10. Representations and Warranties. Each Initial Stockholder, severally and not jointly, represents and warrants to the Company and each other Initial Stockholder that:

(i) such Initial Stockholder has the power, authority and capacity (or, in the case of any Initial Stockholder that is a corporation, proprietary company, limited liability company or limited partnership, all corporate, limited liability company or limited partnership power and authority, as the case may be) to execute, deliver and perform this Agreement;

(ii) in the case of an Initial Stockholder that is a corporation, proprietary company, limited liability company or limited partnership, the execution, delivery and performance of this Agreement by such Initial Stockholder has been duly and validly authorized and approved by all necessary corporate, limited liability company or limited partnership action, as the case may be;

(iii) this Agreement has been duly and validly executed and delivered by such Initial Stockholder and constitutes a valid and legally binding obligation of such Initial Stockholder, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to creditors' rights generally and general principles of equity; and

(iv) the execution, delivery and performance of this Agreement by such Initial Stockholder does not and will not violate the terms of or result in the acceleration of any obligation under (A) any material contract, commitment or other material instrument to which such Stockholder is a party or by which such Initial Stockholder is bound, (B) in the case of an Initial Stockholder that is a corporation, proprietary company, limited liability company or limited partnership, the certificate of incorporation, certificate of formation, certificate of limited partnership, by-laws, operating agreement or limited partnership agreement, as the case may be, or (C) any law, statute, regulation, order or decree applicable to such Initial Stockholder.

11. Definitions. For purposes of this Agreement, the following terms shall have the following respective meanings:

AFFILIATE: (i) with respect to any Person, a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and (ii) with respect to any natural Person, (A) the spouse, parents and direct descendants of such Person, (B) the estate, testamentary trust, trustees, executors, administrators, legatees or testamentary beneficiaries of such Person, and (C) any trust established by such Person for the exclusive benefit of any of the foregoing Persons.

**AFFILIATED STOCKHOLDER:** with respect to the Initial Stockholders, each of their respective Affiliates, in each case, if and so long as it owns any Registrable Securities and has agreed in writing to be bound by the terms and conditions of this Agreement, a copy of which agreement shall have been delivered to the Company.

**BOARD:** the board of directors of the Company.

**CARGILL REGISTRATION RIGHTS AGREEMENT:** as defined in the recitals to this Agreement.

**COMMISSION:** the U.S. Securities and Exchange Commission or any other United States federal agency then administering the Securities Act and other federal securities laws.

**COMMON STOCK:** the common stock of the Company, par value \$.01 per share, and any securities into which such common stock shall have been changed or any securities resulting from any reclassification of such Common Stock.

**COMPANY:** as defined in the preamble to this Agreement.

**CTW REGISTRATION RIGHTS AGREEMENT:** as defined in the recitals to this Agreement.

**DEMAND REGISTRATION:** as defined in Section 1.1.

**EXCHANGE ACT:** the U.S. Securities Exchange Act of 1934, as amended, or any similar federal statute, and the rules and regulations of the Commission thereunder which shall be in effect at the time.

**EXISTING INCIDENTAL REGISTRATION RIGHTS:** rights of any member of the Existing Stockholder Group under any Existing Registration Rights Agreement to require the inclusion of Other Registrable Securities in connection with a proposed registration by the Company of its equity securities under the Securities Act, whether or not for sale for its own account.

**EXISTING REGISTRATION RIGHTS AGREEMENTS:** as defined in the recitals to this Agreement.

**EXISTING STOCKHOLDER GROUP:** the group the members of which are (i) all holders of Registrable Securities (as defined in each Existing Registration Rights Agreement), and in each case, (ii) each Affiliated Stockholder (as defined in each Existing Registration Rights Agreement), and (iii) each Permitted Transferee (as defined in each Existing Registration Rights Agreement), in any case, if and so long as it owns any Registrable Securities (as defined in each Existing Registration Rights Agreement).

ING REGISTRATION RIGHTS AGREEMENT: as defined in the recitals to this Agreement.

INITIAL STOCKHOLDERS: as defined in the recitals to this Agreement.

NASD: National Association of Securities Dealers, Inc.

NASDAQ: the Nasdaq National Market.

OTHER REGISTRABLE SECURITIES: as defined in Section 2(c).

PERMITTED TRANSFEREES: as defined in Section 12.2.

PERSON: an individual, corporation, partnership, limited liability company, joint venture, proprietary company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality, thereof.

PREFERRED STOCK: as defined in the recitals to this Agreement.

PRINCIPAL STOCKHOLDERS: Madison West Associates Corp., C.P. International Investments Ltd., The Peltz Family Limited Partnership and Robert Michael Whyte.

PURCHASE AGREEMENT: as defined in the recitals to this Agreement.

REGISTRABLE SECURITIES: (i) any Common Stock issued or issuable upon the conversion of or other exercise of rights under the Preferred Stock held by the Stockholders or (ii) any equity securities issued or issuable directly or indirectly with respect to the securities referred to in clause (i) by way of conversion or exchange thereof or share dividend or share split or in connection with a combination of shares, recapitalization, reclassification, merger, amalgamation, arrangement, consolidation or other reorganization. As to any particular shares constituting Registrable Securities, such shares will cease to be Registrable Securities when they have been (x) effectively registered under the Securities Act and disposed of in accordance with the Registration Statement covering therein, or (y) sold to the public through a broker, dealer or market maker pursuant to Rule 144 or other exemption from the registration requirements of the Securities Act. For purposes of this Agreement, a Person will be deemed to be a holder of Registrable Securities whenever such Person has the right to acquire directly or indirectly such Registrable Securities (upon conversion or exercise in connection with a transfer of securities or otherwise, but disregarding any restrictions or limitations upon the exercise of such right), whether or not such acquisition has actually been effected.

