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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15 (D) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2003

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15 (D) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the Transition Period from            to

Commission File Number 000 - 32983

**CBRE HOLDING, INC.**

(Exact name of Registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or  
organization)

**94-3391143**

(I.R.S. Employer Identification Number)

**865 South Figueroa Street, Suite 3400  
Los Angeles, California**

(Address of principal executive offices)

**90017**

(Zip Code)

**(213) 613-3226**

(Registrant's telephone number, including area code)

(Former name, former address and  
former fiscal year if changed since last report)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the Registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes  No .

The number of shares of Class A and Class B common stock outstanding at October 31, 2003 was 2,591,358 and 19,271,948 respectively.

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**FORM 10-Q**

**September 30, 2003**

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**CBRE HOLDING, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(Dollars in thousands, except share data)

	September 30, 2003 (Unaudited)	December 31, 2002
<b>ASSETS</b>		
Current Assets:		
Cash and cash equivalents	\$ 85,494	\$ 79,701
Restricted cash	17,912	—
Receivables, less allowance for doubtful accounts of \$17,720 and \$10,892 at September 30, 2003 and December 31, 2002, respectively	250,608	166,213
Warehouse receivable	135,820	63,140
Prepaid expenses	25,222	9,748
Deferred tax assets, net	74,748	18,723
Other current assets	17,731	8,415
Total current assets	607,535	345,940
Property and equipment, net	110,705	66,634
Goodwill	793,251	577,137
Other intangible assets, net of accumulated amortization of \$42,756 and \$7,739 at September 30, 2003 and December 31, 2002, respectively	153,790	91,082
Deferred compensation assets	70,077	63,642
Investments in and advances to unconsolidated subsidiaries	64,482	50,208
Deferred tax assets, net	26,227	36,376
Other assets	140,957	93,857
Total assets	<u>\$ 1,967,024</u>	<u>\$ 1,324,876</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current Liabilities:		
Accounts payable and accrued expenses	\$ 137,295	\$ 102,415
Compensation and employee benefits payable	152,408	63,734
Accrued bonus and profit sharing	101,842	103,858
Income taxes payable	—	15,451
Short-term borrowings:		
Warehouse line of credit	135,820	63,140
Other	27,914	47,925
Total short-term borrowings	163,734	111,065
Current maturities of long-term debt	11,777	10,711
Total current liabilities	567,056	407,234
Long-Term Debt:		
11¼% senior subordinated notes, net of unamortized discount of \$2,886 and \$3,057 at September 30, 2003 and December 31, 2002, respectively	226,114	225,943
Senior secured term loans	277,113	211,000
9¾% senior notes	200,000	—
16% senior notes, net of unamortized discount of \$4,899 and \$5,107 at September 30, 2003 and December 31, 2002, respectively	63,416	61,863
Other long-term debt	52,733	12,327
Total long-term debt	819,376	511,133
Deferred compensation liability	125,465	106,252
Other liabilities	99,725	43,301
Total liabilities	1,611,622	1,067,920
Minority interest	6,706	5,615
Commitments and contingencies		
Stockholders' Equity:		
Class A common stock; \$0.01 par value; 75,000,000 shares authorized; 2,698,441 and 1,793,254 shares issued and outstanding (including treasury shares) at September 30, 2003 and December 31, 2002, respectively	27	17
Class B common stock; \$0.01 par value; 25,000,000 shares authorized; 19,271,948 and 12,624,813 shares issued and outstanding at September 30, 2003 and December 31, 2002, respectively	193	127
Additional paid-in capital	361,400	240,574
Notes receivable from sale of stock	(4,705)	(4,800)
Accumulated earnings	11,533	36,153
Accumulated other comprehensive loss	(17,724)	(18,998)
Treasury stock at cost, 128,684 and 110,174 shares at September 30, 2003 and December 31, 2002, respectively	(2,028)	(1,732)
Total stockholders' equity	348,696	251,341
Total liabilities and stockholders' equity	<u>\$ 1,967,024</u>	<u>\$ 1,324,876</u>

The accompanying notes are an integral part of these consolidated financial statements.

**(Unaudited)**  
**(Dollars in thousands, except share data)**

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2003	2002	2003	2002
Revenue	\$ 423,376	\$ 284,928	\$ 1,008,817	\$ 793,811
Costs and expenses:				
Cost of services	208,198	135,670	484,863	363,506
Operating, administrative and other	180,298	124,470	443,894	364,676
Depreciation and amortization	41,071	6,404	53,571	18,107
Equity income from unconsolidated subsidiaries	(2,318)	(2,778)	(9,182)	(6,422)
Merger-related charges	16,485	—	19,795	50
Operating (loss) income	(20,358)	21,162	15,876	53,894
Interest income	1,788	1,275	3,564	2,673
Interest expense	28,255	15,420	59,519	46,341
(Loss) income before (benefit) provision for income taxes	(46,825)	7,017	(40,079)	10,226
(Benefit) provision for income taxes	(18,380)	5,136	(15,459)	6,596
Net (loss) income	\$ (28,445)	\$ 1,881	\$ (24,620)	\$ 3,630
Basic (loss) income per share	\$ (1.37)	\$ 0.13	\$ (1.45)	\$ 0.24
Weighted average shares outstanding for basic (loss) income per share	20,743,011	15,016,044	16,957,494	15,033,640
Diluted (loss) income per share	\$ (1.37)	\$ 0.12	\$ (1.45)	\$ 0.24
Weighted average shares outstanding for diluted (loss) income per share	20,743,011	15,225,788	16,957,494	15,216,740

The accompanying notes are an integral part of these consolidated financial statements.

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**CBRE HOLDING, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(Unaudited)**  
**(Dollars in thousands)**

	Nine Months Ended September 30,	
	2003	2002
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net (loss) income	\$ (24,620)	\$ 3,630
Adjustments to reconcile net (loss) income to net cash used in operating activities:		
Depreciation and amortization	53,571	18,107
Amortization of deferred financing costs	3,336	2,499
Deferred compensation plan deferrals	7,836	9,224
Gain on sale of servicing rights and other assets	(3,417)	(5,026)
Equity income from unconsolidated subsidiaries	(9,182)	(6,422)
Provision for doubtful accounts	3,598	2,923
Decrease in receivables	23,253	20,020
(Increase) decrease in deferred compensation plan assets	(6,435)	9,919
Increase in prepaid expenses and other assets	(14,237)	(9,142)
Decrease in compensation and employee benefits and accrued bonus and profit sharing	(45,269)	(40,481)
(Decrease) increase in accounts payable and accrued expenses	(22,089)	2,679
Decrease in income taxes payable	(29,134)	(10,250)
Decrease in other liabilities	(1,540)	(19,409)
Other operating activities, net	(6,385)	2,759
Net cash used in operating activities	(70,714)	(18,970)
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Capital expenditures, net of concessions received	(8,185)	(8,281)
Acquisition of businesses including net assets acquired, intangibles and goodwill, net of cash acquired	(243,847)	(14,529)
Other investing activities, net	(652)	6,348
Net cash used in investing activities	(252,684)	(16,462)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Proceeds from revolver and swingline credit facility	152,850	214,250
Repayment of revolver and swingline credit facility	(152,850)	(207,250)
Proceeds from senior secured term loans	75,000	—
Repayment of senior secured term loans	(7,513)	(7,014)
Repayment of notes payable	(43,000)	—
Proceeds from 9 3/4% senior notes	200,000	—
Proceeds from (repayment of) senior notes and other loans, net	3,732	(1,376)
Proceeds from issuance of common stock	120,580	180
Payment of deferred financing fees	(19,774)	(443)
Other financing activities, net	(527)	(412)
Net cash provided by (used in) financing activities	328,498	(2,065)
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	<b>5,100</b>	<b>(37,497)</b>

<b>CASH AND CASH EQUIVALENTS, AT BEGINNING OF PERIOD</b>	79,701	57,450
Effect of currency exchange rate changes on cash	693	(1,469)
<b>CASH AND CASH EQUIVALENTS, AT END OF PERIOD</b>	<u>\$ 85,494</u>	<u>\$ 18,484</u>

**SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:**

Cash paid during the period for:		
Interest (net of amount capitalized)	\$ 31,694	\$ 33,961
Income taxes, net of refunds	\$ 25,533	\$ 16,481

The accompanying notes are an integral part of these consolidated financial statements.

**CBRE HOLDING, INC.**  
**CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY**  
(Unaudited)  
(Dollars in thousands, except share data)

	Class A common stock	Class B common stock	Additional paid-in capital	Notes receivable from sale of stock	Accumulated earnings (loss)	Accumulated other comprehensive (loss) income	Minimum pension liability	Foreign currency translation	Treasury stock	Total
Balance, December 31, 2002	\$ 17	\$ 127	\$ 240,574	\$ (4,800)	\$ 36,153	\$ (17,039)	\$ (1,959)	\$ (1,732)	\$ 251,341	
Net loss	—	—	—	—	(24,620)	—	—	—	(24,620)	
Issuance of Class A common stock	10	—	14,297	(76)	—	—	—	—	14,231	
Issuance of Class B common stock	—	66	106,287	—	—	—	—	—	106,353	
Issuance of deferred compensation stock fund units, net of cancellations	—	—	242	—	—	—	—	—	242	
Net collection on notes receivable from sale of stock	—	—	—	171	—	—	—	—	171	
Purchase of common stock	—	—	—	—	—	—	—	(296)	(296)	
Foreign currency translation gain	—	—	—	—	—	—	1,274	—	1,274	
Balance, September 30, 2003	<u>\$ 27</u>	<u>\$ 193</u>	<u>\$ 361,400</u>	<u>\$ (4,705)</u>	<u>\$ 11,533</u>	<u>\$ (17,039)</u>	<u>\$ (685)</u>	<u>\$ (2,028)</u>	<u>\$ 348,696</u>	

The accompanying notes are an integral part of these consolidated financial statements.

**CBRE HOLDING, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(Unaudited)

**1. Nature of Operations**

CBRE Holding, Inc., a Delaware corporation, was incorporated on February 20, 2001 as Blum CB Holding Corporation. On March 26, 2001, Blum CB Holding Corporation changed its name to CBRE Holding, Inc. (the Company). The Company and its former wholly owned subsidiary, Blum CB Corporation (Blum CB), a Delaware corporation, were created to acquire all of the outstanding shares of CB Richard Ellis Services, Inc. (CBRE), an international real estate services firm. Prior to July 20, 2001, the Company was a wholly owned subsidiary of Blum Strategic Partners, L.P. (Blum Strategic), formerly known as RCBA Strategic Partners, LP, which is an affiliate of Richard C. Blum, a director of the Company and CBRE.

On July 20, 2001, the Company acquired CBRE pursuant to an Amended and Restated Agreement and Plan of Merger, dated May 31, 2001, among the Company, CBRE and Blum CB. Blum CB was merged with and into CBRE, with CBRE being the surviving corporation (the 2001 Merger). The operations of the Company after the 2001 Merger are substantially the same as the operations of CBRE prior to the 2001 Merger. In addition, the Company has no substantive operations other than its investment in CBRE.

**2. Insignia Acquisition**

On July 23, 2003, pursuant to an Amended and Restated Agreement and Plan of Merger, dated May 28, 2003 (the Insignia Acquisition Agreement), by and among the Company, CBRE, Apple Acquisition Corp. (Apple Acquisition), a Delaware corporation and wholly owned subsidiary of CBRE, and Insignia Financial Group, Inc. (Insignia), Apple Acquisition was merged with and into Insignia (the Insignia Acquisition). Insignia was the surviving corporation in the Insignia Acquisition and at the effective time of the Insignia Acquisition became a wholly owned subsidiary of CBRE. The Company acquired Insignia to solidify its position as the market leader in the commercial real estate services industry.

In conjunction with and immediately prior to the Insignia Acquisition, Island Fund I LLC (Island), a Delaware limited liability company, which is affiliated with Andrew L. Farkas, Insignia's former Chairman and Chief Executive Officer, and some of Insignia's other former officers, completed the purchase of specified real estate investment assets of Insignia, pursuant to a Purchase Agreement, dated May 28, 2003 (the Island Purchase Agreement), by and among Insignia, the Company, CBRE, Apple Acquisition and Island. A number of the real estate investment assets that were sold to Island required the consent of one or more third parties in order to transfer such assets. Some of these third party consents were not obtained prior to the closing of the Insignia Acquisition. As a result, the Company continues to hold these real estate investment assets pending the receipt of these third party consents. While the Company holds these assets, it has generally agreed to provide Island with the economic benefits from these assets and Island generally has agreed to indemnify the Company with respect to any losses incurred in connection with continuing to hold these assets.

Pursuant to the terms of the Insignia Acquisition Agreement, (1) each issued and outstanding share of Insignia Common Stock (other than treasury shares), par value \$0.01 per share, was converted into the right to receive \$11.156 in cash, without interest (the Insignia Common Stock Merger Consideration), (2) each issued and outstanding share of Insignia's Series A Preferred Stock, par value \$0.01 per share, and Series B Preferred Stock, par value \$0.01 per share, was converted into the right to receive \$100.00 per share, plus accrued and unpaid dividends, (3) all outstanding warrants and options to acquire Insignia common stock other than as described below, whether vested or unvested, were canceled and represented the right to receive a cash payment, without interest, equal to the excess, if any, of the Insignia Common Stock Merger Consideration over the per share exercise price of the option or warrant, multiplied by the number of shares of Insignia Common Stock subject to the option or warrant less any applicable withholding taxes and (4) outstanding options to purchase Insignia Common Stock granted pursuant to Insignia's 1998 Stock Investment Plan, whether vested or unvested, were canceled and represented the right to receive a cash payment, without interest, equal to the excess, if any, of (a) the higher of (x) the Insignia Common Stock Merger Consideration, or (y) the highest final sale price per share of the Insignia Common Stock as reported on the New York Stock Exchange (NYSE) at any time during the 60-day period preceding the closing of the Insignia Acquisition (which was \$11.20), over (b) the exercise price of the options, multiplied by the number of shares of Insignia Common Stock subject to the options, less any applicable withholding taxes. Following the

Insignia Acquisition, the Insignia Common Stock was delisted from the NYSE and deregistered under the Securities Exchange Act of 1934.

The funding to complete the Insignia Acquisition, as well as the refinancing of substantially all of the outstanding indebtedness of Insignia, was obtained through (a) the sale of 6,587,135 shares of the Company's Class B Common Stock, par value \$0.01 per share, to Blum Strategic Partners, L.P., a Delaware limited partnership, Blum Strategic Partners II, L.P., a Delaware limited partnership and Blum Strategic Partners II GmbH & Co. KG, a German limited partnership, for an aggregate cash purchase price of \$105,394,160, (b) the sale of 227,865 shares of the Company's Class A Common Stock, par value \$.01 per share, to DLJ Investment Partners, L.P., a Delaware limited partnership, DLJ Investment Partners II, L.P., a Delaware limited partnership and DLJIP II Holdings, L.P., a Delaware limited partnership, for an aggregate cash purchase price of \$3,645,840, (c) the sale of 625,000 shares of the Company's Class A Common Stock to California Public Employees' Retirement System for an aggregate cash purchase price of \$10,000,000, (d) the sale of 60,000 shares of the Company's Class B Common Stock to Frederic V. Malek for an aggregate cash purchase price of \$960,000, (e) the release from escrow of the net proceeds from the offering by CBRE Escrow, Inc. (CBRE Escrow), a wholly owned subsidiary of CBRE that merged with and into CBRE in connection with the Insignia Acquisition, of \$200.0 million of the 9¾% Senior Notes due May 15, 2010 (see Note 11), which Senior Notes had been issued and sold by CBRE Escrow on May 22, 2003, (f) \$75.0 million of term loan borrowings under the Amended and Restated Credit Agreement (see Notes 11 and 19), dated as of May 22, 2003, by and among CBRE, Credit Suisse First Boston (CSFB) as Administrative Agent and Collateral Agent, the other lenders named in the credit agreement, the Company and the guarantors named in the credit agreement and (g) \$36,870,229.61 of cash proceeds from the completion of the sale to Island.

### 3. Purchase Accounting

The aggregate preliminary purchase price for the acquisition of Insignia was approximately \$325.9 million, which includes: (1) cash paid for shares of Insignia's outstanding common stock, valued at \$11.156 per share, (2) \$100.00 per share plus accrued and unpaid dividends paid to the owners of Insignia's outstanding Series A preferred stock and Series B preferred stock, (3) cash payments to holders of Insignia's vested and unvested warrants and options and (4) direct costs incurred in connection with the acquisition.

The preliminary purchase accounting adjustments related to the Insignia Acquisition have been recorded in the accompanying consolidated financial statements as of, and for periods subsequent to, July 23, 2003. The following table summarizes the estimated fair values of the assets acquired and the liabilities assumed at the date of acquisition. The Company is in the process of obtaining third party valuations of certain intangible assets as well as finalizing the fair value of all other assets and liabilities as of the acquisition date.

**Fair Value of Assets Acquired and Liabilities Assumed**  
**At July 23, 2003**  
**(Dollars in thousands)**

Current assets	\$	297,780
Property and equipment, net		41,589
Goodwill		211,996
Other intangible assets, net		93,971
Other assets		33,011
<b>Total assets acquired</b>		<b>678,347</b>
Current liabilities		176,546
Liabilities assumed in connection with the Insignia Acquisition		74,586
Notes payable		43,000
Noncurrent deferred tax liabilities, net		23,690
All other liabilities		34,604
<b>Total liabilities assumed</b>		<b>352,426</b>
<b>Net assets acquired</b>	<b>\$</b>	<b>325,921</b>

The Insignia Acquisition gave rise to the consolidation and elimination of some Insignia duplicate facilities and Insignia redundant employees as well as the termination of certain contracts as a result of a change of control of Insignia. As a result, the Company has accrued certain liabilities in accordance with Emerging Issues Task Force No. 95-3, "Recognition of Liabilities in Connection with a Purchase Business Combination." These liabilities assumed in connection with the Insignia Acquisition consist of the following (dollars in thousands):

	2003 Charge to Goodwill	Utilized to Date	To be Utilized
Lease termination costs	\$ 26,488	\$ —	\$ 26,488
Severance	29,363	6,454	22,909
Change of control payments	10,451	10,451	—
Costs associated with exiting contracts	8,284	7,259	1,025
	<b>\$ 74,586</b>	<b>\$ 24,164</b>	<b>\$ 50,422</b>

### 4. Basis of Preparation

The accompanying consolidated balance sheet as of September 30, 2003, the consolidated statements of operations for the three and nine months ended September 30, 2003 and the consolidated statement of cash flows for the nine months ended September 30, 2003 include the consolidated financial statements of Insignia from July 23, 2003, the date of the Insignia Acquisition, including all material adjustments required under the purchase method of accounting. As such, the consolidated financial statements of the Company after the Insignia Acquisition are not directly comparable to the financial statements prior to the Insignia Acquisition.