REGISTRATION EXPENSES: all expenses incident to the Company's performance of or compliance with any registration pursuant to this Agreement, including, without limitation, (i) registration, filing and NASD fees, (ii) fees and expenses of complying

with securities or blue sky laws, (iii) fees and expenses associated with listing securities on an exchange or NASDAQ, (iv) word processing, duplicating and printing expenses, (v) messenger and delivery expenses, (vi) transfer agents', trustees', depositories', registrars' and fiscal agents fees, (vii) fees and disbursements of counsel for the Company and of its independent public accountants, including the expenses of any special audits or "cold comfort" letters, (viii) reasonable fees and disbursements of any one counsel retained by the sellers of Registrable Securities, which counsel shall be designated in the manner specified in Section 3 and (ix) any fees and disbursements of underwriters customarily paid by issuers or sellers of securities, but excluding underwriting discounts and commissions and transfer taxes, if any.

REQUESTING PARTY: as defined in Section 1.1.

REQUISITE STOCKHOLDERS: at any time, Stockholders holding in the aggregate at least 20% of the then outstanding Registrable Securities.

SECURITIES ACT: the U.S. Securities Act of 1933, as amended, or any similar U.S. federal statute, and the rules and regulations of the Commission thereunder which shall be in effect at the time.

STOCKHOLDERS: (i) each Initial Stockholder and, in each case, (ii) each Affiliated Stockholder, and (iii) each Permitted Transferee, in any case, if and as long as such Person owns any Registrable Securities.

## 12. Miscellaneous.

12.1. Rule 144, etc. If the Company shall have filed a registration statement pursuant to the requirements of Section 12 of the Exchange Act or a registration statement pursuant to the requirements of the Securities Act relating to any class of securities, the Company will file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the Commission thereunder, and will take such further action as any holder of Registrable Securities may reasonably request, all to the extent required from time to time to enable such holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (A) Rule 144 under the Securities Act, as such rule may be amended from time to time or (b) any successor rule or regulation hereafter adopted by the Commission. Upon the request of any holder of Registrable Securities the Company will deliver to such holder a written statement as to whether it has complied with such requirements.

12.2. Successors, Assigns and Transferees. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective predecessors and permitted assigns under this Section 12.2. Provided that an express assignment shall

have been made, a copy of which shall have been delivered to the Company, the provisions of this Agreement which are for the benefit of a holder of Registrable Securities shall be for the benefit of and enforceable by any subsequent holder of any Registrable Securities ("PERMITTED TRANSFEREES"), subject to the provisions respecting the minimum numbers or percentages of shares of Registrable Securities required in order to be entitled to certain rights, or to take certain actions, contained herein.

12.3. Amendment and Modification. This Agreement may be amended, modified or supplemented by the Company only with the written consent of each of the Principal Stockholders, in each case so long as it owns at least 50% of the Registrable Securities originally owned by it that remain Registrable Securities and, if any such Principal Stockholder no longer owns at least 50% of such Registrable Securities, Principal Stockholders holding at least 50% of such Registrable Securities.

12.4. Governing Law. This Agreement and the rights and obligations of the parties hereunder and the persons subject hereto shall be governed by, and construed and interpreted in accordance with, the law of the State of New York, without giving effect to the choice of law principles thereof.

12.5. Invalidity Provision. The invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of this Agreement, including that provision, in any other jurisdiction.

12.6. Notices. All notices, requests, demands, letters, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered personally, (b) mailed, certified or registered mail with postage prepaid, (c) sent by next-day or overnight mail or delivery or (d) sent by telecopy, as follows:

(i) If to the Company, to it at:

MCM Capital Group, Inc.  
5775 Roscoe Court  
San Diego, California 92123  
Attention: Chief Executive Officer  
Telecopier No.: (858) 309-6977

with a copy to:

MCM Capital Group, Inc.  
5775 Roscoe Court  
San Diego, California 92123  
Attention: General Counsel  
Telecopier No.: (858) 309-6977

with a copy (which shall not constitute notice) to:

Snell & Wilmer L.L.P.  
One Arizona Center  
Phoenix, Arizona  
Attention: Steven D. Pidgeon, Esq.  
Telecopier No.: (602) 382-6070

(ii) If to the Stockholders, to them at the addresses set forth in Schedule A and with a copy (which shall not constitute notice) to:

Debevoise & Plimpton  
919 Third Avenue  
New York, New York 10022  
Attention: Steven Ostner, Esq.  
Telecopier No.: (212) 909-6836

and to

C.P. International Investments Ltd.  
54-58 Park Street  
Sydney, NSW 2000  
Australia  
Attention: General Counsel  
Telecopier No.: (011) 612 9261 3148

and to

Madison West Associates Corp.  
c/o Triarc Companies, Inc.  
280 Park Avenue  
New York, New York 10017  
Attention: General Counsel  
Telecopier No.: (212) 451-3216

or to such other Person or address as any party shall specify by notice in writing to the Company. All such notices, requests, demands, letters, waivers and other communications shall be deemed to have been received (w) if by personal delivery on the day after such delivery, (x) if by certified or registered mail, on the eighth business day after the mailing thereof, (y) if by next-day or overnight mail or delivery, on the day delivered or (z) if by telecopy, on the next day following the day on which such telecopy was sent, provided that a copy is also sent by certified or registered mail.