Pro forma results of the Company, assuming the Insignia Acquisition had occurred as of January 1, 2002, are presented below. These pro forma results have been prepared for comparative purposes only and include certain adjustments, such as increased amortization expense as a result of intangible assets acquired in the Insignia Acquisition as well as higher interest expense as a result of debt acquired to finance the Insignia Acquisition. These pro forma results do not purport to be indicative of what operating results would have been, and may not be indicative of future operating results (in thousands, except per share amounts):

	2003		2002	
Revenue	\$	462,004	\$	434,827
Operating income	\$	8,795	\$	22,965
Net loss	\$	(11,586)	\$	(1,072)
Basic and diluted loss per share	\$	(.51)	\$	(.05)

The accompanying consolidated financial statements have been prepared in accordance with the rules applicable to Form 10-Q and include all information and footnotes required for interim financial statement presentation. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting periods. Actual results could differ materially from those estimates. All significant inter-company transactions and balances have been eliminated, and certain reclassifications have been made to prior periods' consolidated financial statements to conform with the current period presentation. The results of operations for the three and nine months ended September 30, 2003 are not necessarily indicative of the results of operations to be expected for the year ending December 31, 2003. The consolidated financial statements and notes to the consolidated financial statements should be read in conjunction with the Company's filing on form 10-K, which contains the latest available audited consolidated financial statements and notes thereto, as of and for the year ended December 31, 2002.

## 5. New Accounting Pronouncements

In January 2003, the Financial Accounting Standards Board (FASB) issued FASB Interpretation No. (FIN) 46, "Consolidation of Variable Interest Entities," which is an interpretation of Accounting Research Bulletin No. 51, "Consolidated Financial Statements." This interpretation addresses consolidation of entities that are not controllable through voting interests or in which the equity investors do not bear the residual economic risks. The objective of this interpretation is to provide guidance on how to identify a variable interest entity (VIE) and determine when the assets, liabilities, noncontrolling interests and results of operations of a VIE need to be consolidated with its primary beneficiary. A company that holds variable interests in an entity will need to consolidate the entity if the company's interest in the VIE is such that the company will absorb a majority of the VIE's expected losses and/or receive a majority of the VIE's expected residual returns or if the VIE does not have sufficient equity at risk to finance its activities without additional subordinated financial support from other parties. For VIEs in which a significant (but not majority) variable interest is held, certain disclosures are required. The consolidation requirements of FIN 46 apply immediately to VIEs created after January 31, 2003. Initially, the consolidation requirements applied to existing VIEs in the first fiscal year or interim period beginning after June 15, 2003. On October 9, 2003, the effective date of FIN 46 was deferred until the end of the first interim or annual period ending after December 15, 2003 for VIEs created on or before January 31, 2003. Certain disclosure requirements apply in all financial statements issued after January 31, 2003, regardless of when the VIE was established. The adoption of this interpretation has not had and is not expected to have a material impact on the Company's financial position or results of operations.

In April 2003, the FASB issued Statement of Financial Accounting Standards (SFAS) No. 149, "Amendment to Statement 133 on Derivative Instruments and Hedging Activities." SFAS No. 149 amends and clarifies accounting for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities under SFAS No. 133. SFAS No. 149 is applied prospectively and is effective for contracts entered into or modified after June 30, 2003, except for SFAS No. 133 implementation issues that have been effective for fiscal quarters that began prior to June 15, 2003 and certain provisions relating to forward purchases and sales on securities that do not yet exist. The adoption of this statement has not had a material impact on the Company's financial position or results of operations.

In May 2003, the FASB issued SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity." SFAS No. 150 requires that certain financial instruments, which under previous guidance were accounted for as equity, must now be accounted for as liabilities. The financial instruments affected include mandatorily redeemable stock, certain financial instruments that require or may require the issuer to buy back some of its shares in exchange for cash or other assets and certain obligations that can be settled with shares of stock. SFAS No. 150 is effective for all financial instruments entered into or modified after May 31, 2003 and must be applied to the Company's existing financial instruments effective July 1, 2003. On October 29, 2003, the FASB deferred indefinitely the provisions of paragraphs 9 and 10 and related guidance in the appendices of this pronouncement as they apply to mandatorily redeemable noncontrolling interests. The adoption of the effective provisions of SFAS No. 150 have not had a material impact on the Company's financial position or results of operations.

## 6. Stock-Based Compensation

The Company continues to account for stock-based compensation under the recognition and measurement principles of Accounting Principles Board (APB) Opinion No. 25 and has not voluntarily changed to the fair value based method of accounting for stock-based compensation. In accordance with APB No. 25, the Company does not recognize compensation expense for options that were granted at or above the market price of the underlying stock on the date of grant. Had compensation expense been determined consistent with SFAS No. 123, "Accounting for Stock-Based Compensation" the Company's net (loss) income and per share information would have been as follows on a pro-forma basis (dollars in thousands, except per share data):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2003	2002	2003	2002
Net (loss) income as reported	\$	(28,445)	\$	1,881
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards, net of related tax effect		(166)		(131)
Pro forma net (loss) income	\$	(28,611)	\$	1,750
Basic EPS:				
As Reported	\$	(1.37)	\$	0.13
Pro Forma	\$	(1.38)	\$	0.12
Diluted EPS:				
As Reported	\$	(1.37)	\$	0.12
Pro Forma	\$	(1.38)	\$	0.11

These pro forma amounts may not be representative of future pro forma results.

The weighted average fair value of options granted was \$1.47 and \$2.19 for the three months ended September 30, 2003 and 2002, respectively, and \$1.62 and \$2.33 for the nine months ended September 30, 2003 and 2002, respectively. Dividend yield is excluded from the calculation since it is the present intention of the Company to retain all earnings. The fair value of each option grant and warrant is estimated on the date of grant using the Black-Scholes option pricing model with the following weighted average assumptions used for grants:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2003	2002	2003	2002
Risk-free interest rate	2.74 %	3.85 %	3.03 %	4.06 %
Expected volatility	0.00 %	0.00 %	0.00 %	0.00 %
Expected life	5 years	5 years	5 years	5 years

The Black-Scholes option valuation model was developed for use in estimating the fair value of traded options, which have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions including the expected stock price volatility. Because the Company's employee stock options have characteristics significantly different from those of traded options and because changes in the subjective input assumptions can materially affect the fair value estimate, the Company believes that the Black-Scholes model does not necessarily provide a reliable single measure of the fair value of its employee stock options.

## 7. Restricted Cash

Included in the accompanying consolidated balance sheet as of September 30, 2003, is restricted cash of \$17.9 million, which primarily consists of cash pledged to secure the guarantee of notes issued in connection with previous acquisitions by Insignia in the United Kingdom (UK). The acquisitions include the 1999 acquisition of St. Quintin Holdings Limited and the 1998 acquisition of Richard Ellis Group Limited.

## 8. Goodwill and Other Intangible Assets

The Company engages a third-party valuation firm to perform an annual assessment of its goodwill and other intangible assets deemed to have indefinite lives for impairment as of the beginning of the fourth quarter of each year. The Company also assesses its goodwill and other intangible assets deemed to have indefinite useful lives for impairment when events or circumstances indicate that their carrying value may not be recoverable from future cash flows. The Company is in the process of completing its annual impairment test as of October 1, 2003.

The changes in the carrying amount of goodwill for the nine months ended September 30, 2003 are as follows (dollars in thousands):

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	Americas	EMEA	Asia Pacific	Total
Balance at January 1, 2003	\$ 467,668	\$ 106,063	\$ 3,406	\$ 577,137
Purchase accounting adjustments related to acquisitions	216,114	—	—	216,114
Balance at September 30, 2003	\$ 683,782	\$ 106,063	\$ 3,406	\$ 793,251

In accordance with SFAS No. 142, "Goodwill and Other Intangibles" all goodwill acquired in an acquisition should be assigned to reporting units as of the date of the acquisition. In connection with the Insignia Acquisition, the Company is currently evaluating the fair value of the acquired reporting units and the applicable goodwill to be assigned. As a result, the changes in the carrying amount of goodwill for the nine months ended September 30, 2003 do not reflect the allocation of goodwill based upon the fair value of Insignia's acquired reporting units.

Other intangible assets totaled \$153.8 million and \$91.1 million, net of accumulated amortization of \$42.6 million and \$7.7 million, as of September 30, 2003 and December 31, 2002, respectively, and are comprised of the following (dollars in thousands):

	As of September 30, 2003		As of December 31, 2002	
	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization
<b>Unamortizable intangible assets</b>				
Trademark	\$ 63,700		\$ 63,700	
Trade name	19,445		—	
Total	\$ 83,145		\$ 63,700	
<b>Amortizable intangible assets</b>				
Backlog	\$ 64,543	\$ 30,985	\$ —	\$ —
Management contracts	23,737	8,060	18,887	5,605
Loan servicing rights	17,071	3,361	16,234	2,134
Other	8,050	350	—	—
Total	\$ 113,401	\$ 42,756	\$ 35,121	\$ 7,739

In accordance with SFAS No. 141, "Business Combinations," a \$63.7 million trademark was separately identified as a result of the 2001 Merger. As a result of the Insignia Acquisition, a \$19.4 million trade name was separately identified, which represents the Richard Ellis trade name in the UK that was owned by Insignia prior to the Insignia Acquisition. Both the trademark and the trade name have indefinite useful lives and accordingly are not being amortized.

Backlog represents the fair value of Insignia's net revenue backlog as of July 23, 2003, which was acquired as part of the Insignia Acquisition. The backlog consists of the net commissions receivable on Insignia's revenue producing transactions, which were at various stages of completion prior to the Insignia Acquisition. This intangible asset is being amortized as cash is received or upon final closing of these pending transactions.

Management contracts are primarily comprised of property management contracts in the United States (US), the UK, France and other European operations, as well as valuation services and fund management contracts in the UK. These management contracts are being amortized over estimated useful lives of up to ten years.

Loan servicing rights represent the fair value of servicing assets in the Company's mortgage banking line of business in the US that were acquired as part of the 2001 Merger. The loan servicing rights are being amortized over estimated useful lives of up to ten years.

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Other amortizable intangible assets include producer employment contracts in the US, UK, France and other European operations as well as franchise agreements and a trade name in France. These other intangible assets are being amortized over estimated useful lives of up to ten years.

Amortization expense related to intangible assets was \$32.5 million and \$34.4 million for the three and nine months ended September 30, 2003, respectively. The estimated amortization expense for the five years ending December 31, 2007 approximates \$59.0 million, \$17.5 million, \$6.2 million, \$5.4 million and \$5.3 million, respectively.

## 9. Investments in and Advances to Unconsolidated Subsidiaries

Combined condensed financial information for the entities accounted for using the equity method is as follows (dollars in thousands):

Condensed Balance Sheets Information:

	September 30, 2003	December 31, 2002
Current assets	\$ 144,801	\$ 127,635
Noncurrent assets	\$ 1,973,473	\$ 1,552,546
Current liabilities	\$ 239,388	\$ 108,463
Noncurrent liabilities	\$ 828,133	\$ 664,241
Minority interest	\$ 4,310	\$ 3,938

Condensed Statements of Operations Information:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2003	2002	2003	2002
Net revenue	\$ 116,516	\$ 83,435	\$ 319,328	\$ 252,341
Operating income	\$ 31,296	\$ 17,786	\$ 87,046	\$ 58,335
Net income	\$ 31,135	\$ 24,579	\$ 78,922	\$ 34,035

The Company's investment management business involves investing the Company's own capital in certain real estate investments together with clients, including its equity investments in CB Richard Ellis Strategic Partners, L.P., Global Innovation Partners, L.L.C. and other co-investments included in the table above. The Company has provided investment management, property management, brokerage, appraisal and other professional services to these equity investees.

## 10. Employee Benefit Plans

On July 23, 2003, the Company issued 876,000 options to acquire Class A common stock at an exercise price of \$16.00 per share to employees. These options vest and are exercisable in 20% increments over a five-year period ending July 23, 2008. All of the options will become fully vested and exercisable upon a change in control of the Company.

In connection with the Insignia Acquisition, the Company assumed Insignia's existing employee benefit plans including a 401(k) Retirement Savings Plan, a 401(k) Restoration Plan and two defined benefit plans.

The 401(k) Retirement Savings Plan covers substantially all Insignia employees in the U.S. Insignia made contributions equal to 25% of the employees' contribution up to a maximum of 6% of the employees' compensation and participants fully vest in employer contributions after 5 years. All contributions to the 401(k) Savings Plan were expensed in earnings. Insignia's contribution was discontinued on July 23, 2003. Upon the close of the Insignia Acquisition, participants in the Insignia 401(k) Savings Plan were required to join the Company's Capital Accumulation Plan (the Cap Plan). Currently, only loan payments are being accepted into the former Insignia 401(k) Savings Plan until the Company receives IRS approval to terminate the plan and transfer plan balances into the Cap Plan.

The 401(k) Restoration Plan allows designated executives of Insignia and certain participating affiliated employees in the Insignia 401(k) Retirement Savings Plan to defer the receipt of a portion of their compensation in excess of the amount of compensation that is permitted to be contributed to the 401(k) Retirement Savings Plan. This plan is intended to constitute an unfunded "top hat" plan described in Section 201(2), 302(a)(3) and 401(a)(1) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). This plan ceased to accept deferrals on July 23, 2003.

Insignia maintains two defined benefit plans for some of its employees. The plans provide benefits based upon the final salary of participating employees. The funding policy is to contribute annually an amount to fund pension cost as actuarially determined by an independent pension consulting firm.

## 11. Debt

The Company issued \$200.0 million in aggregate principal amount of 9¾% Senior Notes due May 15, 2010 (the 9¾% Senior Notes) on May 22, 2003. The 9¾% Senior Notes are unsecured obligations, and rank equal in right of payment with existing and future senior indebtedness and senior in right of payment to any existing and future subordinated indebtedness of the Company. The 9¾% Senior Notes are jointly and severally guaranteed on a senior basis by the Company and its domestic subsidiaries. Interest accrues at a rate of 9¾% per year and is payable semi-annually in arrears on May 15 and November 15, commencing on November 15, 2003. The 9¾% Senior Notes are redeemable at the Company's option, in whole or in part, on or after May 15, 2007 at 104.875% of par on that date and at declining prices thereafter. In addition, before May 15, 2006, the Company may redeem up to 35.0% of the originally issued amount of the 9¾% Senior Notes at 109¾% of par, plus accrued and unpaid interest, solely with the net cash proceeds from

public equity offerings. In the event of a change of control, the Company is obligated to make an offer to purchase the 9¾% Senior Notes at a redemption price of 101.0% of the principal amount, plus accrued and unpaid interest. The amount of the 9¾% Senior Notes included in the accompanying consolidated balance sheets was \$200.0 million as of September 30, 2003.

In accordance with the terms of the offering of the 9¾% Senior Notes, the proceeds from the sale of the 9¾% Senior Notes were placed in escrow on May 22, 2003. The proceeds were released from this escrow account on July 23, 2003, the date of the Insignia Acquisition.

In connection with the Insignia Acquisition, the Company entered into an amended and restated credit agreement with CSFB and other lenders (the Credit Facility). The Credit Facility was, and the amended and restated Credit Facility continues to be, jointly and severally guaranteed by the Company and its domestic subsidiaries and secured by substantially all of their assets. The amended and restated Credit Facility includes a Tranche A term facility of \$50.0 million (which was fully drawn in connection with the 2001 Merger), maturing on July 20, 2007; a Tranche B term facility of \$260.0 million (\$185.0 million of which was drawn in connection with the 2001 Merger and \$75.0 million of which was drawn in connection with the Insignia Acquisition), maturing on July 18, 2008; and a revolving line of credit of \$90.0 million, including revolving credit loans, letters of credit and a swingline loan facility, maturing on July 20, 2007. After the amendment and restatement, borrowings under the Tranche A and revolving facility bear interest at varying rates based on the Company's option, at either the applicable LIBOR plus 3.00% to 3.75% or the alternate base rate plus 2.00% to 2.75%, in both cases as determined by reference to the Company's ratio of total debt less available cash to EBITDA, which is defined in the amended and restated credit agreement. The



alternate base rate is the higher of (1) CSFB's prime rate or (2) the Federal Funds Effective Rate plus one-half of one percent. After the amendment and restatement, borrowings under the Tranche B facility bear interest at varying rates based on the Company's option at either the applicable LIBOR plus 4.25% or the alternate base rate plus 3.25%.

The Tranche A facility will be repaid by July 20, 2007 through quarterly principal payments over six years, which total \$7.5 million each year through June 30, 2003 and \$8.75 million each year thereafter through July 20, 2007. The Tranche B facility required quarterly principal payments of approximately \$0.5 million, and after the amendment and restatement requires quarterly principal payments of approximately \$0.65 million, with the remaining outstanding principal due on July 18, 2008. The revolving line of credit requires the repayment of any outstanding balance for a period of 45 consecutive days commencing on any day in the month of December of each year as determined by the Company. The Company repaid its revolving credit facility as of November 5, 2002 and at September 30, 2003 had no line of credit borrowings outstanding. The total amount outstanding under the Credit Facility included in senior secured term loans and current maturities of long-term debt in the accompanying consolidated balance sheets was \$288.5 million and \$221.0 million as of September 30, 2003 and December 31, 2002, respectively.

The Company issued \$229.0 million in aggregate principal amount of 11¼% Senior Subordinated Notes due June 15, 2011 (the 11¼% Senior Subordinated Notes), for approximately \$225.6 million, net of discount, on June 7, 2001. The 11¼% Senior Subordinated Notes are jointly and severally guaranteed on a senior subordinated basis by the Company and its domestic subsidiaries. The 11¼% Senior Subordinated Notes require semi-annual payments of interest in arrears on June 15 and December 15, having commenced on December 15, 2001, and are redeemable in whole or in part on or after June 15, 2006 at 105.625% of par on that date and at declining prices thereafter. In addition, before June 15, 2004, the Company may redeem up to 35.0% of the originally issued amount of the 11¼% Senior Subordinated Notes at 111¼% of par, plus accrued and unpaid interest, solely with the net cash proceeds from public equity offerings. In the event of a change of control, the Company is obligated to make an offer to purchase the 11¼% Senior Subordinated Notes at a redemption price of 101.0% of the principal amount, plus accrued and unpaid interest. The amount of the 11¼% Senior Subordinated Notes included in the accompanying consolidated balance sheets, net of unamortized discount, was \$226.1 million and \$225.9 million as of September 30, 2003 and December 31, 2002, respectively.

In connection with the 2001 Merger, the Company issued an aggregate principal amount of \$65.0 million of 16% Senior Notes due on July 20, 2011 (the 16% Senior Notes). The 16% Senior Notes are unsecured obligations, senior to all current and future unsecured indebtedness, but subordinated to all current and future secured indebtedness of the Company. Interest accrues at a rate of 16.0% per year and is payable quarterly in arrears. Interest may be paid in kind to the extent CBRE's ability to pay cash dividends is restricted by the terms of the

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Credit Facility. Additionally, interest in excess of 12.0% may, at the Company's option, be paid in kind through July 2006. The Company elected to pay in kind interest in excess of 12.0%, or 4.0%, that was payable on April 20, 2002, July 20, 2002, October 20, 2002, January 20, 2003 and April 20, 2003. The 16% Senior Notes are redeemable at the Company's option, in whole or in part, at 116.0% of par commencing on July 20, 2001 and at declining prices thereafter. As of September 30, 2003, the redemption price was 109.6% of par. In the event of a change in control, the Company is obligated to make an offer to purchase all of the outstanding 16% Senior Notes at 101.0% of par. The total amount of the 16% Senior Notes included in the accompanying consolidated balance sheets, net of unamortized discount, was \$63.4 million and \$61.9 million as of September 30, 2003 and December 31, 2002, respectively.

The 16% Senior Notes are solely the Company's obligation to repay. CBRE has neither guaranteed nor pledged any of its assets as collateral for the 16% Senior Notes, and is not obligated to provide cash flow to the Company for repayment of these 16% Senior Notes. However, the Company has no substantive assets or operations other than its investment in CBRE to meet any required principal and interest payments on the 16% Senior Notes. The Company will depend on CBRE's cash flows to fund principal and interest payments as they come due.

The 9¾% Notes, the Credit Facility, the 11¼% Senior Subordinated Notes and the 16% Senior Notes all contain numerous restrictive covenants that, among other things, limit the Company's ability to incur additional indebtedness, pay dividends or distributions to stockholders, repurchase capital stock or debt, make investments, sell assets or subsidiary stock, engage in transactions with affiliates, enter into sale/leaseback transactions, issue subsidiary equity and enter into consolidations or mergers. The Credit Facility requires the Company to maintain a minimum coverage ratio of interest and certain fixed charges and a maximum leverage and senior secured leverage ratio of earnings before interest, taxes, depreciation and amortization to funded debt. The Credit Facility also requires the Company to pay a facility fee based on the total amount of the unused commitment.

The Company had short-term borrowings of \$163.7 million and \$111.1 million with related weighted average interest rates of 2.5% and 3.9% as of September 30, 2003 and December 31, 2002, respectively.

A subsidiary of the Company has had a credit agreement with Residential Funding Corporation (RFC) since 2001 for the purpose of funding mortgage loans that will be resold. On December 16, 2002, the Company entered into a Third Amended and Restated Warehousing Credit and Security Agreement effective December 20, 2002. The agreement provided for a revolving line of credit of \$200.0 million, bore interest at the lower of one-month LIBOR or 2.0% (RFC Base Rate) plus 1.0% and expired on August 31, 2003. On June 25, 2003, the agreement was modified to provide a temporary revolving line of credit increase of \$200.0 million that resulted in a total line of credit equaling \$400.0 million, which expired on August 30, 2003 and to change the RFC Base Rate to one-month LIBOR plus 1.0%. By amendment on August 29, 2003, the expiration date of the agreement was extended to September 25, 2003. On September 26, 2003, the Company entered into a Fourth Amended and Restated Warehousing Credit and Security Agreement. The agreement provides for a revolving line of credit of up to \$200.0 million, bears interest at one-month LIBOR plus 1.0% and expires on August 31, 2004.

During the three months ended September 30, 2003, the Company had a maximum of \$272.5 million revolving line of credit principal outstanding with RFC. At September 30, 2003 and December 31, 2002, respectively, the Company had a \$135.8 million and a \$63.1 million warehouse line of credit outstanding, which are included in short-term borrowings in the accompanying consolidated balance sheets. Additionally, the Company had a \$135.8 million and a \$63.1 million warehouse receivable, which are also included in the accompanying consolidated balance sheets as of September 30, 2003 and December 31, 2002, respectively.

In connection with the Insignia Acquisition, the Company assumed \$13.8 million of acquisition loan notes that were issued in connection with previous acquisitions by Insignia in the UK. The acquisition loan notes are payable to sellers of the formerly acquired UK businesses and are secured by restricted cash deposits in approximately the same amount. The acquisition loan notes are redeemable semi-annually at the discretion of the note holder and have a final maturity date of April 2010. At September 30, 2003, the Company had \$13.9 million in acquisition loan notes outstanding, which are included in short-term borrowings in the accompanying consolidated balance sheets.

In connection with the Insignia Acquisition, on July 23, 2003 the Company assumed and immediately repaid Insignia's outstanding revolving credit facility of \$28.0 million and subordinated credit facility of \$15.0 million.

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A subsidiary of the Company has a credit agreement with JP Morgan Chase. The credit agreement provides for a non-recourse revolving line of credit of up to \$20.0 million, bears interest at 1.0% in excess of the bank's cost of funds and expires on May 28, 2004. At September 30, 2003 and December 31, 2002 the Company had no revolving line of credit principal outstanding with JP Morgan Chase.

During 2001, the Company incurred \$37.2 million of non-recourse debt through a joint venture. During the third quarter of 2003, the maturity date on this non-recourse debt was extended to July 31, 2008. At September 30, 2003 and December 31, 2002, respectively, the Company had \$40.4 million of non-recourse debt outstanding included

in other long-term debt and \$40.0 million of non-recourse debt outstanding included in short-term borrowings in the accompanying consolidated balance sheets. Additionally, during the third quarter of 2003, through this joint venture the Company incurred additional non-recourse debt of \$1.9 million with a maturity date of June 15, 2004. At September 30, 2003, this \$1.9 million of non-recourse debt is included in short-term borrowings in the accompanying consolidated balance sheets.

## 12. Commitments and Contingencies

The Company is a party to a number of pending or threatened lawsuits arising out of, or incident to, its ordinary course of business. Management believes that any liability that may result from disposition of these lawsuits will not have a material effect on the Company's consolidated financial position or results of operations.

A subsidiary of the Company previously executed an agreement with Fannie Mae to initially fund the purchase of a commercial mortgage loan portfolio using proceeds from its RFC line of credit. Subsequently a 100% participation in the loan portfolio was sold to Fannie Mae with the Company retaining the credit risk on the first 2% of losses incurred on the underlying portfolio of commercial mortgage loans. The current loan portfolio balance is \$98.6 million and the Company has collateralized a portion of its obligations to cover the first 1% of losses through a letter of credit in favor of Fannie Mae for a total of approximately \$1.0 million. The other 1% is covered in the form of a guarantee to Fannie Mae.

The Company had outstanding letters of credit totaling \$27.8 million as of September 30, 2003 including approximately \$10.2 million of letters of credit to partially secure construction loans which the Company assumed under the Island Purchase Agreement and the Fannie Mae letter of credit discussed in the preceding paragraph. The letters of credit expire at varying dates through August 31, 2004, although the Company is obligated to renew the letters of credit related to the Island Purchase until as late as July 23, 2006.

The Company had guarantees totaling \$10.5 million as of September 30, 2003, which consisted primarily of guarantees of overdraft facilities, property debt and the obligations to Fannie Mae discussed above. Generally, the guarantees do not bear formal maturity dates and remain outstanding until certain conditions have been satisfied.

An important part of the strategy for the Company's investment management business involves investing the Company's own capital in certain real estate investments with its clients. These co-investments typically range from 2% to 5% of the equity in a particular fund. As of September 30, 2003, the Company had committed an additional \$21.4 million to fund future co-investments.

## 13. Comprehensive (Loss) Income

Comprehensive (loss) income consists of net (loss) income and other comprehensive (loss) income. Accumulated other comprehensive loss consists of foreign currency translation adjustments and minimum pension liability adjustments. Foreign currency translation adjustments exclude income tax expense (benefit) given that the earnings of non-US subsidiaries are deemed to be reinvested for an indefinite period of time.

The following table provides a summary of comprehensive (loss) income (dollars in thousands):

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	Three Months Ended September 30,		Nine Months Ended September 30,	
	2003	2002	2003	2002
Net (loss) income	\$ (28,445)	\$ 1,881	\$ (24,620)	\$ 3,630
Foreign currency translation gain (loss)	4,548	(8,285)	1,274	2,027
Comprehensive (loss) income	\$ (23,897)	\$ (6,404)	\$ (23,346)	\$ 5,657

## 14. Per Share Information

For the three and nine months ended September 30, 2003, basic and diluted loss per share for the Company was computed by dividing the net loss by the weighted average number of common shares outstanding of 20,743,011 and 16,957,494, respectively. As a result of operating losses incurred, diluted weighted average shares outstanding did not give effect to common stock equivalents, as to do so would have been anti-dilutive.

For the three and nine months ended September 30, 2002, basic income per share for the Company was computed by dividing the net income by the weighted average number of common shares outstanding of 15,016,044 and 15,033,640, respectively. Diluted income per share included the dilutive effect of contingently issuable shares of 209,744 and 183,100 for the three and nine months ended September 30, 2002 respectively.

## 15. Fiduciary Funds

The accompanying consolidated balance sheets do not include the net assets of escrow, agency and fiduciary funds, which amounted to \$472.5 million and \$414.6 million at September 30, 2003 and December 31, 2002, respectively.

## 16. Merger-Related Charges

The Company recorded merger-related charges of \$19.8 million for the nine months ended September 30, 2003 in connection with the Insignia Acquisition. The charges consisted of the following (dollars in thousands):

	2003 Charge	Utilized to Date	To be Utilized
Lease termination costs	\$ 7,637	\$ 383	\$ 7,254
Change of control payments	4,687	4,687	—
Severance	3,824	3,824	—
Consulting costs	2,003	2,003	—
Other	1,644	1,644	—
Total merger-related charges	\$ 19,795	\$ 12,541	\$ 7,254

## 17. Guarantor and Nonguarantor Financial Statements

In connection with the Insignia Acquisition, CBRE issued an aggregate of \$200.0 million in Senior Notes (the 9¾% Senior Notes) due May 15, 2010. These 9¾% Senior Notes are unsecured and rank equally in right of payment with existing and future senior indebtedness and senior in right of payment to any existing and future subordinated indebtedness. The 9¾% Senior Notes are effectively subordinated to indebtedness and other liabilities of the Company's subsidiaries that are not guarantors of the 9¾% Senior Notes. The 9¾% Senior Notes are guaranteed on a full, unconditional, joint and several and senior basis by the Company and CBRE's domestic subsidiaries.

In connection with the 2001 Merger, CBRE issued an aggregate of \$229.0 million in 11¼% Senior Subordinated Notes (the 11¼% Senior Subordinated Notes) due June

15, 2011. The 11¼% Senior Subordinated Notes are unsecured and rank equally in right of payment with any of the Company's senior subordinated unsecured indebtedness. The 11¼% Senior Subordinated Notes are effectively subordinated to indebtedness and other liabilities of the Company's subsidiaries that are not guarantors of the 11¼% Senior Subordinated Notes. The 11¼% Senior Subordinated Notes are guaranteed on a full, unconditional, joint and several and senior subordinated basis by the Company and CBRE's domestic subsidiaries.

The following condensed consolidating financial information includes:

(1) Condensed consolidating balance sheets as of September 30, 2003 and December 31, 2002; condensed consolidating statements of operations for the three and nine months ended September 30, 2003 and 2002, and condensed consolidating statements of cash flows for the nine months ended September 30, 2003 and 2002, of (a) the Company, as the parent, (b) CBRE, which is the subsidiary issuer, (c) the guarantor subsidiaries, (d) the nonguarantor subsidiaries and (e) the Company on a consolidated basis; and

(2) Elimination entries necessary to consolidate the Company, as the parent, with CBRE and its guarantor and nonguarantor subsidiaries.

Investments in consolidated subsidiaries are presented using the equity method of accounting. The principal elimination entries eliminate investments in consolidated subsidiaries and inter-company balances and transactions. In accordance with SFAS No. 142, all goodwill acquired in an acquisition should be assigned to reporting units as of the date of the acquisition. In connection with the Insignia Acquisition, the Company is currently evaluating the fair value of the acquired reporting units and the applicable goodwill to be assigned. As a result, the condensed consolidating balance sheet as of September 30, 2003 does not reflect this allocation of goodwill based upon the fair value of Insignia's acquired reporting units. In addition, the preliminary estimated fair value of other intangible assets acquired in the Insignia Acquisition, along with the related amortization expense, have been reported in the accompanying condensed financial information of the guarantor subsidiaries. Once the Company finalizes the purchase accounting related to the Insignia Acquisition, other intangible assets and the related amortization expense will be re-allocated to the non-guarantor subsidiaries.

**CBRE HOLDING, INC.**  
**CONDENSED CONSOLIDATING BALANCE SHEET**  
**AS OF SEPTEMBER 30, 2003**  
**(Unaudited)**  
**(Dollars in thousands)**

	<u>Parent</u>	<u>CBRE</u>	<u>Guarantor Subsidiaries</u>	<u>Nonguarantor Subsidiaries</u>	<u>Elimination</u>	<u>Consolidated Total</u>
<b>Current Assets:</b>						
Cash and cash equivalents	\$ 20,066	\$ 20	\$ 59,302	\$ 6,106	\$ —	\$ 85,494
Restricted cash	—	—	14,688	3,224	—	17,912
Receivables, less allowance for doubtful accounts	24	18	120,139	130,427	—	250,608
Warehouse receivable	—	—	135,820	—	—	135,820
Prepaid expenses and other current assets	75,307	23,389	17,297	23,438	(21,730)	117,701
Total current assets	95,397	23,427	347,246	163,195	(21,730)	607,535
Property and equipment, net	—	—	75,051	35,654	—	110,705
Goodwill	—	—	658,109	135,142	—	793,251
Other intangible assets, net	—	—	151,980	1,810	—	153,790
Deferred compensation assets	—	70,077	—	—	—	70,077
Investment in and advances to unconsolidated subsidiaries	—	4,896	49,123	10,463	—	64,482
Investment in consolidated subsidiaries	322,194	197,723	68,836	—	(588,753)	—
Inter-company loan receivable	—	858,277	—	—	(858,277)	—
Deferred tax assets, net	26,227	—	—	—	—	26,227
Other assets	4,476	26,135	55,117	55,229	—	140,957
Total assets	<u>\$ 448,294</u>	<u>\$ 1,180,535</u>	<u>\$ 1,405,462</u>	<u>\$ 401,493</u>	<u>\$ (1,468,760)</u>	<u>\$ 1,967,024</u>
<b>Current Liabilities:</b>						
Accounts payable and accrued expenses	\$ 2,132	\$ 18,299	\$ 47,813	\$ 69,051	\$ —	\$ 137,295
Inter-company payable	21,730	—	—	—	(21,730)	—
Compensation and employee benefits payable	—	—	101,666	50,742	—	152,408
Accrued bonus and profit sharing	—	—	63,741	38,101	—	101,842
Short-term borrowings:						
Warehouse line of credit	—	—	135,820	—	—	135,820
Other	—	—	14,757	13,157	—	27,914
Total short-term borrowings	—	—	150,577	13,157	—	163,734
Current maturities of long-term debt	—	11,350	—	427	—	11,777
Total current liabilities	23,862	29,649	363,797	171,478	(21,730)	567,056
<b>Long-Term Debt:</b>						
11¼% senior subordinated notes, net of unamortized discount	—	226,114	—	—	—	226,114
Senior secured term loans	—	277,113	—	—	—	277,113
9¾% senior notes	—	200,000	—	—	—	200,000
16% senior notes, net of unamortized discount	63,416	—	—	—	—	63,416
Other long-term debt	—	—	12,129	40,604	—	52,733
Inter-company loan payable	—	—	790,638	67,639	(858,277)	—
Total long-term debt	63,416	703,227	802,767	108,243	(858,277)	819,376
Deferred compensation liability	—	125,465	—	—	—	125,465
Other liabilities	12,320	—	41,175	46,230	—	99,725
Total liabilities	99,598	858,341	1,207,739	325,951	(880,007)	1,611,622

Minority interest	—	—	—	6,706	—	6,706
Commitments and contingencies						
Stockholders' Equity	348,696	322,194	197,723	68,836	(588,753)	348,696
Total liabilities and stockholders' equity	<u>\$ 448,294</u>	<u>\$ 1,180,535</u>	<u>\$ 1,405,462</u>	<u>\$ 401,493</u>	<u>\$ (1,468,760)</u>	<u>\$ 1,967,024</u>

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**CBRE HOLDING, INC.**  
**CONDENSED CONSOLIDATING BALANCE SHEET**  
**AS OF DECEMBER 30, 2002**  
(Dollars in thousands)

	Parent	CBRE	Guarantor Subsidiaries	Nonguarantor Subsidiaries	Elimination	Consolidated Total
<b>Current Assets:</b>						
Cash and cash equivalents	\$ 127	\$ 54	\$ 74,173	\$ 5,347	\$ —	\$ 79,701
Receivables, less allowance for doubtful accounts	—	40	61,624	104,549	—	166,213
Warehouse receivable	—	—	63,140	—	—	63,140
Prepaid and other current assets	18,723	22,201	8,432	7,729	(20,199)	36,886
Total current assets	18,850	22,295	207,369	117,625	(20,199)	345,940
Property and equipment, net	—	—	51,419	15,215	—	66,634
Goodwill	—	—	442,965	134,172	—	577,137
Other intangible assets, net	—	—	89,075	2,007	—	91,082
Deferred compensation assets	—	63,642	—	—	—	63,642
Investment in and advances to unconsolidated subsidiaries	—	4,782	39,205	6,221	—	50,208
Investment in consolidated subsidiaries	302,593	322,794	66,162	—	(691,549)	—
Inter-company loan receivable	—	429,396	—	—	(429,396)	—
Deferred tax assets, net	36,376	—	—	—	—	36,376
Other assets	4,896	17,464	20,453	51,044	—	93,857
Total assets	<u>\$ 362,715</u>	<u>\$ 860,373</u>	<u>\$ 916,648</u>	<u>\$ 326,284</u>	<u>\$ (1,141,144)</u>	<u>\$ 1,324,876</u>
<b>Current Liabilities:</b>						
Accounts payable and accrued expenses	\$ 2,137	\$ 4,610	\$ 36,895	\$ 58,773	\$ —	\$ 102,415
Inter-company payable	20,199	—	—	—	(20,199)	—
Compensation and employee benefits payable	—	—	40,938	22,796	—	63,734
Accrued bonus and profit sharing	—	—	59,942	43,916	—	103,858
Income taxes payable	15,451	—	—	—	—	15,451
Short-term borrowings:						
Warehouse line of credit	—	—	63,140	—	—	63,140
Other	—	—	16	47,909	—	47,925
Total short-term borrowings	—	—	63,156	47,909	—	111,065
Current maturities of long-term debt	—	9,975	—	736	—	10,711
Total current liabilities	37,787	14,585	200,931	174,130	(20,199)	407,234
<b>Long-Term Debt:</b>						
11¼% senior subordinated notes, net of unamortized discount	—	225,943	—	—	—	225,943
Senior secured term loans	—	211,000	—	—	—	211,000
16% senior notes, net of unamortized discount	61,863	—	—	—	—	61,863
Other long-term debt	—	—	12,129	198	—	12,327
Inter-company loan payable	—	—	362,344	67,052	(429,396)	—
Total long-term debt	61,863	436,943	374,473	67,250	(429,396)	511,133
Deferred compensation liability	—	106,252	—	—	—	106,252
Other liabilities	11,724	—	18,450	13,127	—	43,301
Total liabilities	111,374	557,780	593,854	254,507	(449,595)	1,067,920
Minority interest	—	—	—	5,615	—	5,615
Commitments and contingencies						
Stockholders' Equity	251,341	302,593	322,794	66,162	(691,549)	251,341
Total liabilities and stockholders' equity	<u>\$ 362,715</u>	<u>\$ 860,373</u>	<u>\$ 916,648</u>	<u>\$ 326,284</u>	<u>\$ (1,141,144)</u>	<u>\$ 1,324,876</u>

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**CBRE HOLDING, INC.**  
**CONDENSED CONSOLIDATING STATEMENT OF OPERATIONS**  
**FOR THE THREE MONTHS ENDED SEPTEMBER 30, 2003**  
(Unaudited)  
(Dollars in thousands)

	Parent	CBRE	Guarantor Subsidiaries	Nonguarantor Subsidiaries	Elimination	Consolidated Total
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Revenue	\$	—	\$	—	\$	309,075	\$	114,301	\$	—	\$	423,376
Costs and expenses:												
Cost of services		—		—		156,972		51,226		—		208,198
Operating, administrative and other		88		(1,994)		125,412		56,792		—		180,298
Depreciation and amortization		—		—		38,162		2,909		—		41,071
Equity (income) loss from unconsolidated subsidiaries		—		(60)		(2,539)		281		—		(2,318)
Merger-related charges		—		—		14,151		2,334		—		16,485
Operating (loss) income		(88)		2,054		(23,083)		759		—		(20,358)
Interest income		67		10,596		832		471		(10,178)		1,788
Interest expense		2,947		25,666		8,389		1,431		(10,178)		28,255
Equity (loss) income from consolidated subsidiaries		(26,924)		(20,315)		1,813		—		45,246		—
Loss before (benefit) provision for income taxes		(26,924)		(33,331)		(28,827)		(201)		45,246		(46,825)
(Benefit) provision for income taxes		(1,447)		(6,407)		(8,512)		(2,014)		—		(18,380)
Net (loss) income	\$	(28,445)	\$	(26,924)	\$	(20,315)	\$	1,813	\$	45,426	\$	(28,445)