12.7. Headings; Execution in Counterparts. The headings and captions contained herein are for convenience and shall not control or affect the meaning or construction of any provision hereof. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same instrument.

12.8. Injunctive Relief. Each of the parties recognizes and agrees that money damages may be insufficient and, therefore, in the event of a breach of any provision of this Agreement the aggrieved party may elect to institute and prosecute proceedings in any court of competent jurisdiction to enforce specific performance or to enjoin the continuing breach of this Agreement. Such remedies shall, however, be cumulative and not exclusive, and shall be in addition to any other remedy which such party may have.

12.9. Term. This Agreement shall be effective as of the date hereof and shall continue in effect thereafter until the earlier of (a) its termination by the consent of the parties hereto or their respective successors in interest, (b) the date on which no Registrable Securities remain outstanding, and (c) the date on which the Requesting Parties have collectively exhausted their respective rights to request registrations under Sections 1.1 and 1.2(b) and all remaining Registrable Securities are subject to immediate resale by the holder thereof without regard to volume limitation pursuant to paragraph (k) of Rule 144 under the Securities Act; provided that after the date on which the Requesting Parties have collectively exhausted their respective rights to request registrations under Sections 1.1 and 1.2(b), the rights and obligations under this Agreement of any individual holder of Registrable Securities shall terminate if and when all of such holder's Registrable Securities are subject to immediate resale without regard to volume limitation pursuant to paragraph (k) of Rule 144 under the Securities Act.

12.10. Further Assurances. Subject to the specific terms of this Agreement, each of the Company and the Stockholders shall make, execute, acknowledge and deliver such other instruments and documents, and take all such other actions, as may be reasonably required in order to effectuate the purposes of this Agreement and to consummate the transactions contemplated hereby.

12.11. Entire Agreement. This Agreement is intended by the parties hereto as a final expression of their agreement and intended to be a complete and exclusive statement of their agreement and understanding in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

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IN WITNESS WHEREOF this Agreement has been signed by each of the parties hereto and shall be effective as of the date first above written

MCM CAPITAL GROUP, INC.

By: /s/ Carl C. Gregory III

-----  
Name: Carl C. Gregory III  
Title: President

C.P. INTERNATIONAL INVESTMENTS LTD.

By: /s/ David Barnett

-----  
Name: David Barnett  
Title: Director

MADISON WEST ASSOCIATES CORP.

By: /s/ Francis T. McCarron

-----  
Name: Francis T. McCarron  
Title: Senior Vice President  
& CFO

ROBERT MICHAEL WHYTE

By: /s/ Neville Joel Katz

-----  
signed by Neville Joel Katz,  
Power of Attorney for  
Robert Michael Whyte

THE PELTZ FAMILY LIMITED PARTNERSHIP

By: /s/ Nelson Peltz

-----  
Name: Nelson Peltz  
Title: General Partner

JONATHAN P. MAY 1998 TRUST

By: /s/ Peter W. May

-----  
Name: Peter W. May  
Title: Co-Trustee

LESLIE A. MAY 1998 TRUST

By: /s/ Peter W. May

-----  
Name: Peter W. May  
Title: Co-Trustee

ERIC D. KOGAN

/s/ ERIC D. KOGAN  
-----

JOHN L. BARNES, JR.

/s/ JOHN L. BARNES, JR.  
-----

JARRETT POSNER

/s/ JARRETT POSNER  
-----

BRIAN L. SCHORR

/s/ BRIAN L. SCHORR  
-----

STUART I. ROSEN

/s/ STUART I. ROSEN  
-----

ALEX LEMOND

/s/ ALEX LEMOND  
-----

THE SECURITIES EVIDENCED BY THIS CERTIFICATE WERE ISSUED ON DECEMBER 31, 2001 IN EXCHANGE FOR SECURITIES ORIGINALLY ISSUED ON JANUARY 12, 2000 AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS AND MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF, AND NO REGISTRATION OF TRANSFER OF SUCH SECURITIES WILL BE MADE ON THE BOOKS OF THE ISSUER, UNLESS (i) SUCH TRANSFER IS MADE IN CONNECTION WITH AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND ANY APPLICABLE STATE SECURITIES LAWS OR (ii) THE COMPANY HAS BEEN FURNISHED WITH A SATISFACTORY OPINION OF COUNSEL FOR THE HOLDER HEREOF THAT SUCH TRANSFER IS EXEMPT FROM THE REGISTRATION REQUIREMENTS OF SUCH ACT, THE RULES AND REGISTRATIONS IN EFFECT THEREUNDER AND ANY APPLICABLE STATE SECURITIES LAWS.