**CBRE HOLDING, INC.**  
**CONDENSED CONSOLIDATING STATEMENT OF OPERATIONS**  
**FOR THE THREE MONTHS ENDED SEPTEMBER 30, 2002**  
(Unaudited)  
(Dollars in thousands)

	Parent	CBRE	Guarantor Subsidiaries	Nonguarantor Subsidiaries	Elimination	Consolidated Total						
Revenue	\$	—	\$	—	\$	211,791	\$	73,137	\$	—	\$	284,928
Costs and expenses:												
Cost of services		—		—		103,245		32,425		—		135,670
Operating, administrative and other		60		312		85,368		38,730		—		124,470
Depreciation and amortization		—		—		4,065		2,339		—		6,404
Equity income from unconsolidated subsidiaries		—		(226)		(2,440)		(112)		—		(2,778)
Merger-related charges		—		—		—		—		—		—
Operating (loss) income		(60)		(86)		21,553		(245)		—		21,162
Interest income		38		10,154		643		566		(10,126)		1,275
Interest expense		2,850		10,944		9,270		2,482		(10,126)		15,420
Equity income (loss) from consolidated subsidiaries		3,458		6,350		(661)		—		(9,147)		—
Income (loss) before (benefit) provision for income taxes		586		5,474		12,265		(2,161)		(9,147)		7,017
(Benefit) provision for income taxes		(1,295)		2,016		5,915		(1,500)		—		5,136
Net income (loss)	\$	1,881	\$	3,458	\$	6,350	\$	(661)	\$	(9,147)	\$	1,881

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**CBRE HOLDING, INC.**  
**CONDENSED CONSOLIDATING STATEMENT OF OPERATIONS**  
**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2003**  
(Unaudited)  
(Dollars in thousands)

	Parent	CBRE	Guarantor Subsidiaries	Nonguarantor Subsidiaries	Elimination	Consolidated Total						
Revenue	\$	—	\$	—	\$	727,394	\$	281,423	\$	—	\$	1,008,817
Costs and expenses:												
Cost of services		—		—		359,672		125,191		—		484,863
Operating, administrative and other		244		2,716		298,302		142,632		—		443,894
Depreciation and amortization		—		—		46,704		6,867		—		53,571
Equity (income) loss from unconsolidated subsidiaries		—		(84)		(9,461)		363		—		(9,182)
Merger-related charges		—		—		15,890		3,905		—		19,795
Operating (loss) income		(244)		(2,632)		16,287		2,465		—		15,876
Interest income		136		29,380		1,916		1,072		(28,940)		3,564
Interest expense		8,800		45,936		28,491		5,232		(28,940)		59,519
Equity loss from consolidated subsidiaries		(19,371)		(10,044)		(957)		—		30,372		—
Loss before (benefit) provision for income taxes		(28,279)		(29,232)		(11,245)		(1,695)		30,372		(40,079)
(Benefit) provision for income taxes		(3,659)		(9,861)		(1,201)		(738)		—		(15,459)
Net loss	\$	(24,620)	\$	(19,371)	\$	(10,044)	\$	(957)	\$	30,372	\$	(24,620)

**CBRE HOLDING, INC.**  
**CONDENSED CONSOLIDATING STATEMENT OF OPERATIONS**  
**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2002**  
(Unaudited)  
(Dollars in thousands)

	Parent	CBRE	Guarantor Subsidiaries	Nonguarantor Subsidiaries	Elimination	Consolidated Total
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Revenue	\$	—	\$	—	\$	585,402	\$	208,409	\$	—	\$	793,811
Costs and expenses:												
Cost of services		—		—		272,678		90,828		—		363,506
Operating, administrative and other		300		3,900		253,492		106,984		—		364,676
Depreciation and amortization		—		—		11,712		6,395		—		18,107
Equity income from unconsolidated subsidiaries		—		(572)		(4,998)		(852)		—		(6,422)
Merger-related charges		—		50		—		—		—		50
Operating (loss) income		(300)		(3,378)		52,518		5,054		—		53,894
Interest income		123		33,219		1,643		820		(33,132)		2,673
Interest expense		8,465		32,354		30,904		7,750		(33,132)		46,341
Equity income (loss) from consolidated subsidiaries		8,301		15,779		(966)		—		(23,114)		—
(Loss) income before (benefit) provision for income taxes		(341)		13,266		22,291		(1,876)		(23,114)		10,226
(Benefit) provision for income taxes		(3,971)		4,965		6,512		(910)		—		6,596
Net income (loss)	\$	<u>3,630</u>	\$	<u>8,301</u>	\$	<u>15,779</u>	\$	<u>(966)</u>	\$	<u>(23,114)</u>	\$	<u>3,630</u>

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**CBRE HOLDING, INC.**  
**CONDENSED CONSOLIDATING STATEMENT OF CASH FLOWS**  
**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2003**  
**(Unaudited)**  
**(Dollars in thousands)**

	Parent	CBRE	Guarantor Subsidiaries	Nonguarantor Subsidiaries	Consolidated Total					
<b>CASH FLOWS (USED IN) PROVIDED BY OPERATING ACTIVITIES:</b>	\$	(46,824)	\$	28,930	\$	(31,706)	\$	(21,114)	\$	(70,714)
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>										
Capital expenditures, net of concessions received		—		—		(9,163)		978		(8,185)
Acquisition of businesses including net assets acquired, intangibles and goodwill, net of cash acquired		—		—		(243,847)		—		(243,847)
Other investing activities, net		—		26		2,638		(3,316)		(652)
Net cash provided by (used in) investing activities		—		26		(250,372)		(2,338)		(252,684)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>										
Proceeds from revolver and swingline credit facility		—		152,850		—		—		152,850
Repayment of revolver and swingline credit facility		—		(152,850)		—		—		(152,850)
Proceeds from senior secured term loans		—		75,000		—		—		75,000
Repayment of senior secured term loans		—		(7,513)		—		—		(7,513)
Repayment of notes payable		—		(43,000)		—		—		(43,000)
Proceeds from 9 3/4% senior notes		—		200,000		—		—		200,000
Proceeds from short term borrowings and other loans, net		—		—		—		3,732		3,732
Proceeds from issuance of common stock		120,580		—		—		—		120,580
(Increase) decrease in intercompany receivables, net		—		(233,711)		267,207		20,127		—
Other financing activities, net		(194)		(19,766)		—		(341)		(20,301)
Net cash provided by (used in) financing activities		66,763		(28,990)		267,207		23,518		328,498
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>		19,939		(34)		(14,871)		66		5,100
<b>CASH AND CASH EQUIVALENTS, AT BEGINNING OF PERIOD</b>		127		54		74,173		5,347		79,701
Effect of currency exchange rate changes on cash		—		—		—		693		693
<b>CASH AND CASH EQUIVALENTS, AT END OF PERIOD</b>	\$	<u>20,066</u>	\$	<u>20</u>	\$	<u>59,302</u>	\$	<u>6,106</u>	\$	<u>85,494</u>

**SUPPLEMENTAL DATA:**

Cash paid during the period for:										
Interest (net of amount capitalized)	\$	4,038	\$	21,949	\$	1,371	\$	4,336	\$	31,694
Income taxes, net of refunds	\$	25,533	\$	—	\$	—	\$	—	\$	25,533

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**CBRE HOLDING, INC.**  
**CONDENSED CONSOLIDATING STATEMENT OF CASH FLOWS**  
**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2002**  
**(Unaudited)**  
**(Dollars in thousands)**

	Parent	CBRE	Guarantor Subsidiaries	Nonguarantor Subsidiaries	Consolidated Total
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<b>CASH FLOWS PROVIDED BY (USED IN)</b>							
<b>OPERATING ACTIVITIES:</b>							
	\$	557	\$	2,910	\$ (16,510)	\$ (5,927)	\$ (18,970)
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>							
Capital expenditures, net of concessions received		—		—	(6,354)	(1,927)	(8,281)
Acquisition of businesses including net assets acquired, intangibles and goodwill, net of cash acquired		—	(11,760)		419	(3,188)	(14,529)
Other investing activities, net		—	44		3,973	2,331	6,348
Net cash used in investing activities		—	(11,716)		(1,962)	(2,784)	(16,462)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>							
Proceeds from revolver and swingline credit facility		—	214,250		—	—	214,250
Repayment of revolver and swingline credit facility		—	(207,250)		—	—	(207,250)
(Repayment of) proceeds from senior notes and other loans, net		—	(189)		(3,016)	1,829	(1,376)
Repayment of senior secured term loans		—	(7,014)		—	—	(7,014)
Decrease (increase) in intercompany receivables, net		—	8,405		(8,199)	(206)	—
Other financing activities, net		(539)	(172)		(94)	130	(675)
Net cash (used in) provided by financing activities		(539)	8,030		(11,309)	1,753	(2,065)
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>							
		18	(776)		(29,781)	(6,958)	(37,497)
<b>CASH AND CASH EQUIVALENTS, AT BEGINNING OF PERIOD</b>							
		3	931		42,204	14,312	57,450
Effect of currency exchange rate changes on cash		—	—		—	(1,469)	(1,469)
<b>CASH AND CASH EQUIVALENTS, AT END OF PERIOD</b>							
	\$	21	\$ 155	\$ 12,423	\$ 5,885	\$ 18,484	
<b>SUPPLEMENTAL DATA:</b>							
Cash paid during the period for:							
Interest (net of amount capitalized)	\$	6,520	\$ 22,691	\$ 1,356	\$ 3,394	\$ 33,961	
Income taxes, net of refunds	\$	16,481	\$ —	\$ —	\$ —	\$ 16,481	

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## 18. Industry Segments

The Company reports its operations through three geographically organized segments: (1) Americas, (2) Europe, Middle East and Africa (EMEA) and (3) Asia Pacific. The Americas consist of operations in the U.S., Canada, Mexico and South America. EMEA mainly consists of operations in Europe, while Asia Pacific includes operations in Asia, Australia and New Zealand. As discussed in notes 8 and 17, the Company has not yet finalized the purchase accounting for the Insignia Acquisition. As a result, goodwill and other intangible assets acquired in the Insignia Acquisition, along with the related amortization expense, have been included in the Americas segment. Upon finalization of the purchase accounting for the Insignia Acquisition, goodwill, other intangible assets and the related amortization expense will be re-allocated to the appropriate segments. The following table summarizes the revenue and operating income (loss) by operating segment (dollars in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2003	2002	2003	2002
<b>Revenue</b>				
Americas	\$ 324,508	\$ 224,188	\$ 766,995	\$ 618,709
EMEA	69,390	38,261	167,020	111,632
Asia Pacific	29,478	22,479	74,802	63,470
	<u>\$ 423,376</u>	<u>\$ 284,928</u>	<u>\$ 1,008,817</u>	<u>\$ 793,811</u>
<b>Operating (loss) income</b>				
Americas	\$ (19,804)	\$ 21,524	\$ 15,486	\$ 48,679
EMEA	(3,671)	(159)	(3,072)	1,791
Asia Pacific	3,117	(203)	3,462	3,424
	<u>(20,358)</u>	<u>21,162</u>	<u>15,876</u>	<u>53,894</u>
<b>Interest income</b>	1,788	1,275	3,564	2,673
<b>Interest expense</b>	28,255	15,420	59,519	46,341
<b>(Loss) income before (benefit) provision for income taxes</b>	<u>\$ (46,825)</u>	<u>\$ 7,017</u>	<u>\$ (40,079)</u>	<u>\$ 10,226</u>
		September 30,	December 31,	
		2003	2002	
		(dollars in thousands)		
<b>Identifiable assets</b>				
Americas	\$	1,408,986	\$	868,990
EMEA		264,121		198,027
Asia Pacific		107,448		123,059
Corporate		186,469		134,800
	\$	<u>1,967,024</u>	\$	<u>1,324,876</u>

Identifiable assets by industry segment are those assets used in the Company's operations in each segment. Corporate identifiable assets are primarily cash and cash equivalents and net deferred tax assets.

## 19. Subsequent Events

On October 14, 2003, the Company refinanced all of the outstanding loans under the Credit Facility it entered into in connection with the completion of the Insignia Acquisition. As part of this refinancing, the Company entered into a new amended and restated credit agreement. The prior Credit Facility was, and the new amended and

restated credit facilities continue to be, jointly and severally guaranteed by the Company and its domestic subsidiaries and secured by substantially all of their assets.

In connection with the October 14, 2003 refinancing of the senior secured credit facilities and the signing of a new amended and restated credit agreement, the former Tranche A term facility and Tranche B term facility were combined into a new single term loan facility. The new term loan facility, of which \$300.0 million was drawn on October 14, 2003, requires quarterly principal payments of \$2.5 million through September 30, 2008 and matures on December 31, 2008. Borrowings under the new term loan facility bear interest at varying rates based, at the Company's option, on either LIBOR plus 3.25% or the alternate base rate plus 2.25%. The maturity date and interest rate for borrowings under the revolving credit facility remain unchanged in the new amended and restated credit agreement. The revolving line of credit requires the repayment of any outstanding balance for a period of 45 consecutive days commencing on any day in the month of December of each year as determined by the Company.

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On October 27, 2003, the Company redeemed \$20.0 million in aggregate principal amount of its 16% Senior Notes. The Company paid a \$1.9 million premium in connection with this redemption.

Early in the fourth quarter of 2003, the Company announced that effective January 1, 2004, it will close the Deferred Compensation Plan (DCP) to new participants. During 2004, the DCP will continue to accept compensation deferrals from participants who currently have a balance, meet the eligibility requirements and elect to participate, up to a maximum annual contribution amount of \$250,000 per participant. However, the DCP will cease accepting compensation deferrals from current participants effective January 1, 2005.

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## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### Introduction

Management's discussion and analysis of financial condition, results of operations, liquidity and capital resources contained within this report on Form 10-Q is more clearly understood when read in conjunction with the Notes to the Consolidated Financial Statements. The Notes to the Consolidated Financial Statements elaborate on certain terms that are used throughout this discussion and provide information about the Company and the basis of presentation used in this report on Form 10-Q.

On July 20, 2001, the Company acquired CB Richard Ellis Services, Inc. (CBRE), pursuant to an Amended and Restated Agreement and Plan of Merger, dated May 31, 2001 (the 2001 Merger Agreement), among the Company, CBRE and Blum CB Corp. (Blum CB), a wholly owned subsidiary of the Company. Blum CB was merged with and into CBRE, with CBRE being the surviving corporation (the 2001 Merger). At the effective time of the 2001 Merger, CBRE became a wholly owned subsidiary of the Company.

On July 23, 2003, pursuant to an Amended and Restated Agreement and Plan of Merger, dated May 28, 2003 (the Insignia Acquisition Agreement), by and among the Company, CBRE, Apple Acquisition Corp. (Apple Acquisition), a Delaware corporation and wholly owned subsidiary of CBRE, and Insignia Financial Group, Inc. (Insignia), a Delaware corporation, Apple Acquisition was merged with and into Insignia (the Insignia Acquisition). Insignia was the surviving corporation in the Insignia Acquisition and at the effective time of the Insignia Acquisition became a wholly owned subsidiary of CBRE. The Company acquired Insignia to solidify its position as the market leader in the commercial real estate services industry.

### Results of Operations

The following tables set forth items derived from the consolidated statements of operations for the three and nine months ended September 30, 2003 and 2002 presented in dollars and as a percentage of revenue:

	Three Months Ended September 30,				Nine Months Ended September 30,			
	2003		2002		2003		2002	
	(Dollars in thousands)							
Revenue	423,376	100.0%	284,928	100.0%	1,008,817	100.0%	793,811	100.0%
Costs and expenses:								
Cost of services	208,198	49.2	135,670	47.6	484,863	48.1	363,506	45.8
Operating, administrative and other	180,298	42.6	124,470	43.7	443,894	44.0	364,676	45.9
Depreciation and amortization	41,071	9.7	6,404	2.2	53,571	5.3	18,107	2.3
Equity income from unconsolidated subsidiaries	(2,318)	(0.5)	(2,778)	(1.0)	(9,182)	(0.9)	(6,422)	(0.8)
Merger-related charges	16,485	3.9	—	—	19,795	2.0	50	—
Operating (loss) income	(20,358)	(4.8)	21,162	7.4	15,876	1.6	53,894	6.8
Interest income	1,788	0.4	1,275	0.4	3,564	0.4	2,673	0.3
Interest expense	28,255	6.7	15,420	5.4	59,519	5.9	46,341	5.8
(Loss) income before (benefit) provision for income taxes	(46,825)	(11.1)	7,017	2.5	(40,079)	(4.0)	10,226	1.3
(Benefit) provision for income taxes	(18,380)	(4.3)	5,136	1.8	(15,459)	(1.5)	6,596	0.8
Net (loss) income	<u>\$ (28,445)</u>	<u>(6.7)%</u>	<u>\$ 1,881</u>	<u>0.7%</u>	<u>\$ (24,620)</u>	<u>(2.4)%</u>	<u>\$ 3,630</u>	<u>0.5%</u>
EBITDA	<u>\$ 20,713</u>	<u>4.9%</u>	<u>\$ 27,566</u>	<u>9.7%</u>	<u>\$ 69,447</u>	<u>6.9%</u>	<u>\$ 72,001</u>	<u>9.1%</u>

EBITDA represents earnings before net interest expense, income taxes, depreciation and amortization. Management believes that the presentation of EBITDA will enhance a reader's understanding of the Company's operating performance. EBITDA is also a measure used by senior management to evaluate the performance of the Company's various lines of business and for other required or discretionary purposes, such as the use of EBITDA as a significant component when measuring performance under the Company's employee incentive programs. Additionally, many of the Company's debt covenants are based upon a measurement similar to EBITDA. EBITDA should not be considered as an alternative to (i) operating income determined in accordance with accounting principles generally accepted in the United States of America, or (ii) operating cash flow determined in accordance with accounting principles generally accepted in the United States of America. The Company's calculation of EBITDA may not be



EBITDA is calculated as follows (dollars in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2003	2002	2003	2002
Operating (loss) income	\$ (20,358)	\$ 21,162	\$ 15,876	\$ 53,894
Add:				
Depreciation and amortization	41,071	6,404	53,571	18,107
EBITDA	\$ 20,713	\$ 27,566	\$ 69,447	\$ 72,001

### Three Months Ended September 30, 2003 Compared to the Three Months Ended September 30, 2002

The Company reported a consolidated net loss of \$28.4 million for the three months ended September 30, 2003 on revenue of \$423.4 million as compared to consolidated net income of \$1.9 million on revenue of \$284.9 million for the three months ended September 30, 2002.

Revenue on a consolidated basis increased \$138.4 million or 48.6% during the three months ended September 30, 2003 as compared to the three months ended September 30, 2002. The increase was primarily driven by higher revenue as a result of the Insignia Acquisition as well as increased worldwide sales and lease transaction revenue and appraisal fees. Additionally, foreign currency translation had an \$8.8 million positive impact on total revenue during the quarter ended September 30, 2003.

Cost of services on a consolidated basis totaled \$208.2 million, an increase of \$72.5 million or 53.5% over the third quarter of 2002. This increase was mainly attributable to higher commission expense due to increased revenue as a result of the Insignia Acquisition as well as higher worldwide sales and lease transaction revenue. Also contributing to the variance were increased worldwide payroll related costs, including insurance and pension expense in the United Kingdom (UK), which were partially caused by the Insignia Acquisition as well as increased headcount in Europe. Additionally, foreign currency translation had a \$4.1 million negative impact on cost of services during the current year period. As a result, cost of services as a percentage of revenue increased from 47.6% for the third quarter of 2002 to 49.2% for the third quarter of the current year.

Operating, administrative and other expenses on a consolidated basis were \$180.3 million, an increase of \$55.8 million or 44.9% for the three months ended September 30, 2003 as compared to the third quarter of the prior year. The increase was primarily driven by increased costs as a result of the Insignia Acquisition, including \$1.2 million of integration costs, as well as higher worldwide payroll related expenses and bonuses. Included in the 2003 bonus amount was an accrual for a one-time performance award of approximately \$1.9 million. In addition, occupancy expense was higher in the UK as a result of the Company's relocation to a new facility. Lastly, foreign currency translation had a \$4.0 million negative impact on total operating expenses for the three months ended September 30, 2003.

Depreciation and amortization expense on a consolidated basis increased by \$34.7 million or 541.3% mainly due to higher amortization expense primarily as a result of net revenue backlog acquired as part of the Insignia Acquisition.

Equity income from unconsolidated subsidiaries on a consolidated basis decreased \$0.5 million or 16.6% for the three months ended September 30, 2003 as compared to the three months ended September 30, 2002 primarily due to higher minority interest expense in the current year.

Merger-related charges on a consolidated basis were \$16.5 million for the three months ended September 30, 2003 and primarily consisted of lease termination costs associated with vacated spaces, change of control payments, consulting costs and severance costs, all of which were attributable to the Insignia Acquisition.

Consolidated interest expense was \$28.3 million, an increase of \$12.8 million or 83.2% for the three months ended September 30, 2003 as compared to the third quarter of the prior year. This increase was primarily driven by a \$6.8 million write-off of unamortized deferred financing fees associated with the prior credit facility as well as higher interest expense as a result of the additional debt issued in connection with the Insignia Acquisition.

Benefit for income tax on a consolidated basis was \$18.4 million for the three months ended September 30, 2003 as compared to a provision for income tax of \$5.1 million for the three months ended September 30, 2002. The income tax (benefit) provision and effective tax rate were not comparable between periods due to the effects of the Insignia Acquisition. Additionally, non-taxable gains associated with the Company's deferred compensation plan in the current year versus the non-deductible losses experienced in the prior year contributed to a lower effective tax rate in the current year.

### Nine Months Ended September 30, 2003 Compared to the Nine Months Ended September 30, 2002

The Company reported a consolidated net loss of \$24.6 million for the nine months ended September 30, 2003 on revenue of \$1.0 billion as compared to consolidated net income of \$3.6 million on revenue of \$793.8 million for the nine months ended September 30, 2002.

Revenue on a consolidated basis increased \$215.0 million or 27.1% during the nine months ended September 30, 2003 as compared to the nine months ended September 30, 2002. The increase was driven by higher revenue as a result of the Insignia Acquisition, significantly higher worldwide sales transaction revenue as well as increased worldwide appraisal fees and lease transaction revenue. Additionally, foreign currency translation had a \$28.6 million positive impact on total revenue during the nine months ended September 30, 2003.

Cost of services on a consolidated basis totaled \$484.9 million, an increase of \$121.4 million or 33.4% from the nine months ended September 30, 2002. This increase was mainly due to higher commission expense as a result of the Insignia Acquisition as well as increased worldwide sales and lease transaction revenue. Increased worldwide payroll related costs, primarily insurance, also contributed to the variance. Additionally, foreign currency translation had a \$12.5 million negative impact on cost of services during the current year period. As a result, cost of services as a percentage of revenue increased from 45.8% for the nine months ended September 30, 2002 to 48.1% for the nine months ended September 30, 2003.

Operating, administrative and other expenses on a consolidated basis were \$443.9 million, an increase of \$79.2 million or 21.7% for the nine months ended September 30, 2003 as compared to the nine months ended September 30, 2002. The increase was primarily driven by higher costs as a result of the Insignia Acquisition, including \$1.2 million of integration costs, as well as increased worldwide bonuses, payroll related expenses and consulting expenses, principally in the Americas and Europe. Included in the 2003 bonus amount was an accrual for a one-time performance award of approximately \$6.9 million. In addition, occupancy expense was higher in the UK as a result of the Company's relocation to a new facility. Lastly, foreign currency translation had a \$13.7 million negative impact on total operating expenses during the nine months ended September 30, 2003. These increases were partially offset by net foreign currency transaction gains resulting from the weaker U.S. dollar.

Depreciation and amortization expense on a consolidated basis increased by \$35.5 million or 195.9% mainly due to an increase in amortization expense primarily as a result of net revenue backlog acquired as part of the Insignia Acquisition. The increase in amortization expense was also due to a one-time reduction of amortization expense recorded in the prior year, which arose from the adjustment of certain intangible assets to their estimated fair values as of their acquisition date as determined by independent third party appraisers in connection with the 2001 Merger.

Equity income from unconsolidated subsidiaries on a consolidated basis increased \$2.8 million or 43.0% for the nine months ended September 30, 2003 as compared to the nine months ended September 30, 2002 primarily due to a gain on sale of owned units in an investment fund.

Merger-related charges on a consolidated basis were \$19.8 million for the nine months ended September 30, 2003. These charges primarily consisted of lease termination costs associated with vacated spaces, change of control payments, consulting costs and severance costs, all of which were attributable to the Insignia Acquisition.

Consolidated interest expense was \$59.5 million for the nine months ended September 30, 2003, an increase of \$13.2 million or 28.4% as compared to the nine months ended September 30, 2002. This increase was primarily driven by a \$6.8 million write-off of unamortized deferred financing fees associated with the prior credit facility as well as higher interest expense as a result of the additional debt issued in connection with the Insignia Acquisition.

Benefit for income tax on a consolidated basis was \$15.5 million for the nine months ended September 30, 2003 as compared to provision for income tax of \$6.6 million for the nine months ended September 30, 2002. The income tax (benefit) provision and effective tax rate were not comparable between periods due to the effects of the Insignia Acquisition. Additionally, non-taxable gains associated with the Company's deferred compensation plan in the current year versus the non-deductible losses experienced in the prior year contributed to a lower effective tax rate in the current year.

## Segment Operations

The Company reports its operations through three geographically organized segments: (1) Americas, (2) Europe, Middle East and Africa (EMEA) and (3) Asia Pacific. The Americas consist of operations in the U.S., Canada, Mexico and South America. EMEA mainly consists of operations in Europe, while Asia Pacific includes operations in Asia, Australia and New Zealand. The Company has not yet finalized the purchase accounting for the Insignia Acquisition. As a result, other intangible assets acquired in the Insignia Acquisition, along with the related amortization expense, have been included in the Americas segment (see Note 18 of the Notes to Consolidated Financial Statements). Upon finalization of the purchase accounting for the Insignia Acquisition, other intangible assets and the related amortization expense will be re-allocated to the appropriate segments. The Americas results for the nine months ended September 30, 2003 include merger-related charges of \$15.9 million attributable to the Insignia Acquisition. The EMEA results for the nine months ended September 30, 2003 include merger-related charges of \$3.9 million associated with the Insignia Acquisition. The following table summarizes the revenue, costs and expenses, and operating income (loss) by operating segment for the periods ended September 30, 2003 and 2002 (dollars in thousands):

	Three Months Ended September 30,				Nine Months Ended September 30,							
	2003		2002		2003		2002					
<b>Americas</b>												
Revenue	\$	324,508	100.0%	\$	224,188	100.0%	\$	766,995	100.0%	\$	618,709	100.0%
Costs and expenses:												
Cost of services		165,013	50.9		109,919	49.0		380,942	49.7		291,173	47.1
Operating, administrative and other		129,170	39.8		90,842	40.5		316,352	41.2		271,803	43.9
Depreciation and amortization		38,512	11.9		4,354	1.9		47,703	6.2		12,561	2.0
Equity income from unconsolidated subsidiaries		(2,536)	(0.8)		(2,451)	(1.1)		(9,379)	(1.2)		(5,557)	(0.9)
Merger-related charges		14,153	4.4		—	—		15,891	2.1		50	—
Operating (loss) income	\$	(19,804)	(6.1)%	\$	21,524	9.6%	\$	15,486	2.0%	\$	48,679	7.9%
EBITDA	\$	18,708	5.8%	\$	25,878	11.5%	\$	63,189	8.2%	\$	61,240	9.9%
<b>EMEA</b>												
Revenue	\$	69,390	100.0%	\$	38,261	100.0%	\$	167,020	100.0%	\$	111,632	100.0%
Costs and expenses:												
Cost of services		30,779	44.4		16,063	42.0		71,160	42.6		45,344	40.6
Operating, administrative and other		38,088	54.9		21,143	55.3		91,237	54.6		61,319	54.9
Depreciation and amortization		1,609	2.3		1,220	3.2		3,430	2.1		3,194	2.9
Equity loss (income) from unconsolidated subsidiaries		253	0.4		(6)	—		361	0.2		(16)	—
Merger-related charges		2,332	3.4		—	—		3,904	2.3		—	—
Operating (loss) income	\$	(3,671)	(5.3)%	\$	(159)	(0.4)%	\$	(3,072)	(1.8)%	\$	1,791	1.6%
EBITDA	\$	(2,062)	(3.0)%	\$	1,061	2.8%	\$	358	0.2%	\$	4,985	4.5%
<b>Asia Pacific</b>												
Revenue	\$	29,478	100.0%	\$	22,479	100.0%	\$	74,802	100.0%	\$	63,470	100.0%
Costs and expenses:												
Cost of services		12,406	42.1		9,688	43.1		32,761	43.8		26,989	42.5
Operating, administrative and other		13,040	44.2		12,485	55.5		36,305	48.5		31,554	49.7
Depreciation and amortization		950	3.2		830	3.7		2,438	3.3		2,352	3.7
Equity income from unconsolidated subsidiaries		(35)	(0.1)		(321)	(1.4)		(164)	(0.2)		(849)	(1.3)
Operating income (loss)	\$	3,117	10.6%	\$	(203)	(0.9)%	\$	3,462	4.6%	\$	3,424	5.4%

EBITDA	\$	4,067	13.8%	\$	627	2.8%	\$	5,900	7.9%	\$	5,776	9.1%
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EBITDA represents earnings before net interest expense, income taxes, depreciation and amortization. Management believes that the presentation of EBITDA will enhance a reader's understanding of the Company's operating performance. EBITDA is also a measure used by senior management to evaluate the performance of the Company's various lines of business and for other required or discretionary purposes, such as the use of EBITDA as a significant component when measuring performance under the Company's employee incentive programs. Additionally, many of the Company's debt covenants are based upon a measurement similar to EBITDA. EBITDA should not be considered as an alternative to (i) operating income determined in accordance with accounting principles generally accepted in the United States of America, or (ii) operating cash flow determined in accordance with accounting principles generally accepted in the United States of America. The Company's calculation of EBITDA may not be comparable to similarly titled measures reported by other companies.

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EBITDA is calculated as follows (dollars in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2003	2002	2003	2002
<b>Americas</b>				
Operating (loss) income	\$ (19,804)	\$ 21,524	\$ 15,486	\$ 48,679
Add: Depreciation and amortization	38,512	4,354	47,703	12,561
EBITDA	\$ 18,708	\$ 25,878	\$ 63,189	\$ 61,240
<b>EMEA</b>				
Operating (loss) income	\$ (3,671)	\$ (159)	\$ (3,072)	\$ 1,791
Add: Depreciation and amortization	1,609	1,220	3,430	3,194
EBITDA	\$ (2,062)	\$ 1,061	\$ 358	\$ 4,985
<b>Asia Pacific</b>				
Operating income (loss)	\$ 3,117	\$ (203)	\$ 3,462	\$ 3,424
Add: Depreciation and amortization	950	830	2,438	2,352
EBITDA	\$ 4,067	\$ 627	\$ 5,900	\$ 5,776

#### Three Months Ended September 30, 2003 Compared to the Three Months Ended September 30, 2002

##### Americas

Revenue increased by \$100.3 million or 44.7% for the three months ended September 30, 2003 as compared to the three months ended September 30, 2002 primarily driven by the Insignia Acquisition as well as increased sales transaction revenue, lease transaction revenue and loan fees. The sales and lease transaction revenue increases were primarily due to an increased number of transactions and a higher average value per transaction. Loan fees increased as a result of a higher number of deals and a higher average value per deal. Cost of services increased by \$55.1 million or 50.1% for the three months ended September 30, 2003 as compared to the three months ended September 30, 2002 primarily driven by higher commission expense due to increased revenue as a result of the Insignia Acquisition as well as higher sales and lease transaction revenue. Also contributing to the variance were increased payroll related costs, primarily insurance. Cost of services as a percentage of revenue increased from 49.0% for the third quarter of the prior year to 50.9% for the third quarter of the current year. Operating, administrative and other expenses increased \$38.3 million or 42.2% mainly due to increased costs as a result of the Insignia Acquisition, including integration expenses of \$1.2 million, as well as higher bonuses and payroll related costs. Included in the 2003 bonus amount was an accrual for a one-time performance award of approximately \$1.9 million.

##### EMEA

Revenue increased by \$31.1 million or 81.4% for the three months ended September 30, 2003 as compared to the three months ended September 30, 2002. This was mainly driven by increased revenue as a result of the Insignia Acquisition as well as higher sales and lease transaction revenue across Europe. Cost of services increased \$14.7 million or 91.6% as a result of higher producer compensation expense and increased payroll related costs, including pension and insurance expenses, partially due to the Insignia Acquisition as well as a result of new hires. Operating, administrative and other expenses increased by \$16.9 million or 80.1% mainly due to increased costs as a result of the Insignia Acquisition as well as higher payroll related expenses and bonuses. In addition, occupancy expense was higher in the UK as a result of the Company's relocation to a new facility.

##### Asia Pacific

Revenue increased by \$7.0 million or 31.1% for the three months ended September 30, 2003 as compared to the three months ended September 30, 2002. The increase was primarily driven by an overall increase in revenue in Australia and New Zealand. Cost of services increased by \$2.7 million or 28.0% mainly driven by increased transaction revenue as well as higher producer compensation expense due to increased headcount in Australia and New Zealand. Operating, administrative and other expenses increased by \$0.6 million or 4.4% primarily due to an increased accrual for long-term incentives in Australia and New Zealand.

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#### Nine Months Ended September 30, 2003 Compared to the Nine Months Ended September 30, 2002

##### Americas

Revenue increased by \$148.3 million or 24.0% for the nine months ended September 30, 2003 as compared to the nine months ended September 30, 2002 primarily driven by the Insignia Acquisition as well as significantly higher sales transaction revenue due to an increased number of transactions and a higher average value per transaction. Cost of services increased by \$89.8 million or 30.8% for the nine months ended September 30, 2003 as compared to the nine months ended September 30, 2002 due to increased revenue as a result of the Insignia Acquisition and higher sales transaction revenue, as well as increased payroll related costs, primarily insurance. As a result, cost of services as a percentage of revenue increased from 47.1% for the nine months ended September 30, 2002 to 49.7% for the nine months ended September 30, 2003. Operating, administrative and other expenses increased \$44.5 million or 16.4% mainly caused by higher costs as a result of the Insignia Acquisition, including integration expenses of \$1.2 million, as well as increased bonuses and payroll related costs. Included in the 2003 bonus amount was an accrual for a one-time performance award of approximately \$6.9 million. These increases were partially offset by net foreign currency transaction gains resulting from the weakened U.S. dollar.

##### EMEA

Revenue increased by \$55.4 million or 49.6% for the nine months ended September 30, 2003 as compared to the nine months ended September 30, 2002. This was mainly driven by increased revenue as a result of the Insignia Acquisition as well as higher sales and lease transaction revenue across Europe. Cost of services increased \$25.8

million or 56.9% as a result of higher producer compensation expense and increased payroll related costs, including pension and insurance expenses, partially due to the Insignia Acquisition and new hires. *Operating, administrative and other expenses* increased by \$29.9 million or 48.8% mainly driven by increased costs as a result of the Insignia Acquisition as well as higher bonus, payroll related and consulting expenses. In addition, occupancy expense was higher in the UK as a result of the Company's relocation to a new facility.

## Asia Pacific

*Revenue* increased by \$11.3 million or 17.9% for the nine months ended September 30, 2003 as compared to the nine months ended September 30, 2002. The increase was primarily driven by an overall increase in revenue in Australia and New Zealand. These revenue increases were partially offset by reduced revenue in the Company's Japanese investment management business. *Cost of services* increased by \$5.8 million or 21.4% mainly attributable to increased transaction revenue as well as higher producer compensation expense due to increased headcount in Australia and New Zealand. *Operating, administrative and other expenses* increased by \$4.8 million or 15.1% primarily due to an increased accrual for long-term incentives in Australia and New Zealand.

## Liquidity and Capital Resources

On July 23, 2003, pursuant to an Amended and Restated Agreement and Plan of Merger, dated May 28, 2003 (the Insignia Acquisition Agreement), by and among the Company, CBRE, Apple Acquisition Corp. (Apple Acquisition), a Delaware corporation and wholly owned subsidiary of CBRE, and Insignia Financial Group, Inc. (Insignia), Apple Acquisition was merged with and into Insignia (the Insignia Acquisition). Insignia was the surviving corporation in the Insignia Acquisition and at the effective time of the Insignia Acquisition became a wholly owned subsidiary of CBRE.

In conjunction with and immediately prior to the Insignia Acquisition, Island Fund I LLC (Island), a Delaware limited liability company, which is affiliated with Andrew L. Farkas, Insignia's former Chairman and Chief Executive Officer, and some of Insignia's other former officers, completed the purchase of specified real estate investment assets of Insignia, pursuant to a Purchase Agreement, dated May 28, 2003 (the Island Purchase Agreement), by and among Insignia, the Company, CBRE, Apple Acquisition and Island. A number of the real estate investment assets that were sold to Island required the consent of one or more third parties in order to transfer such assets. Some of these third party consents were not obtained prior to the closing of the Insignia Acquisition. As a result, the Company continues to hold these real estate investment assets pending the receipt of these third party consents. While the Company holds these assets, it has generally agreed to provide Island with the economic benefits from these assets and Island generally has agreed to indemnify the Company with respect to any losses incurred in connection with continuing to hold these assets.

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Pursuant to the terms of the Insignia Acquisition Agreement, (1) each issued and outstanding share of Insignia's Common Stock (other than treasury shares), par value \$0.01 per share, was converted into the right to receive \$11.156 in cash, without interest (the Insignia Common Stock Merger Consideration), (2) each issued and outstanding share of Insignia's Series A Preferred Stock, par value \$0.01 per share, and Series B Preferred Stock, par value \$0.01 per share, was converted into the right to receive \$100.00 per share, plus accrued and unpaid dividends, (3) all outstanding warrants and options to acquire Insignia Common Stock other than as described below, whether vested or unvested, were canceled and represented the right to receive a cash payment, without interest, equal to the excess, if any, of the Insignia Common Stock Merger Consideration over the per share exercise price of the option or warrant, multiplied by the number of shares of Insignia Common Stock subject to the option or warrant less any applicable withholding taxes and (4) outstanding options to purchase Insignia Common Stock granted pursuant to Insignia's 1998 Stock Investment Plan, whether vested or unvested, were canceled and represented the right to receive a cash payment, without interest, equal to the excess, if any, of (a) the higher of (x) the Insignia Common Stock Merger Consideration, or (y) the highest final sale price per share of the Insignia Common Stock as reported on the New York Stock Exchange (NYSE) at any time during the 60-day period preceding the closing of the Insignia Acquisition (which was \$11.20), over (b) the exercise price of the options, multiplied by the number of shares of Insignia Common Stock subject to the options, less any applicable withholding taxes. Following the Insignia Acquisition, the Insignia Common Stock was delisted from the NYSE and deregistered under the Securities Exchange Act of 1934.