THE SECURITIES EVIDENCED BY THIS CERTIFICATE AND THE SECURITIES ISSUABLE UPON THE EXERCISE OF THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS SET FORTH IN A WARRANT AGREEMENT, DATED AS OF JANUARY 12, 2000, AS THEREAFTER AMENDED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, COPIES OF WHICH ARE ON FILE AT THE PRINCIPAL EXECUTIVE OFFICES OF THE ISSUER. NO REGISTRATION OF TRANSFER OF SUCH SECURITIES WILL BE MADE ON THE BOOKS OF THE ISSUER UNLESS AND UNTIL SUCH RESTRICTIONS SHALL HAVE BEEN COMPLIED WITH.

MCM CAPITAL GROUP, INC.

WARRANT CERTIFICATE  
Dated as of December 31, 2001

WARRANTS TO PURCHASE 228,571 SHARES OF COMMON STOCK

Certificate No. W-005  
Number of Warrants: 228,571

MCM CAPITAL GROUP, INC., a corporation organized and existing under the laws of the State of Delaware (the "Company"), hereby certifies that, for value received, ING (U.S.) INVESTMENT CORPORATION, or its registered assigns, as nominee of ING (U.S.) CAPITAL LLC, is the registered holder of the number of Warrants set forth above (the "Warrants"). Each Warrant shall entitle the registered holder thereof (the "Holder"), during the time periods specified below and subject to the provisions contained herein and in the Warrant Agreement (as defined below), to receive from the Company one share of Common Stock, par value \$0.01 per share, of the Company ("Common Stock"), subject to adjustment upon the occurrence of certain events as more fully described in the Warrant Agreement, at an exercise price of \$0.01 per share.

The Warrants shall be exercisable beginning on the date of issuance through January 12, 2005 (the "Expiration Date") for up to 100% of the aggregate number of shares of Common Stock issuable upon exercise of the Warrants from time to time. This Warrant Certificate shall terminate and become void as of the close of business on the Expiration Date.

This Warrant Certificate is issued under and in accordance with the Warrant Agreement, dated as of January 12, 2000 (as thereafter amended, modified or supplemented, the "Warrant Agreement"), among the Company and ING (U.S.) Capital LLC, and is subject to the terms and provisions contained in the Warrant Agreement and in the Note Purchase Agreement (each such term is defined in the Warrant Agreement), to all of which terms and provisions the Holder of this Warrant Certificate consents by acceptance hereof, which applicable terms and provisions are hereby incorporated herein by reference and made a part hereof. Reference is hereby made to the Warrant Agreement and the Note Purchase Agreement for a full statement of the respective rights, limitations of rights, duties and obligations thereunder of the Company and the Holders of the Warrants.

The number of shares of Common Stock issuable upon the exercise of each Warrant is subject to adjustment as provided in the Warrant Agreement.

All shares of Common Stock issuable by the Company upon the exercise of Warrants shall, upon such issue and upon payment of the Exercise Price in accordance with the terms set forth in the Warrant Agreement, be duly and validly issued and fully paid and non-assessable.

In order to exercise a Warrant, the Holder hereof must surrender this Warrant Certificate at the office of the Company, with the Form of Election to Purchase attached hereto appropriately completed and duly executed by the Holder hereof, all subject to the terms and conditions hereof and of the Warrant Agreement.

All terms used in this Warrant Certificate that are defined in the Warrant Agreement shall have the meanings assigned to them in the Warrant Agreement.

Copies of the Warrant Agreement are on file at the office of the Company and may be obtained by writing to the Company at MCM Capital Group, Inc., 5775 Roscoe Court, San Diego, California 92123, Attention: Secretary.

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IN WITNESS WHEREOF, the Company has caused this Warrant Certificate to be executed by its officers thereunto duly authorized as of the date first written above.

MCM CAPITAL GROUP, INC.

By: /s/ Carl C. Gregory, III

-----  
Name: Carl C. Gregory, III  
Title: President and CEO

THE SECURITY REPRESENTED BY THIS INSTRUMENT WAS ORIGINALLY ISSUED ON DECEMBER 31, 2001 IN EXCHANGE FOR A NOTE ORIGINALLY ISSUED ON JANUARY 12, 2000 AND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. THE TRANSFER OF SUCH SECURITY IS SUBJECT TO THE CONDITIONS SPECIFIED IN THE NOTE PURCHASE AGREEMENT, DATED AS OF JANUARY 12, 2000, AS AMENDED, between the issuer hereof and ING (U.S.) Capital LLC, and the issuer hereof reserves the right to refuse the transfer of such security until such conditions have been fulfilled with respect to such transfer. Upon written request, a copy of such conditions will be furnished by the issuer hereof to the holder hereof without charge.

MCM CAPITAL GROUP, INC.

SERIES NO. 1 NOTE  
DUE JANUARY 15, 2007

No. R-002  
\$7,250,000

New York, New York  
December 31, 2001

MCM CAPITAL GROUP, INC., a Delaware corporation (the "Company"), for value received, hereby promises to pay to the order of ING (U.S.) CAPITAL LLC ("ING"), or registered assigns, on January 15, 2007, the principal amount of SEVEN MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS, with interest (computed on the basis of a 360-day year of twelve 30-day months) from the date hereof on the unpaid balance of such principal amount at the following rates: on and after the date hereof through July 15, 2003, at a rate of 6.0% per annum, and on and after July 16, 2003, at a rate of 8.0% per annum, payable semiannually in arrears on the 15th day of each January and July (each, a "Payment Date") after the date hereof, commencing July 15, 2002, until such unpaid principal shall become due and payable (whether at maturity or at a date fixed for prepayment or by declaration or otherwise), and with additional interest on any overdue principal and premium, if any, and (to the extent permitted by applicable law) on any overdue interest at the rate of 2.0% per annum, payable aforesaid or, at the option of the registered holder hereof, on demand.