The funding to complete the Insignia Acquisition, as well as the refinancing of substantially all of the outstanding indebtedness of Insignia, was obtained through (a) the sale of 6,587,135 shares of the Company's Class B Common Stock, par value \$0.01 per share, to Blum Strategic Partners, L.P., a Delaware limited partnership, Blum Strategic Partners II, L.P., a Delaware limited partnership and Blum Strategic Partners II GmbH & Co. KG, a German limited partnership, for an aggregate cash purchase price of \$105,394,160, (b) the sale of 227,865 shares of the Company's Class A Common Stock, par value \$.01 per share, to DLJ Investment Partners, L.P., a Delaware limited partnership, DLJ Investment Partners II, L.P., a Delaware limited partnership and DLJIP II Holdings, L.P., a Delaware limited partnership, for an aggregate cash purchase price of \$3,645,840, (c) the sale of 625,000 shares of the Company's Class A Common Stock to California Public Employees' Retirement System for an aggregate cash purchase price of \$10,000,000, (d) the sale of 60,000 shares of the Company's Class B Common Stock to Frederic V. Malek for an aggregate cash purchase price of \$960,000, (e) the release from escrow of the net proceeds from the offering by CBRE Escrow, Inc. (CBRE Escrow), a wholly owned subsidiary of CBRE that merged with and into CBRE in connection with the Insignia Acquisition, of \$200.0 million of the 9¾% Senior Notes due May 15, 2010 (the 9¾% Senior Notes), which had been issued and sold by CBRE Escrow on May 22, 2003, (f) \$75.0 million of term loan borrowings under the Amended and Restated Credit Agreement dated as of May 22, 2003, by and among CBRE, Credit Suisse First Boston (CSFB) as Administrative Agent and Collateral Agent, the other lenders named in the credit agreement, the Company and the guarantors named in the credit agreement and (g) \$36,870,229.61 of cash proceeds from the completion of the sale to Island.

The Company believes it can satisfy its non-acquisition obligations, as well as its working capital requirements and funding of investments, with internally generated cash flow, borrowings under the revolving line of credit with CSFB and other lenders or any replacement credit facilities. In the near term, further material acquisitions, if any, that necessitate cash will require new sources of capital such as an expansion of the revolving credit facility and/or issuing additional debt or equity. The Company anticipates that its existing sources of liquidity, including cash flow from operations, will be sufficient to meet its anticipated non-acquisition cash requirements for the foreseeable future, but at a minimum for the next twelve months.

Net cash used in operating activities totaled \$70.7 million for the nine months ended September 30, 2003, an increase of \$51.7 million compared to the nine months ended September 30, 2002. This increase was primarily attributable to merger-related expenses paid in the current period as well as due to the timing of payments to vendors and taxing authorities.

Net cash used in investing activities totaled \$252.7 million for the nine months ended September 30, 2003, an increase of \$236.2 million compared to the same period of the prior year. This increase was primarily due to costs incurred in the current year associated with the Insignia Acquisition.

Net cash provided by financing activities totaled \$328.5 million for the nine months ended September 30, 2003 compared to net cash used in financing activities of \$2.1 million for the nine months ended September 30,

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2002. This increase was mainly attributable to the additional net debt and equity financing resulting from the Insignia Acquisition in the current year.

The Company issued \$200.0 million in aggregate principal amount of 9¾% Senior Notes due May 15, 2010 on May 22, 2003. The 9¾% Senior Notes are unsecured obligations, and rank equal in right of payment with existing and future senior indebtedness and senior in right of payment to any existing and future subordinated indebtedness of the Company. The 9¾% Senior Notes are jointly and severally guaranteed on a senior basis by the Company and its domestic subsidiaries. Interest accrues at a rate of 9¾% per year and is payable semi-annually in arrears on May 15 and November 15, commencing on November 15, 2003. The 9¾% Senior Notes are redeemable at the Company's option, in whole or in part, on or after May 15, 2007 at 104.875% of par on that date and at declining prices thereafter. In addition, before May 15, 2006, the

Company may redeem up to 35.0% of the originally issued amount of the 9¾% Senior Notes at 109 ¾% of par, plus accrued and unpaid interest, solely with the net cash proceeds from public equity offerings. In the event of a change of control, the Company is obligated to make an offer to purchase the 9¾% Senior Notes at a redemption price of 101.0% of the principal amount, plus accrued and unpaid interest. The amount of the 9¾% Senior Notes included in the accompanying consolidated balance sheets was \$200.0 million as of September 30, 2003.

In accordance with the terms of the debt offering of the 9¾% Senior Notes, the proceeds from the sale of the 9¾% Senior Notes were placed in escrow on May 22, 2003. The proceeds were released from this escrow account on July 23, 2003, the date of the Insignia Acquisition.

In connection with the Insignia Acquisition, the Company entered into an amended and restated credit agreement with CSFB and other lenders (the Credit Facility). On October 14, 2003, the Company refinanced all of the outstanding loans under the amended and restated credit agreement it entered into in connection with the completion of the Insignia Acquisition. As part of this refinancing, the Company entered into a new amended and restated credit agreement. The prior credit facilities were, and the current amended and restated credit facilities continue to be, jointly and severally guaranteed by the Company and its domestic subsidiaries and secured by substantially all of their assets.

The amended and restated credit facilities entered into in connection with the Insignia Acquisition included the following: (1) a Tranche A term facility of \$50.0 million maturing on July 20, 2007, which was fully drawn in connection with the 2001 merger; (2) a Tranche B term facility of \$260.0 million maturing on July 18, 2008, \$185.0 million of which was drawn in connection with the 2001 merger and \$75.0 million of which was drawn in connection with the Insignia Acquisition; and (3) a revolving line of credit of \$90.0 million, including revolving credit loans, letters of credit and a swingline loan facility, maturing on July 20, 2007. After the amendment and restatement in connection with the Insignia Acquisition, borrowings under the Tranche A and revolving facility bore interest at varying rates based on the Company's option, at either the applicable LIBOR plus 3.00% to 3.75% or the alternate base rate plus 2.00% to 2.75%, in both cases as determined by reference to the ratio of total debt less available cash to EBITDA, which is defined in the amended and restated credit agreement. The alternate base rate is the higher of (1) CSFB's prime rate or (2) the Federal Funds Effective Rate plus one-half of one percent. After the amendment and restatement in connection with the Insignia Acquisition, borrowings under the Tranche B facility bore interest at varying rates based on the Company's option at either the applicable LIBOR plus 4.25% or the alternate base rate plus 3.25%.

In connection with the October 14, 2003 refinancing of the senior secured credit facilities and the signing of a new amended and restated credit agreement, the former Tranche A term facility and Tranche B term facility were combined into a new single term loan facility. The new term loan facility, of which \$300.0 million was drawn on October 14, 2003, requires quarterly principal payments of \$2.5 million through September 30, 2008 and matures on December 31, 2008. Borrowings under the new term loan facility bear interest at varying rates based at the Company's option, on either LIBOR plus 3.25% or the alternate base rate plus 2.25%. The maturity date and interest rate for borrowings under the revolving credit facility remain unchanged in the new amended and restated credit agreement. The revolving line of credit requires the repayment of any outstanding balance for a period of 45 consecutive days commencing on any day in the month of December of each year as determined by the Company. The Company repaid its revolving credit facility as of November 5, 2002 and July 23, 2003. The total amounts outstanding under the Credit Facility included in senior secured term loans and current maturities of long-term debt in the accompanying consolidated balance sheets were \$288.5 million and \$221.0 million as of September 30, 2003 and December 31, 2002, respectively.

The Company issued \$229.0 million in aggregate principal amount of 11¼% Senior Subordinated Notes due June 15, 2011 (the 11¼% Senior Subordinated Notes), for approximately \$225.6 million, net of discount, on June 7,

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2001. The 11¼% Senior Subordinated Notes are jointly and severally guaranteed on a senior subordinated basis by the Company and its domestic subsidiaries. The 11¼% Senior Subordinated Notes require semi-annual payments of interest in arrears on June 15 and December 15, having commenced on December 15, 2001, and are redeemable in whole or in part on or after June 15, 2006 at 105.625% of par on that date and at declining prices thereafter. In addition, before June 15, 2004, the Company may redeem up to 35.0% of the originally issued amount of the 11¼% Senior Subordinated Notes at 111¼% of par, plus accrued and unpaid interest, solely with the net cash proceeds from public equity offerings. In the event of a change of control, the Company is obligated to make an offer to purchase the 11¼% Senior Subordinated Notes at a redemption price of 101.0% of the principal amount, plus accrued and unpaid interest. The amount of the 11¼% Senior Subordinated Notes included in the accompanying consolidated balance sheets, net of unamortized discount, was \$226.1 million and \$225.9 million as of September 30, 2003 and December 31, 2002, respectively.

In connection with the 2001 Merger, the Company issued an aggregate principal amount of \$65.0 million of 16% Senior Notes due on July 20, 2011 (the 16% Senior Notes). The 16% Senior Notes are unsecured obligations, senior to all current and future unsecured indebtedness, but subordinated to all current and future secured indebtedness of the Company. Interest accrues at a rate of 16.0% per year and is payable quarterly in arrears. Interest may be paid in kind to the extent CBRE's ability to pay cash dividends is restricted by the terms of the Credit Facility. Additionally, interest in excess of 12.0% may, at the Company's option, be paid in kind through July 2006. The Company elected to pay in kind interest in excess of 12.0%, or 4.0%, that was payable on April 20, 2002, July 20, 2002, October 20, 2002, January 20, 2003 and April 20, 2003. The 16% Senior Notes are redeemable at the Company's option, in whole or in part, at 116.0% of par commencing on July 20, 2001 and at declining prices thereafter. As of September 30, 2003, the redemption price was 109.6% of par. In the event of a change in control, the Company is obligated to make an offer to purchase all of the outstanding 16% Senior Notes at 101.0% of par. The total amount of the 16% Senior Notes included in the accompanying consolidated balance sheets, net of unamortized discount, was \$63.4 million and \$61.9 million as of September 30, 2003 and December 31, 2002, respectively.

On October 27, 2003, the Company redeemed \$20.0 million in aggregate principal amount of its 16% Senior Notes. The Company paid a \$1.9 million premium in connection with this redemption.

The 16% Senior Notes are solely the Company's obligation to repay. CBRE has neither guaranteed nor pledged any of its assets as collateral for the 16% Senior Notes, and is not obligated to provide cash flow to the Company for repayment of these 16% Senior Notes. However, the Company has no substantive assets or operations other than its investment in CBRE to meet any required principal and interest payments on the 16% Senior Notes. The Company will depend on CBRE's cash flows to fund principal and interest payments as they come due.

The 9¾% Senior Notes, the Credit Facility, the 11¼% Senior Subordinated Notes and the 16% Senior Notes all contain numerous restrictive covenants that, among other things, limit the Company's ability to incur additional indebtedness, pay dividends or distributions to stockholders, repurchase capital stock or debt, make investments, sell assets or subsidiary stock, engage in transactions with affiliates, enter into sale/leaseback transactions, issue subsidiary equity and enter into consolidations or mergers. The amendment and restatement of the Credit Facility modified the financial covenant ratios to provide a greater degree of flexibility than the prior Credit Facility. The amended and restated Credit Facility requires the Company to maintain a minimum coverage ratio of interest and certain fixed charges and a maximum leverage and senior secured leverage ratio of earnings before interest, taxes, depreciation and amortization to funded debt. The Credit Facility required, and after the amendment and restatement continues to require, the Company to pay a facility fee based on the total amount of the unused commitment.

On February 23, 2003, Moody's Investor Service confirmed the ratings of the Company's senior secured term loans and Senior Subordinated Notes at B1 and B3, respectively. On May 1, 2003, Moody's assigned the rating of B1 to the Company's \$200.0 million 9¾% Senior Notes and confirmed the ratings of the senior secured term loans at B1. On April 3, 2003, Standard and Poor's Ratings Service downgraded the Company's senior secured term loans and Senior Subordinated Notes from BB- to B+ and B to B-, respectively. On April 14, 2003, Standard and Poor's assigned the rating B+ to the Company's 9¾% Senior Notes. On September 30, 2003, in connection with the refinancing of the outstanding senior secured credit facilities, Standard and Poor's confirmed the B+ rating of the senior secured term loans. Neither the Moody's nor the Standard and Poor's ratings impact the Company's ability to borrow or affect the Company's interest rates for the senior secured term loans.

A subsidiary of the Company has had a credit agreement with Residential Funding Corporation (RFC) since 2001 for the purpose of funding mortgage loans that will be resold. On December 16, 2002, the Company entered into a Third Amended and Restated Warehousing Credit and Security Agreement effective December 20, 2002. The

agreement provided for a revolving line of credit of \$200.0 million, bore interest at the lower of one-month LIBOR or 2.0% (RFC Base Rate) plus 1.0% and expired on August 31, 2003. On June 25, 2003, the agreement was modified to provide a temporary revolving line of credit increase of \$200.0 million that resulted in a total line of credit equaling \$400.0 million, which expired on August 30, 2003 and to change the RFC Base Rate to one-month LIBOR plus 1.0%. By amendment on August 29, 2003, the expiration date of the agreement was extended to September 25, 2003. On September 26, 2003, the Company entered into a Fourth Amended and Restated Warehousing Credit and Security Agreement. The agreement provides for a revolving line of credit of up to \$200.0 million, bears interest at one-month LIBOR plus 1.0% and expires on August 31, 2004.

During the three months ended September 30, 2003, the Company had a maximum of \$272.5 million revolving line of credit principal outstanding with RFC. At September 30, 2003 and December 31, 2002, respectively, the Company had a \$135.8 million and a \$63.1 million warehouse line of credit outstanding, which are included in short-term borrowings in the accompanying consolidated balance sheets. Additionally, the Company had a \$135.8 million and a \$63.1 million warehouse receivable, which are also included in the accompanying consolidated balance sheets as of September 30, 2003 and December 31, 2002, respectively.

In connection with the Insignia Acquisition, the Company assumed \$13.8 million of acquisition loan notes that were issued in connection with previous acquisitions by Insignia in the United Kingdom (UK). The acquisition loan notes are payable to sellers of the formerly acquired UK businesses and are secured by restricted cash deposits in approximately the same amount. The acquisition loan notes are redeemable semi-annually at the discretion of the note holder and have a final maturity date of April 2010. At September 30, 2003, the Company had \$13.9 million in acquisition loan notes outstanding, which are included in short-term borrowings in the accompanying consolidated balance sheets.

In connection with the Insignia Acquisition, on July 23, 2003 the Company assumed and immediately repaid Insignia's outstanding revolving credit facility of \$28.0 million and subordinated credit facility of \$15.0 million.

A subsidiary of the Company has a credit agreement with JP Morgan Chase. The credit agreement provides for a non-recourse revolving line of credit of up to \$20.0 million, bears interest at 1.0% in excess of the bank's cost of funds and expires on May 28, 2004. At September 30, 2003 and December 31, 2002 the Company had no revolving line of credit principal outstanding with JP Morgan Chase.

During 2001, the Company incurred \$37.2 million of non-recourse debt through a joint venture. During the third quarter of 2003, the maturity date on this non-recourse debt was extended to July 31, 2008. At September 30, 2003 and December 31, 2002, respectively, the Company had \$40.4 million of non-recourse debt included in other long-term debt and \$40.0 million of non-recourse included in short-term borrowings in the accompanying consolidated balance sheets. Additionally, during the third quarter of 2003, through this joint venture the Company incurred additional non-recourse debt of \$1.9 million with a maturity date of June 15, 2004. At September 30, 2003, this \$1.9 million of non-recourse debt is included in short-term borrowings in the accompanying consolidated balance sheet.

The following is a summary of the Company's various contractual obligations as of September 30, 2003, except for operating leases which are as of December 31, 2002 (dollars in thousands):

Contractual Obligations	Payments Due by Period				
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Total debt (1) (2)	\$ 994,887	\$ 175,511	\$ 22,774	\$ 296,842	\$ 499,760
Operating leases (3)	694,391	98,839	167,097	126,913	301,542
Deferred compensation plan liability (4)	125,465	—	—	—	125,465
Pension liability (4)	31,559	—	—	—	31,559
<b>Total Contractual Obligations</b>	<b>\$ 1,846,302</b>	<b>\$ 274,350</b>	<b>\$ 189,871</b>	<b>\$ 423,755</b>	<b>\$ 958,326</b>
Other Commitments	Amount of Commitments Expiration				
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Letters of credit (5)	\$ 27,797	\$ 27,797	\$ —	\$ —	\$ —
Guarantees (5)	10,506	10,506	—	—	—
Co-investment commitments (5)	21,370	15,462	5,908	—	—
<b>Total Commitments</b>	<b>\$ 59,673</b>	<b>\$ 53,765</b>	<b>\$ 5,908</b>	<b>\$ —</b>	<b>\$ —</b>

(1) Includes capital lease obligations. See Note 11 of the Notes to Consolidated Financial Statements.

- (2) As described in greater detail in Note 19 of the Notes to the Consolidated Financial Statements, on October 14, 2003, the Company refinanced its senior secured credit facilities, which, among other things, increased the amount of outstanding term loans and changed the amortization schedule for the term loans.
- (3) Includes the Company's outstanding operating lease obligations as of December 31, 2002 as well as Insignia's outstanding operating lease obligations as of December 31, 2002 reported on their annual report on form 10-K for the year ended December 31, 2002.
- (4) An undeterminable portion of this amount will be paid in years one through five.
- (5) See Note 12 of the Notes to Consolidated Financial Statements.

Early in the fourth quarter of 2003, the Company announced that effective January 1, 2004, it will close the Deferred Compensation Plan (DCP) to new participants. During 2004, the DCP will continue to accept compensation deferrals from participants who currently have a balance, meet the eligibility requirements and elect to participate, up to a maximum annual contribution amount of \$250,000 per participant. However, the DCP will cease accepting compensation deferrals from current participants effective January 1, 2005.

#### Derivatives and Hedging Activities

The Company applies Statement of Financial Accounting Standards (SFAS) No. 133, "Accounting for Derivative Instruments and Hedging Activities", as amended by SFAS No. 138, "Accounting for Certain Derivative Instruments and Certain Hedging Activities" when accounting for derivatives. In the normal course of business, the Company sometimes utilizes derivative financial instruments in the form of foreign currency exchange forward contracts to mitigate foreign currency exchange exposure resulting from intercompany loans. The Company does not engage in any speculative activities with respect to foreign currency. At September 30, 2003, the Company had foreign currency exchange forward contracts with an aggregate notional amount of \$26.5 million, which mature on various dates through December 31, 2003. The net impact

on the Company's earnings for the three and nine months ending September 30, 2003 resulting from the unrealized gains and/or losses on these foreign currency exchange forward contracts was not significant.

## Litigation

The Company is a party to a number of pending or threatened lawsuits arising out of, or incident to, its ordinary course of business. Management believes that any liability that may result from disposition of these lawsuits will not have a material effect on the Company's consolidated financial position or results of operations.

## Application of Critical Accounting Policies

The Company's consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America, which require management to make estimates and assumptions that affect reported amounts. The estimates and assumptions are based on historical experience and on other factors that management believes to be reasonable. Actual results may differ from those estimates under different assumptions or conditions. The Company believes that the following critical accounting policies represent the areas where more significant judgments and estimates are used in the preparation of its consolidated financial statements:

### *Revenue Recognition*

The Company records real estate commissions on sales upon close of escrow or upon transfer of title. Real estate commissions on leases are generally recorded as income once the Company satisfies all obligations under the commission agreement. A typical commission agreement provides that the Company earns a portion of the lease commission upon the execution of the lease agreement by the tenant, while the remaining portion(s) of the lease commission is earned at a later date, usually upon tenant occupancy. The existence of any significant future contingencies will result in the delay of recognition of revenue until such contingencies are satisfied. For example, if the Company does not earn all or a portion of the lease commission until the tenant pays their first month's rent and the lease agreement provides the tenant with a free rent period, the Company delays revenue recognition until cash rent is paid by the tenant. Investment management and property management fees are recognized when earned under the provisions of the related agreements. Appraisal fees are recorded after services have been rendered. Loan origination fees are recognized at the time the loan closes and the Company has no significant remaining obligations for performance in connection with the transaction, while loan servicing fees are recorded to revenue as monthly principal and interest payments are collected from mortgagors. Other commissions, consulting fees and referral fees are recorded as income at the time the related services have been performed unless significant future contingencies exist.

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In establishing the appropriate provisions for trade receivables, the Company makes assumptions with respect to their future collectibility. The Company's assumptions are based on an individual assessment of a customer's credit quality as well as subjective factors and trends, including the aging of receivables balances. In addition to these individual assessments, in general, outstanding trade accounts receivable amounts that are greater than 180 days are fully provided for.

### *Principles of Consolidation*

The accompanying consolidated financial statements include the accounts of CBRE Holding, Inc. (the Company) and majority-owned and controlled subsidiaries. The equity attributable to minority shareholders' interests in subsidiaries is shown separately in the accompanying consolidated balance sheets. All significant intercompany accounts and transactions have been eliminated in consolidation.

The Company's investments in unconsolidated subsidiaries in which it has the ability to exercise significant influence over operating and financial policies, but does not control, are accounted for under the equity method. Accordingly, the Company's share of the earnings of these equity-method basis companies is included in consolidated net income. All other investments held on a long-term basis are valued at cost less any impairment in value.

### *Goodwill and Other Intangible Assets*

Goodwill represents the excess of the purchase price paid by the Company over the fair value of the tangible and intangible assets and liabilities acquired in the 2001 Merger and in the Insignia Acquisition. Other intangible assets include a trademark, which was separately identified as a result of the 2001 Merger, as well as a trade name separately identified as a result of the Insignia Acquisition representing the Richard Ellis trade name in the UK that was owned by Insignia prior to the Insignia Acquisition. Both the trademark and the trade name are not being amortized and have indefinite estimated useful lives. Other intangible assets also include backlog, which represents the fair value of Insignia's net revenue backlog as of July 23, 2003 that was acquired as part of the Insignia Acquisition. The backlog consists of the net commission receivable on Insignia's revenue producing transactions, which were at various stages of completion prior to the Insignia Acquisition. Backlog is being amortized as cash is received or upon final closing of these pending transactions. The remaining other intangible assets primarily include management contracts, loan servicing rights, producer employment contracts, franchise agreements and a trade name, which are all being amortized on a straight-line basis over estimated useful lives ranging up to ten years.

The Company fully adopted SFAS No. 142, "Goodwill and Other Intangible Assets," effective January 1, 2002. This statement requires the Company to perform at least an annual assessment of impairment of goodwill and other intangible assets deemed to have indefinite useful lives based on assumptions and estimates of fair value and future cash flow information. The Company engages a third-party valuation firm to perform an annual assessment of its goodwill and other intangible assets deemed to have indefinite lives for impairment as of the beginning of the fourth quarter of each year. The Company also assesses its goodwill and other intangible assets deemed to have indefinite useful lives for impairment when events or circumstances indicate that their carrying value may not be recoverable from future cash flows. The Company completed its required annual impairment test as of October 1, 2002 and determined that no impairment existed. The Company is in the process of completing its annual impairment test as of October 1, 2003.

## New Accounting Pronouncements

In January 2003, the Financial Accounting Standards Board (FASB) issued FASB Interpretation No. (FIN) 46, "Consolidation of Variable Interest Entities," which is an interpretation of Accounting Research Bulletin No. 51, "Consolidated Financial Statements." This interpretation addresses consolidation of entities that are not controllable through voting interests or in which the equity investors do not bear the residual economic risks. The objective of this interpretation is to provide guidance on how to identify a variable interest entity (VIE) and determine when the assets, liabilities, noncontrolling interests and results of operations of a VIE need to be consolidated with its primary beneficiary. A company that holds variable interests in an entity will need to consolidate the entity if the company's interest in the VIE is such that the company will absorb a majority of the VIE's expected losses and/or receive a majority of the VIE's expected residual returns or if the VIE does not have sufficient equity at risk to finance its activities without additional subordinated financial support from other parties. For VIEs in which a significant (but not majority) variable interest is held, certain disclosures are required. The consolidation requirements of FIN 46 apply immediately to VIEs created after January 31, 2003. Initially, the consolidation requirements applied to existing VIEs in the first fiscal year or interim period beginning after June 15,

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2003. On October 9, 2003, the effective date of FIN 46 was deferred until the end of the first interim or annual period ending after December 15, 2003 for VIEs created on or before January 31, 2003. Certain disclosure requirements apply in all financial statements issued after January 31, 2003, regardless of when the VIE was established. The adoption of this interpretation has not had and is not expected to have a material impact on the Company's financial position or results of operations.

In April 2003, the FASB issued SFAS No. 149, "Amendment to Statement 133 on Derivative Instruments and Hedging Activities." SFAS No. 149 amends and clarifies accounting for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities under SFAS No. 133. SFAS No. 149 is applied prospectively and is effective for contracts entered into or modified after June 30, 2003, except for SFAS No. 133 implementation issues that have been effective for fiscal quarters that began prior to June 15, 2003 and certain provisions relating to forward purchases and sales on securities that do not yet exist. The adoption of this statement has not had a material impact on the Company's financial position or results of operations.

In May 2003, the FASB issued SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity." SFAS No. 150 requires that certain financial instruments, which under previous guidance were accounted for as equity, must now be accounted for as liabilities. The financial instruments affected include mandatorily redeemable stock, certain financial instruments that require or may require the issuer to buy back some of its shares in exchange for cash or other assets and certain obligations that can be settled with shares of stock. SFAS No. 150 is effective for all financial instruments entered into or modified after May 31, 2003 and must be applied to the Company's existing financial instruments effective July 1, 2003. On October 29, 2003, the FASB deferred indefinitely the provisions of paragraphs 9 and 10 and related guidance in the appendices of this pronouncement as they apply to mandatorily redeemable noncontrolling interests. The adoption of the effective provisions of SFAS No. 150 have not had a material impact on the Company's financial position or results of operations.

#### Forward-Looking Statements

Portions of this Form 10-Q, including Management's Discussion and Analysis of Financial Condition and Results of Operations, contain forward-looking statements within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements, which are generally identified by the use of terms such as "will", "expected" or similar expressions, involve known and unknown risks, uncertainties and other factors that may cause the Company's actual results and performance in future periods to be materially different from any future results or performance suggested in forward-looking statements in this Form 10-Q. Any forward-looking statements speak only as of the date of this report and the Company expressly disclaims any obligation to update or revise any forward-looking statements found herein to reflect any changes in its expectations or results or any change in events. Factors that could cause results to differ materially include, but are not limited to: commercial real estate vacancy levels; employment conditions and their effect on vacancy rates; property values; rental rates; any general economic recession domestically or internationally; and general conditions of financial liquidity for real estate transactions.

#### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The Company's exposure to market risk consists of foreign currency exchange rate fluctuations related to international operations and changes in interest rates on debt obligations.

Approximately 28% of the Company's business is transacted in local currencies of foreign countries. The Company attempts to manage its exposure primarily by balancing monetary assets and liabilities, and maintaining cash positions only at levels necessary for operating purposes. The Company routinely monitors its transaction exposure to currency exchange rate changes and sometimes enters into foreign currency exchange forward and option contracts to limit its exposure, as appropriate. The Company does not engage in any speculative activities with respect to foreign currency. At September 30, 2003, the Company had foreign currency exchange forward contracts with an aggregate notional amount of \$26.5 million, which mature on various dates through December 31, 2003. The net impact on the Company's earnings for the three and nine months ended September 30, 2003 resulting from the unrealized gains and/or losses on these foreign currency exchange forward contracts was not significant.

The Company manages its interest expense by using a combination of fixed and variable rate debt. The Company's fixed and variable rate debt at September 30, 2003 consisted of the following (dollars in thousands):

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Year of Maturity	Fixed Rate	One-Month Yen LIBOR +3.5%	One-Month LIBOR +1.0%	Three-Month LIBOR +3.25%	Three-Month LIBOR +3.75%	Six-Month GBP LIBOR - 1.0%	Interest Rate Range of 1.0% to 6.25%	Total
2003	\$ 467	\$ —	\$ 135,820	\$ 2,188	\$ 650	\$ 13,881	\$ 12,102	\$ 165,108
2004	1,948	—	—	8,750	2,600	—	—	13,298
2005	17	—	—	8,750	2,600	—	—	11,367
2006	17	—	—	8,750	2,600	—	—	11,367
2007	17	—	—	4,375	2,600	—	—	6,992
2008	2,023	40,389	—	—	2,600	—	—	45,012
Thereafter (1)	499,743	—	—	—	242,000	—	—	741,743
<b>Total</b>	<b>\$ 504,232</b>	<b>\$ 40,389</b>	<b>\$ 135,820</b>	<b>\$ 32,813</b>	<b>\$ 255,650</b>	<b>\$ 13,881</b>	<b>\$ 12,102</b>	<b>\$ 994,887</b>
Weighted Average Interest Rate	11.2%	3.9%	2.1%	4.4%	4.9%	1.5%	6.0%	7.6%

(1) Primarily includes the 11¼% Senior Subordinated Notes, the 9¾% Senior Notes, the 16% Senior Notes and the Tranche B term loans under the senior secured credit facilities.

The Company utilizes sensitivity analyses to assess the potential effect of its variable rate debt. If interest rates were to increase by 40 basis points, which would comprise approximately 10% of the weighted average variable rates at September 30, 2003, the net impact would be a decrease of \$1.5 million on pre-tax income and cash provided by operating activities for the nine months ending September 30, 2003.

Based on dealers' quotes at September 30, 2003, the estimated fair value's of the Company's \$200.0 million 9¾% Senior Notes and the \$ 226.1 million 11¼% Senior Subordinated Notes were \$216.0 million and \$244.2 million, respectively. There was no trading activity for the 16% Senior Notes, which have an effective interest rate of 17.8% and are due in 2011. The carrying value of the 16% Senior Notes as of September 30, 2003 totaled \$63.4 million. Estimated fair values for the term loans under the senior secured credit facilities and the remaining long-term debt are not presented because the Company believes that they are not materially different from book value, primarily because the majority of the remaining debt is based on variable rates that approximate terms that could be obtained at September 30, 2003.

As described in greater detail in Note 19 of the Notes to Consolidated Financial Statements, on October 14, 2003, the Company refinanced its senior secured credit facilities, which included an increase in the amount of outstanding term loans, as well as changes to the amortization schedules, maturities and interest rates of the term loans.

#### ITEM 4. DISCLOSURE CONTROLS AND PROCEDURES

As of the end of the period covered by this report, the Company carried out an evaluation, under the supervision and with the participation of its Chief Executive Officer and Chief Financial Officer, of the effectiveness of its disclosure controls and procedures. Disclosure controls and procedures are designed to ensure that information required to be disclosed in the periodic reports filed or submitted under the Securities and Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective as of the end of the quarterly period covered by this report. No change in the internal control over financial reporting occurred during the last fiscal quarter that has materially affected, or is likely to materially affect, the internal control over financial reporting.



## PART II. OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

The Company is a party to a number of pending or threatened lawsuits arising out of, or incident to, its ordinary course of business. Management believes that any liability that may result from the disposition of these lawsuits will not have a material effect on the Company's consolidated financial position or results of operations.

### ITEM 2. CHANGES IN SECURITIES AND USE OF PROCEEDS

- (a) Not applicable
- (b) Not applicable
- (c) On July 23, 2003, the Company issued and sold the following equity securities pursuant to the Section 4(2) exemption from the registration requirements of the Securities Act of 1933, as amended:
  - 6,587,135 shares of the Company's Class B Common Stock, par value \$0.01 per share, to Blum Strategic Partners, L.P., a Delaware limited partnership, Blum Strategic Partners II, L.P., a Delaware limited partnership and Blum Strategic Partners II GmbH & Co. KG, a German limited partnership, for an aggregate cash purchase price of \$105,394,160
  - 227,865 shares of the Company's Class A Common Stock, par value \$.01 per share, to DLJ Investment Partners, L.P., a Delaware limited partnership, DLJ Investment Partners II, L.P., a Delaware limited partnership, DLJIP II Holdings, L.P., a Delaware limited partnership, for an aggregate cash purchase price of \$3,645,840
  - 625,000 shares of the Company's Class A Common Stock to California Public Employees' Retirement System for an aggregate cash purchase price of \$10,000,000
  - 60,000 shares of the Company's Class B Common Stock to Frederic V. Malek for an aggregate cash purchase price of \$960,000

The cash proceeds received by the Company from these issuances of shares of Class A and Class B common stock, together with borrowings under a new credit agreement and the cash proceeds received from the issuance of 9¾% Senior Notes due May 15, 2010, were used to consummate the Insignia Acquisition.

- (d) Not applicable

### ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

The Annual Meeting of Stockholders was held on September 16, 2003. The stockholders elected the following nine directors to serve one-year terms:

- Richard Blum
- Jeffrey Cozad
- Bradford Freeman
- Frederick Malek
- Claus Moller
- Jeffrey Pion
- Brett White
- Gary Wilson
- Raymond Wirta

Each director nominee received 148,275,351 votes, constituting all votes cast by identifiable stockholders. Additional proxies were received by the Company from stockholders that could not be identified from the

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information on the proxy. All such proxies voted in favor of each director nominee, except for a single stockholder who abstained. The votes received from identifiable stockholders constituted 76% of the maximum number of votes that could be cast and were sufficient for the election of directors. There were no other abstentions or broker non-votes.

### ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

- (a) Exhibits

Exhibit Number	Description
2.1*	Amended and Restated Agreement and Plan of Merger, dated May 28, 2003, by and among CBRE Holding (the "Company"), CB Richard Ellis Services (CBRE), Apple Acquisition Corp. (Apple Acquisition), a Delaware corporation and wholly owned subsidiary of CBRE and Insignia Financial Group Inc. (Insignia) (incorporated by reference to Exhibit 2.2 to CBRE's Registration Statement on Form S-4 filed on October 20, 2003).
2.2*	Purchase Agreement, dated May 28, 2003, by and among the Company, CBRE, Apple Acquisition and Insignia (incorporated by reference to Exhibit 2.3 to CBRE's Registration Statement on Form S-4 filed on October 20, 2003).
4.1*	Indenture, dated May 22, 2003, among CBRE Escrow, Inc. and U.S. Bank National Association, as Trustee, for 9¾% Senior Notes due May 15, 2010 (incorporated by reference to Exhibit 4.1 to CBRE's Registration Statement on Form S-4 filed on October 20, 2003)
10.1	Amended and Restated Credit Agreement dated October 14, 2003, by and among CBRE, the Company, and Credit Suisse First Boston.
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes – Oxley Act of 2003.
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes – Oxley Act of 2003.
32	Certifications by Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes – Oxley Act of 2003.

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\* Incorporated by reference.

- (b) Reports on Form 8-K

The registrant filed a Current Report on Form 8-K on August 18, 2003 with regard to the Company's conference call on August 11, 2003 discussing the operating results for the second quarter of 2003.

The registrant filed a Current Report on Form 8-K on August 11, 2003 furnishing a press release issued on August 11, 2003 discussing the Company's operating results for the second quarter of 2003.

The registrant filed a Current Report on Form 8-K on August 7, 2003 to announce the consummation of the Company's acquisition of Insignia Financial Group, Inc. ("Insignia") on July 23, 2003.

The registrant filed a Current Report on Form 8-K on July 9, 2003 with regard to a press release issued on July 8, 2003 announcing that the Company and Insignia had reached an agreement in principle with certain stockholders of Insignia providing for the settlement of purported class action litigation recently commenced by such stockholders.

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#### SIGNATURE

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.

**CBRE HOLDING, INC.**

Date: November 14, 2003

/s/ KENNETH J. KAY  
Kenneth J. Kay  
*Chief Financial Officer*

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## AMENDED AND RESTATED CREDIT AGREEMENT

dated as of October 14, 2003,

among

CB RICHARD ELLIS SERVICES, INC.

CBRE HOLDING, INC.

THE LENDERS NAMED HEREIN

and

CREDIT SUISSE FIRST BOSTON,

as Administrative Agent

CREDIT SUISSE FIRST BOSTON,

as Sole Lead Arranger and Sole Bookrunner

CREDIT LYONNAIS NEW YORK BRANCH,

as Syndication Agent

SCOTIA CAPITAL,

as Documentation Agent

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AMENDED AND RESTATED CREDIT AGREEMENT dated as of October 14, 2003, among CB RICHARD ELLIS SERVICES, INC., a Delaware corporation (the "*Borrower*"), CBRE HOLDING, INC., a Delaware corporation ("*Holdings*"), the Lenders (as defined in Article I), and CREDIT SUISSE FIRST BOSTON, a bank organized under the laws of Switzerland, acting through its Cayman Islands branch, as administrative agent (in such capacity, the "*Administrative Agent*") and as collateral agent (in such capacity, the "*Collateral Agent*") for the Lenders.

The Borrower, Holdings, the Administrative Agent and certain lenders party thereto (the "*Existing Lenders*") previously entered into that certain Credit Agreement dated as of July 20, 2001, as amended and restated as of May 22, 2003 (the "*Existing Credit Agreement*"), under which (a) the Existing Lenders extended credit or agreed to extend credit in the form of (i) Tranche A Term Loans, Tranche B Term Loans and Additional Tranche B Term Loans (as each such term is defined in the Existing Credit Agreement, the "*Existing Term Loans*"), and (ii) Revolving Loans at any time and from time to time prior to the Revolving Credit Maturity Date, in an aggregate principal amount at any time outstanding not in excess of \$90,000,000, (b) the Swingline Lender agreed to extend credit, at any time and from time to time prior to the Revolving Credit Maturity Date, in the form of Swingline Loans, in an aggregate principal amount at any time outstanding not in excess of \$10,000,000 and (c) the Issuing Bank agreed to issue Letters of Credit, in an aggregate face amount at any time outstanding not in excess of \$30,000,000, to support payment obligations incurred in the ordinary course of business by the Borrower and its Subsidiaries.