Payments of principal and interest on this Series No. 1 Note shall be made in lawful money of the United States of America at the principal office of The Chase Manhattan Bank, 5 Metrotech Center, Brooklyn, New York, or at such other office or agency in New York, New York as the registered holder of this Series No. 1 Note shall have designated by written notice to the Company as provided in the Note Purchase Agreement referred to below. The Company may treat the Person in whose name this Series No. 1 Note is registered on the register kept by the Company as provided in such Note Purchase Agreement as the owner of this Series No. 1 Note for the purpose of receiving payment and for all other purposes, and the Company shall not be affected by any notice to the contrary. The Note Purchase Agreement permits the Company to issue PIK Notes in lieu of interest under certain conditions.

This Series No. 1 Note is one of the Company's senior notes (the "Series No. 1 Notes"), originally issued in the aggregate principal amount of \$10,000,000 pursuant to a Note Purchase Agreement, dated as of January 12, 2000 (the "Note Purchase Agreement"), between the Company and ING. The registered holder of this Series No. 1 Note is entitled to the benefits of the Note Purchase Agreement and may enforce the agreements of the Company contained therein and exercise the remedies provided for thereby or otherwise available in respect thereof. The Series No. 1 Notes are subject to optional prepayment, in whole or in part, and are entitled to mandatory prepayments and redemption, all as specified in the Note Purchase Agreement. In case an Event of Default, as defined in the Note Purchase Agreement, shall occur and be continuing, the unpaid balance of the principal of this Series No. 1 Note may be declared and become due and payable in the manner and with the effect provided in the Note Purchase Agreement. By acceptance of this Series No. 1 Note, each holder agrees to be bound as a Noteholder in accordance with Section 4.7 of the Note Purchase Agreement, as amended.

This Series No. 1 Note is a registered note and, as provided in the Note Purchase Agreement, is transferable only upon surrender of this Series No. 1 Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or his attorney duly authorized in writing.

This Series No. 1 Note is made and delivered in New York, New York and shall be governed by the internal laws of the State of New York.

MCM CAPITAL GROUP, INC.

By: /s/ Barry R. Barkley

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Barry R. Barkley  
Executive Vice President

## AMENDMENT NO. 2

AMENDMENT NO. 2, dated as of December 31, 2001, between MCM CAPITAL GROUP, INC., a corporation duly organized and validly existing under the laws of the State of Delaware (the "Company"), and ING (U.S.) CAPITAL LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware ("ING").

The Company and ING are parties to a Note Purchase Agreement dated as of January 12, 2000 (as amended by that certain Amendment No. 1 dated as of April 28, 2000 and as further amended or otherwise modified prior to the date hereof and in effect on the date hereof, the "Purchase Agreement"), providing, subject to the terms and conditions thereof, for the purchase by ING of \$10,000,000 principal amount of 12.0% Series No. 1 Senior Notes due January 15, 2007. The Company and ING wish to amend the Purchase Agreement in certain respects and, accordingly, the parties hereto hereby agree as follows:

Section 1. Definitions. Except as otherwise defined in this Amendment No. 2, terms defined in the Purchase Agreement are used herein as defined therein.

Section 2. Amendments. Subject to the satisfaction of the conditions precedent specified in Section 5 below (but (x) effective as of the date hereof and (y) subject to the conditions subsequent specified in Section 6 below), the Purchase Agreement shall be amended as follows:

2.01. Section 1.1 of the Purchase Agreement (Definitions) is hereby amended by adding the following new definitions and inserting each in its appropriate alphabetical location:

"`Amendment No. 2' means Amendment No. 2, dated as of December 31, 2001, between MCM Capital Group, Inc. and ING (U.S.) Capital LLC."

"`CFSC Credit Agreement' means the Credit Agreement, dated as of December 20, 2000, between MRC Receivables Corporation, as borrower, and CFSC Capital Corp. VIII, as lender."

"Dollar' and '\$' shall mean lawful money of the United States of America."

"`LIBOR' means, for any date, the rate per annum (rounded upwards, if necessary, to the nearest 1/16 of 1%) reported, at 11:00 a.m. (London time) on the date two Business Days prior to such date, on Dow Jones Market Screen 3750 (British Bankers Association Settlement Rate) as the London Interbank Offered Rate for Dollar deposits having a term of one month and in an amount equal to or greater than \$1,000,000."

"`LIBOR Interest' means, for any Payment Date and in respect of any Series No. 1 Notes, interest on such Series No. 1 Notes accrued during the period commencing on the immediately preceding Payment Date and ending on the date prior to such Payment Date at a rate per annum equal to LIBOR for such immediately preceding Payment Date (but in no event greater than the interest charged pursuant to Section 4.4(b) of the Purchase Agreement)."

"`Triarc Guaranty' means the Guaranty and Option Agreement, dated as of January 12, 2000 by Triarc Companies, Inc. in favor of the Purchaser, as the same shall be modified and supplemented and in effect from time to time."

2.02. Section 4.4(b) of the Purchase Agreement (Interest) is hereby amended in its entirety to read as follows:

"(b) Interest. The Series No. 1 Notes will bear interest, prior to the occurrence of any Default pursuant to Section 7.1.1 relating to the non-payment of principal of or interest on the Series No. 1 Notes, at the following rates per annum:

(i) on and after the Closing Date through December 30, 2001, at a rate of 12.0%,

(ii) on and after December 31, 2001 through July 15, 2003, at a rate of 6.0%, and

(iii) on and after July 16, 2003, at a rate of 8.0%.

Interest so accrued will be payable in arrears on each Payment Date, commencing with July 15, 2000 and at maturity; provided, that:

(a) on any Payment Date occurring prior to December 31, 2001, the Company may (in lieu of making any required cash payment of interest on any outstanding Series No. 1 Notes) issue on such date, and each Person then entitled to payment of interest shall accept, a Series No. 1 Note (a "PIK Note") in a principal amount equal to the interest owed to such Person on such Payment Date; and

(b) on any Payment Date occurring after December 31, 2001, but prior to July 15, 2003, the Company may (in lieu of making any required cash payment of interest on any outstanding Series No. 1 Notes in excess of LIBOR Interest for such Payment Date) issue on such date, and each Person then entitled to payment of interest shall accept, a PIK Note in a principal amount equal to the interest owed to such Person on such Payment Date (other than LIBOR Interest for such Payment Date).

All PIK Notes shall have a maturity date of July 1, 2005. At any time when the Company shall have defaulted in the payment when due (whether at maturity, or at a date fixed for payment or prepayment or by declaration or otherwise) of principal of or interest on the Series No. 1 Notes (and for so long as such default shall continue), the Series No. 1 Notes will bear interest, payable semi-annually as aforesaid or at the option of a Noteholder on demand, at a rate equal to the sum of the foregoing rate plus an additional 2% per annum on the entire unpaid balance of such principal amount, on overdue premium, if any, and (to the extent permitted by applicable law) on overdue interest."

2.03. Section 7.16 of the Purchase Agreement (Non-Performance of Other Undertakings) is hereby amended by deleting clause (b) thereof in its entirety.

2.04. Section 5.5 of the Purchase Agreement (Absence of Material Adverse Change) is hereby amended in its entirety to read as follows:

"SECTION 5.5 Absence of Material Adverse Change. There have been no occurrences, events or changed circumstances since September 30, 2001 which, individually, as part of a series or in the aggregate, have had a Materially Adverse Effect."

2.05. Section 6.2.5 of the Purchase Agreement (Restricted Payments, etc.) is hereby amended to add the following at the end thereof:

"except that the Company may declare and make cash dividend payments in respect of the Equity Contribution (as that term is defined in Amendment No. 2), so long as concurrently with the making of each such cash dividend payment the Company shall prepay the Series No. 1 Notes in an aggregate amount equal to 100% of the amount of such cash dividend payment, such prepayment to be applied as follows:

(i) first, to the outstanding PIR Notes; and

(ii) second, after the payment in full of all outstanding PIK Notes, to accrued but unpaid interest on all other Series No. 1 Notes."

Section 3. Agreements of the Issuer and the Purchaser. Notwithstanding anything to the contrary in the Purchase Agreement or any other Purchase Document and subject to the satisfaction of the conditions precedent specified in Section 5 below, but effective as of the date hereof, the Company and ING hereby agree as follows:

3.01 Reduction in Principal and Accrued Interest of Series No. 1 Notes. ING and the Company agree that:

(i) on or prior to the date that the conditions precedent set forth in Section 5 hereof shall have been satisfied, ING will deliver to the Company all Series No. 1 Notes heretofore delivered to it by the Company (which are in an aggregate principal amount equal to \$11,921,391.29) in exchange for a Series No. 1 Note (bearing interest as specified in Section 2.02 of this Amendment No. 2) in a principal amount equal to \$7,250,000 (the "New Series No. 1 Note"), and

(ii) subject to the satisfaction of the conditions precedent set forth in Section 5 hereof (but subject to the conditions subsequent set forth in Section 6 hereof), all accrued but unpaid interest on the Series No. 1 Notes in the amount of \$651,702.65 representing interest on the Series No. 1 Notes for the period July 16, 2001 through December 31, 2001 is hereby forgiven.

From and after the date that the conditions precedent and conditions subsequent set forth in Section 5 and Section 6 hereof shall have been satisfied, (a) each reference in the Purchase Agreement to Series No. 1 Notes shall be deemed to include the New Series No. 1 Note issued pursuant to this Section 3.01, (b) each reference in the Purchase Agreement to the interest rate on the Series No. 1 Notes shall be deemed to refer to the interest rate provided for in Section 2.02 of this Amendment No. 2 and (c) the Series No. 1 Notes returned to the Company pursuant to this Section 3.01 shall be deemed to have been cancelled.

3.02 Reduction in Principal and Interest of Series No. 1 Notes Upon Payment of Fees. On each date that the amount of the "Guaranteed Obligations" (as that term is defined in the Triarc Guaranty) is reduced by any amount (a "Guaranty Reduction Amount") pursuant to Section 2.9 of the Triarc Guaranty, the outstanding indebtedness under the Series No. 1 Notes shall be automatically reduced through forgiveness by an amount equal to one-half of such Guaranty Reduction Amount. Any such reduction shall be applied, Ratably, in the following order: first to accrued interest, then to the outstanding principal amount of outstanding PIK Notes, then to the outstanding principal amount of outstanding New Series No. 1 Notes other than PIK Notes.

3.03 Cancellation of Certain Warrants. ING agrees to deliver to the Company, concurrently with the satisfaction of the conditions precedent set forth in Section 5 hereof, Warrant Certificate No. W-001, representing the right to purchase 428,571 shares of Common Stock of the Company, in exchange for a new Warrant Certificate representing the right to purchase 228,571 shares of Common Stock of the Company (the "New Warrant Certificate"). Except for the number of shares that may be purchased upon exercise of such Warrant and the omission of vesting dates that have already occurred, the New Warrant Certificate shall have the same terms and conditions as Warrant Certificate No. W-001. From and after the date of such exchange, Warrant Certificate No. W-001 shall be deemed to have been cancelled.

3.04 Replacement of Bank of America Credit Agreement and Indebtedness. ING hereby consents to the replacement of the Bank of America Credit Agreement and the Bank of America Indebtedness with a credit agreement (the "Replacement Credit Agreement") at market rates and with other terms no less favorable in the aggregate to the Company than the Bank of America Credit Agreement and related Indebtedness (the "Replacement Indebtedness") in a principal amount not to exceed \$15,000,000. Upon the closing of the Replacement Credit Agreement and the payment in full of the Bank of America Indebtedness, all references in the Purchase Agreement to the Bank of America Credit Agreement and the Bank of America Indebtedness shall be deemed to refer to the Replacement Credit Agreement and the Replacement Indebtedness, respectively.

3.05 Consent to Equity Contribution. ING hereby waives the provisions of Section 6.2.11 of the Purchase Agreement to the extent necessary to permit the Equity Contribution (as defined in Section 6 below), provided that the Company shall have received a fairness opinion, in form and substance reasonably satisfactory to the independent directors of the Company, with respect to the Equity Contribution.

Section 4. Representations and Warranties, The Company represents and warrants to MG that (a) subject to the updated Disclosure Schedule provided to ING concurrently herewith and attached hereto as Schedule A, the representations and warranties set forth in Article V of the Purchase Agreement (other than such representations and warranties that are specifically made as of another date) are true and complete on the date hereof as if made on and as of the date hereof and as if each reference in said Article V to "this Agreement" included reference to this amendment No. 2, and (b) as of the date hereof, and after giving effect to this Amendment No. 2, no Default shall be continuing.

Section 5. Conditions Precedent. As provided in Section 2 above, the amendments to the Purchase Agreement set forth in said Section 2, and the agreements in Section 3 hereof, shall become effective, as of the Effective Date and upon the satisfaction of the following conditions precedent:

5.01 Execution of Amendment No. 2. This Amendment No. 2 shall have been executed and delivered by the Company and by ING, and the Consent at the foot of this Amendment No. 2 shall have been executed and delivered by the Subsidiary Guarantor, and the Consent at the foot of this Amendment No. 2 shall have been executed and delivered by Triarc Companies, Inc.

5.02 New Series No. 1 Note and New Warrant Certificate. ING shall have (a) received the New Series No. 1 Note and the New Warrant Certificate and (b) delivered to the Company all Series No. 1 Notes heretofore delivered to it by the Company and Warrant Certificate No. W-001.

5.03 Equity Contribution. The Company shall have received cash in an aggregate amount equal to or greater than \$4,600,000 (or such lesser amount to which ING may reasonably consent) as net proceeds of a contribution to the equity capital of the Company in a gross amount equal to \$5,000,000 (the "Equity Contribution").

5.04 Equity Contribution Documentation. ING shall have received copies of the executed purchase agreement, the filed certificate of designation and the executed registration rights agreement (collectively, the "Equity Contribution Documentation") providing for or governing the Equity Contribution (and a copy of the fairness opinion referred to in Section 3.05 hereof), the terms and conditions of the Equity Contribution, and the Equity Contribution Documentation therefor, will contain terms no different than those set forth in the drafts dated and delivered to ING as of February 20, 2002.

Section 6. Conditions Subsequent. If, on or prior to February 28, 2002, ING shall not have received a certificate of a senior financial officer of the Company to the effect that (i) the Equity Contribution has been received, and (ii) after giving effect to the Equity Contribution and this Amendment No. 2, no Default under Section 7.1.2 of the Purchase Agreement in respect of the CFSC Credit Agreement shall be continuing, then,

(a) this Amendment No. 2 shall be void ab initio and shall be deemed never to have become effective, and

(b) the Company shall promptly execute and deliver to ING all such documentation reasonably requested by ING to effect the foregoing clause (a) including, without limitation, new Series No. 1 Notes and new Warrants

Section 7. Miscellaneous. Except as herein provided, the Purchase Agreement shall remain unchanged and in full force and effect. This Amendment No. 2 may be executed in any number of counterparts, all of which taken

together shall constitute one and the same amendatory instrument and any of the parties hereto may execute this Amendment No. 2 by signing any such counterpart. This Amendment No. 2 shall be governed by, and construed in accordance with, the laws of the State of New York. This Amendment No. 2 constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior written and oral proposals, understandings, agreements and representations with respect thereto, all of which are merged herein.

[the remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 2 to be duly executed and delivered as of the day and year first above written.

MCM CAPITAL GROUP, INC.

By /s/ Carl C. Gregory, III

-----  
Name: Carl C. Gregory, III  
Title: President and CEO

ING (U.S.) CAPITAL LLC

By /s/ Robert L. Fellows

-----  
Robert L. Fellows  
Director

CONSENT:

The undersigned hereby consents to the foregoing Amendment No. 2 and confirms its obligations under the Subsidiary Guaranty in all respects:

MIDLAND CREDIT MANAGEMENT, INC.

By /s/ Carl C. Gregory, III

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Name: Carl C. Gregory, III  
Title: President and CEO

The undersigned hereby consents to the foregoing Amendment No. 2 and confirms its obligations under the Triarc Guaranty in all respects:

TRIARC COMPANIES, INC.

By /s/ Francis T. McCarron

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Name: Francis T. McCarron  
Title: Senior Vice President

February 21, 2002

ING (U.S.) Capital LLC  
1325 Avenue of the Americas  
New York, NY 10019  
Attention: Bob Fellows

MCM Capital Group, Inc.  
5775 Roscoe Court  
San Diego, California 92123  
Attention: Carl C. Gregory, III

LETTER AGREEMENT

Ladies and Gentlemen:

We refer (i) to that certain Purchase Agreement, dated as of February 21, 2002 (the "Purchase Agreement"), between MCM Capital Group, Inc., a Delaware corporation (the "Company") and the purchasers identified therein as "Purchasers" (the "Purchasers"), providing for the issuance and sale by the Company to the Purchasers of shares of Convertible Preferred Stock (as such term is defined in the Purchase Agreement) and (ii) to that certain Note Purchase Agreement, dated as of January 12, 2000, between the Company and ING (U.S.) Capital LLC (as amended through the date hereof, including, without limitation, by Amendment No. 2, the "Note Agreement"), pursuant to which the Company has issued certain notes (the "Notes") to the purchasers thereof.

In connection with the execution of the Purchase Agreement and in order to induce the holders of the Notes to enter into Amendment No. 2 to the Note Agreement, the Purchasers agree for the benefit of the holders of the Notes that, until such time as the Notes are indefeasibly paid in full in cash, no dividend shall be paid in cash to any holder of Convertible Preferred Stock if the payment of such dividend would be prohibited by the terms of Note Agreement. Each Purchaser and the Company further agrees (i) that if such Purchaser receives any cash payment in contravention of the foregoing restriction, the Company will take such action as may be necessary to rescind such cash dividend to the extent of the ING Payment Amount (as hereinafter defined) so that such rescinded portion of such dividend shall be treated as if it had never been declared or paid and such Purchaser shall remit to the holders of the Notes (and the Company hereby irrevocably instructs such Purchaser to remit to the holders of the Notes), such portion of the cash payment received that would otherwise have been payable to ING (US) Capital LLC in accordance with Section 6.2.5 of the Note Agreement as if a dividend payment had been made in the amount of the unrescinded dividend (the "ING Payment Amount") and (ii) to severally provide written notice to ING (US) Capital LLC of its receipt of any cash dividend payment made in respect of its Convertible Preferred Stock.

This Letter Agreement shall be governed by the laws of the State of New York without giving effect to the conflict of law principles thereof. This Letter Agreement may be executed in two or more counterparts, each of which will be an original, but together will constitute a single document.

This Letter Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

If you are in agreement with the foregoing, please so indicate by signing a copy of this letter agreement in the space provided below.

Sincerely,

MADISON WEST ASSOCIATES CORP.

By: /s/ Francis T. McCarron  
-----  
Name: Francis T. McCarron  
Its: Senior Vice President

C.P. INTERNATIONAL INVESTMENTS LTD.

By: /s/ David Barnett  
-----  
Name: David Barnett  
Its: Director

ROBERT MICHAEL WHYTE

/s/ Neville Joel Katz  
-----  
Signed by Neville Joel Katz, Power of  
Attorney for Robert Michael Whyte

THE PELTZ FAMILY LIMITED PARTNERSHIP

By: /s/ Nelson Peltz  
-----  
Name: Nelson Peltz  
Title: General Partner

JONATHAN P. MAY 1998 TRUST

By: /s/ Peter W. May  
-----  
Name: Peter W. May  
Title: Co-Trustee

LESLIE A. MAY 1998 TRUST

By: /s/ Peter W. May

-----  
Name: Peter W. May  
Title: Co-Trustee

ERIC D. KOGAN

/s/ Eric D. Kogan

-----

JOHN L. BARNES, JR.

/s/ John L. Barnes, Jr.

-----

JARRETT POSNER

/s/ Jarrett Posner

-----

BRIAN L. SCHORR

/s/ Brian L. Schorr

-----

STUART I. ROSEN

/s/ Stuart I. Rosen

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ALEX LEMOND

/s/ Alex Lemond

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Accepted and Agreed:

MCM Capital Group, Inc.

By /s/ Robin R. Pruitt

-----  
Senior V.P.

ING (U.S.) Capital LLC

By

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