The Borrower and Holdings have requested that the Term Lenders make Term Loans to the Borrower in an aggregate principal amount not in excess of \$300,000,000, subject to the terms and conditions set forth herein, the proceeds of which will be used by the Borrower solely (a) to prepay the Existing Term Loans, (b) to redeem, repurchase or otherwise retire a portion of the Holdco Notes and (c) to pay fees and expenses incurred in connection with the Amendment Transactions.

The Term Lenders are willing to make the Term Loans to the Borrower for the purposes set forth above and subject to the terms and conditions set forth herein.

The Borrower, Holdings, the Required Lenders (as defined in the Existing Credit Agreement) and the Term Lenders desire to amend and restate the Existing Credit Agreement in the form hereof to, among other things, set forth the terms and conditions under which the Lenders will make the Term Loans to the Borrower and to make certain other amendments thereto.

The amendment and restatement of the Existing Credit Agreement evidenced by this Agreement shall become effective as provided in the Amendment Agreement; *provided, however*, that if the Restatement Date does not occur on or before October 31, 2003, then this Agreement shall be of no force or effect and the Existing Credit Agreement shall continue in full force and effect.

Accordingly, the parties hereto agree as follows:

ARTICLE I

*Definitions*

SECTION 1.01. **Defined Terms.** As used in this Agreement, the following terms shall have the meanings specified below:

“*ABR*”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“*Additional L/C Facility*” shall mean each letter of credit facility provided to the Borrower by one or more financial institutions, whether or not each such financial institution is a Lender, pursuant to which (a) standby letters of credit are issued or outstanding for the account of the Borrower or any Subsidiary to support payment obligations incurred in the ordinary course of business, and (b) any extensions, renewals or replacements of such letters of credit to the extent the aggregate principal amount of such facility is not increased.

“*Adjusted LIBO Rate*” shall mean, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum equal to the product of (a) the LIBO Rate in effect for such Interest Period and (b) Statutory Reserves.

“*Administrative Agent Fees*” shall have the meaning assigned to such term in Section 2.05(b).

“*Administrative Questionnaire*” shall mean an Administrative Questionnaire in the form of Exhibit A, or such other form as may be supplied from time to time by the Administrative Agent.

“*Affiliate*” shall mean, when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the person specified; *provided, however*, that, for purposes of Section 6.07, the term “*Affiliate*” shall also include any person that directly or indirectly owns 10% or more of any class of Equity Interests of the person specified or that is an officer or director of the person specified.

“*Aggregate Revolving Credit Exposure*” shall mean the aggregate amount of the Lenders’ Revolving Credit Exposures.

“*Alternate Base Rate*” shall mean, for any day, a rate per annum equal to the greater of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus ½ of 1%. Any change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective on the effective date of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

“*Amendment Agreement*” shall mean the Amendment Agreement dated as of October 14, 2003, among other things, effecting the amendment and restatement of the Existing Credit Agreement.

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“*Amendment Transactions*” shall mean, collectively, the transactions to occur on or prior to the Restatement Date, including (a) the execution and delivery of the Amendment Agreement and the borrowing of the Term Loans hereunder, (b) the prepayment of the Existing Term Loans and (c) the payment of all fees and expenses to be paid on or prior to the Restatement Date and owing in connection with the foregoing.

“*Applicable Percentage*” shall mean, for any day, subject to Section 2.07, (a) with respect to any Eurodollar Term Loan, 3.25%, (b) with respect to any ABR Term Loan, 2.25%, and (c) with respect to any Revolving Loan, the applicable percentage set forth below under the caption “Eurodollar Spread—Revolving Loans” or “ABR Spread—Revolving Loans”, as the case may be, based upon the Leverage Ratio as of the relevant date of determination:

<b>Leverage Ratio</b>	<b>Eurodollar Spread— Revolving Loans</b>	<b>ABR Spread— Revolving Loans</b>
<u>Category 1</u> Greater than 2.5 to 1.0	3.75 %	2.75 %
<u>Category 2</u> Greater than 2.0 to 1.0 but less than or equal to 2.5 to 1.0	3.50 %	2.50 %
<u>Category 3</u> Greater than 1.5 to 1.0 but less than or equal to 2.0 to 1.0	3.25 %	2.25 %
<u>Category 4</u> Equal to or less than 1.5 to 1.0	3.00 %	2.00 %

Each change in the Applicable Percentage resulting from a change in the Leverage Ratio shall be effective with respect to all Revolving Loans and Letters of Credit outstanding on and after the date of delivery to the Administrative Agent of the financial statements and certificates required by Section 5.04(a) or (b) and Section 5.04(c), respectively, indicating such change until the date immediately preceding the next date of delivery of such financial statements and certificates indicating another such change. Notwithstanding the foregoing, (a) at any time during which the Borrower has failed to deliver the financial statements and certificates required by Section 5.04(a) or (b) and Section 5.04(c), respectively, or (b) at any time after the occurrence and during the continuance of an Event of Default, the Leverage Ratio shall be deemed to be in Category 1 for purposes of determining the Applicable Percentage.

“*Asset Sale*” shall mean the sale, transfer or other disposition (by way of merger, casualty, condemnation or otherwise) by the Borrower or any of the Subsidiaries to any person other than the Borrower or any Subsidiary Guarantor of any assets of the Borrower or any of the Subsidiaries (other than (i) inventory, damaged, obsolete or worn out assets and Permitted

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Investments, in each case disposed of in the ordinary course of business, (ii) dispositions between or among Foreign Subsidiaries, (iii) the sale by Melody of assets purchased and/or funded pursuant to the Melody Mortgage Warehousing Facility or the Melody Loan Arbitrage Facility, (iv) the sale by Melody of servicing rights in respect of mortgage portfolios in the ordinary course of its business and consistent with past practice) and (v) Designated Real Estate Assets or all or any portion of the Equity Interests of any Designated Real Estate Asset Subsidiary); provided that any asset sale or series of related asset sales having a value (net of related assumed liabilities) not in excess of \$750,000 shall be deemed not to be an "Asset Sale" for purposes of this Agreement.

"*Assignment and Acceptance*" shall mean an assignment and acceptance entered into by a Lender and an assignee, and accepted by the Administrative Agent, in the form of Exhibit B or such other form as shall be approved by the Administrative Agent.

"*Available Cash*" shall mean, on any date, the amount of cash and Permitted Investments held by the Borrower and the Domestic Subsidiaries on such date, less the amount thereof that is (a) reflected as "Cash Surrender Value for Insurance Policy for Deferred Compensation Plan" and "Prepaid Pension Costs" on the most recent balance sheet of the Borrower delivered pursuant to this Agreement or (b) subject to restrictions, directly or indirectly, on its use.

"*Blum Funds*" shall mean (i) Blum Strategic Partners, L.P. (as successor to RCBA Strategic Partners, L.P.) and its successors, (ii) Blum Capital Partners, L.P. and its successors and (iii) any investment fund which is an Affiliate of Blum Capital Partners, L.P. or its successors.

"*Board*" shall mean the Board of Governors of the Federal Reserve System of the United States of America.

"*Borrowing*" shall mean (a) Loans of the same Class and Type made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect, or (b) a Swingline Loan.

"*Borrowing Request*" shall mean a request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit C, or such other form as shall be approved by the Administrative Agent.

"*Business Day*" shall mean any day other than a Saturday, Sunday or day on which banks in New York City are authorized or required by law to close provided, however, that when used in connection with a Eurodollar Loan, the term "*Business Day*" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

"*Calpers Co-investment*" shall mean a Co-investment by Global Innovation Contributors, LLC (which shall be a Co-investment Subsidiary) in Global Innovation Partners, LLC (which shall be a Co-investment Vehicle), pursuant to the terms of such Co-investment contained in the organizational documents of Global Innovation Contributors, LLC and Global Innovation Partners, LLC as of the Closing Date.

"*Capital Expenditures*" shall mean, for any period, (a) the additions to property, plant and equipment and other capital expenditures of the Borrower and its consolidated Subsidiaries that are set forth as such in a consolidated statement of cash flows of the Borrower for such period prepared in accordance with GAAP and (b) Capital Lease Obligations incurred by the Borrower and its consolidated Subsidiaries during such period, but excluding in each case (i) any such expenditure made to restore, replace or rebuild property to the condition of such property

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immediately prior to any damage, loss, destruction or condemnation of such property, to the extent such expenditure is made with insurance proceeds, condemnation awards, damage recovery proceeds or other indemnity payments relating to any such damage, loss, destruction or condemnation within 270 days of receipt of such proceeds, (ii) any such expenditure made at the request of, and for which the Borrower or any consolidated Subsidiary receives reimbursement in cash from, a person other than the Borrower or any Subsidiary in the ordinary course of business, and (iii) expenditures which represent any part of the aggregate consideration made in connection with any investment or Permitted Acquisition permitted under Section 6.04. For purposes of determining the Fixed Charge Coverage Ratio for the periods ended on September 30, 2003, December 31, 2003, and March 31, 2004, Capital Expenditures will be deemed to be equal to (i) for the fiscal quarter ended December 31, 2002, \$9,041,000, (ii) for the fiscal quarter ended March 31, 2003, \$5,486,000 and (iii) for the fiscal quarter ended June 30, 2003, \$616,000.

"*Capital Lease Obligations*" of any person shall mean the obligations of such person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"*Cash Equity Contribution*" shall mean (a) the contribution by one or more Permitted Investors or investors designated by the Blum Funds to Holdings of an aggregate amount of \$120,000,000 in cash in the form of equity on the First Restatement Date and (b) the contribution by Holdings on the First Restatement Date of an aggregate amount of \$100,000,000 in cash to the Borrower as common equity.

"*Change in Control*" shall mean (a) the failure by the Blum Funds to own, directly or indirectly, beneficially and of record, Equity Interests in Holdings representing at least 75% of the Equity Interests in Holdings owned by the Blum Funds on the Closing Date; (b) any person or "group" (within the meaning of Section 13(d) or 14(d) of the Securities Exchange Act of 1934 as in effect on the Closing Date) other than a group controlled by the Blum Funds shall own, beneficially or of record, Equity Interests of Holdings that represents a greater percentage of the Equity Interests of Holdings then owned by the Blum Funds; (c) the Blum Funds shall cease to have the right or ability, by voting power, contract or otherwise, to elect or designate for election a majority of the seats on the board of directors of Holdings; (d) occupation of a majority of the seats (other than vacant seats) on the board of directors of Holdings by persons who were neither (i) nominated by the board of directors of Holdings or any Permitted Investor nor (ii) appointed by the directors so nominated; (e) Holdings shall cease to directly own 100% of the issued and outstanding Equity Interests of the Borrower or (f) the occurrence of a "Change of Control" under and as defined in the Holdco Note Documents, the Senior Subordinated Note Documents or the Senior Unsecured Note Documents. For purposes hereof, (i) the Blum Funds shall not be deemed to beneficially own any Equity Interests owned of record by any other person for purposes of clause (a) and (ii) any person other than the Blum Funds that is member of a group that includes the Blum Funds shall not be deemed to beneficially own any Equity Interests owned of record by the Blum Funds as a result of such ownership by the Blum Funds.

"*Change in Law*" shall mean (a) the adoption of any law, rule or regulation after the Closing Date, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.14, by any lending office of such Lender or by

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such Lender's or Issuing Bank's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date.

"*Class*", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Term Loans, Other Term Loans or Swingline Loans and, when used in reference to any Commitment, refers to whether such Commitment is a Revolving Credit Commitment, a Term Loan Commitment, an Incremental Term Loan Commitment or a Swingline Commitment.

“Closing Date” shall mean July 20, 2001.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“Co-investment” shall mean any investment by a Co-investment Subsidiary in up to 30% of the outstanding Equity Interests and/or outstanding Indebtedness of a Co-investment Vehicle, in each case, pursuant to arrangements substantially similar to arrangements entered into by the Borrower and the Subsidiaries prior to the First Restatement Date.

“Co-investment Subsidiary” shall mean (a) any Subsidiary of the Borrower that is formed solely for the purpose of, and engages in no business other than the business of, investing in or managing Co-investment Vehicles, whether directly or indirectly through one or more other Co-investment Subsidiaries, and (b) the Co-investment Subsidiaries existing on the Restatement Date and listed on Schedule 1.01(b).

“Co-investment Vehicle” shall mean an entity formed for the purpose of investing principally in commercial real estate and managed by a Co-investment Subsidiary pursuant to arrangements substantially similar to arrangements entered into by the Borrower and the Subsidiaries prior to the First Restatement Date.

“Collateral” shall mean all the “Collateral” as defined in any Security Document.

“Collateral Agreement” shall mean the Guarantee and Collateral Agreement, dated as of July 20, 2001, among the Borrower, Holdings, the Subsidiary Guarantors and the Collateral Agent for the benefit of the Secured Parties, a copy of which is attached as Exhibit D.

“Commitment” shall mean, with respect to any Lender, such Lender’s Revolving Credit Commitment, Term Loan Commitment and Swingline Commitment.

“Commitment Fee” shall have the meaning assigned to such term in Section 2.05(a).

“Confidential Information Memorandum” shall mean the Confidential Information Memorandum of the Borrower dated September 2003.

“Consolidated EBITDA” shall mean, for any period, Consolidated Net Income for such period plus (a) without duplication and to the extent deducted in determining such Consolidated Net Income, the sum of (i) Consolidated Interest Expense for such period (including deferred financing costs), (ii) consolidated income tax expense for such period, (iii) all amounts attributable to depreciation and amortization for such period, (iv) any non-recurring fees, expenses or charges in connection with the consummation of the Merger Transactions or the Amendment Transactions, (v) any non-recurring fees, expenses or charges related to any Equity

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Issuance, investment permitted under Section 6.04, Permitted Acquisition or incurrence of Indebtedness, in an amount not exceeding \$5,000,000 for all such non-recurring fees, expenses and charges, (vi) any cost savings implemented within twelve months of the First Restatement Date associated with the Insignia Merger and contained in Schedule 1.01(d), and (vii) all other non-cash losses, expenses and charges of the Borrower and its consolidated Subsidiaries (excluding (x) the write-down of current assets and (y) any such non-cash charge to the extent that it represents an accrual of or reserve for cash expenditures in any future period) and minus (b) without duplication (i) all cash payments made during such period on account of reserves, restructuring charges and other noncash charges added to Consolidated Net Income pursuant to clause (a)(vi) above in a previous period and (ii) to the extent included in determining such Consolidated Net Income, any extraordinary gains for such period, all determined on a consolidated basis in accordance with GAAP. For purposes of determining the Fixed Charge Coverage Ratio, the Interest Coverage Ratio, the Leverage Ratio and the Senior Secured Leverage Ratio as of or for the periods ended on September 30, 2003, December 31, 2003, and March 31, 2004, Consolidated EBITDA will be deemed to be equal to (i) for the fiscal quarter ended December 31, 2002, \$79,592,000, (ii) for the fiscal quarter ended March 31, 2003, \$14,236,000, and (iii) for the fiscal quarter ended June 30, 2003, \$45,837,000.

“Consolidated Interest Expense” shall mean, for any period, (a) the sum of (i) the interest expense (including imputed interest expense in respect of Capital Lease Obligations but excluding all non-cash interest expense) of the Borrower and the Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP, plus (ii) any interest accrued during such period in respect of Indebtedness of the Borrower or any Subsidiary that is required to be capitalized rather than included in consolidated interest expense for such period in accordance with GAAP, minus (b) to the extent otherwise included in Consolidated Interest Expense, (i) deferred financing costs, (ii) interest expense associated with any Non-Recourse Indebtedness and (iii) interest expense on the Existing Term Loans. For purposes of the foregoing, interest expense shall be determined after giving effect to any net payments made or received by the Borrower or any Subsidiary with respect to interest rate Hedging Agreements. For purposes of determining the Interest Coverage Ratio and the Fixed Charge Coverage Ratio for the period of four consecutive quarters ending on September 30, 2003, December 31, 2003, March 31, 2004, June 30, 2004 and September 30, 2004, Consolidated Interest Expense shall be deemed to be (a) for Consolidated Interest Expense in respect of the Senior Unsecured Notes and the Term Loans, (i) the Consolidated Interest Expense for the two consecutive fiscal quarters ended September 30, 2003 (as if such Indebtedness were incurred on April 1, 2003), multiplied by 2, (ii) the Consolidated Interest Expense for the three consecutive fiscal quarters ended December 31, 2003 (as if such Indebtedness were incurred on April 1, 2003), multiplied by 4/3, (iii) the Consolidated Interest Expense for the four consecutive fiscal quarters ending on March 31, 2004 (as if such Indebtedness were incurred on April 1, 2003), (iv) the Consolidated Interest Expense for the four consecutive fiscal quarters ending on June 30, 2004 (as if such Indebtedness were incurred on July 1, 2004), and (v) the Consolidated Interest Expense for the four consecutive fiscal quarters ending on September 30, 2004 (as if such Indebtedness were incurred on October 1, 2004), respectively, plus, for each such period, and (b) for Consolidated Interest Expense in respect of all other Indebtedness, the actual Consolidated Interest Expense for such borrowings for such period.

“Consolidated Net Income” shall mean, for any period, the net income or loss of the Borrower and the Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; *provided* that there shall be excluded (a) the income of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by the Subsidiary of that

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income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, statute, rule or governmental regulation applicable to such Subsidiary, (b) except as set forth in Section 1.04, the income or loss of any person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Borrower or any Subsidiary or the date that such person’s assets are acquired by the Borrower or any Subsidiary, (c) the income of any person in which any other person (other than the Borrower or a Subsidiary of which at least 80% of the Equity Interests is owned by the Borrower or a wholly owned Subsidiary or any director holding qualifying shares in accordance with applicable law) has a joint interest, except to the extent of the amount of dividends or other distributions actually received by the Borrower or a wholly owned Subsidiary from such person during such period, and (d) any gains attributable to sales of assets out of the ordinary course of business; *provided further*, that Consolidated Net Income for any period shall be increased by cash received during such period by the Borrower or any of its consolidated Subsidiaries in respect of commissions receivable (net of related commissions payable to brokers) on leasing transactions that were completed by any acquired business prior to the acquisition of such business and which purchase accounting rules under GAAP would require to be recognized as an intangible asset purchased.

“Control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise, and the terms “Controlling” and “Controlled” shall have meanings correlative thereto.

“Credit Event” shall have the meaning assigned to such term in Section 4.01.



“Default” shall mean any event or condition which upon notice, lapse of time or both would constitute an Event of Default.

“Deferred Compensation Plan” shall mean the Deferred Compensation Plan for employees of the Borrower and the Subsidiaries and any successor plan thereto and the 401(k) Restoration Plan of Insignia and any successor plan thereto.

“Designated Real Estate Asset Guarantee” shall mean any Guarantee by Holdings, the Borrower or any of its Subsidiaries of any of the following obligations of, or relating to, the Designated Real Estate Asset Subsidiaries and the Designated Real Estate Assets: (a) the repayment of a fixed amount of indebtedness or (b) liabilities associated with recourse exceptions to non-recourse indebtedness.

“Designated Real Estate Asset Subsidiaries” shall mean those persons specified in Schedule 1.01(e).

“Designated Real Estate Assets” shall mean those real estate assets specified in Schedule 1.01(e).

“Designated Real Estate Credit Support” shall mean, with respect to any Designated Real Estate Assets, (a) any Designated Real Estate Asset Guarantee or (b) any letter of credit for which Holdings, the Borrower or any of its Subsidiaries is the account party or otherwise liable that supports the indebtedness or other obligations or liabilities of such Designated Real Estate Assets or the Designated Real Estate Asset Subsidiaries that are the direct or indirect owners of such Designated Real Estate Assets.

“dollars” or “\$” shall mean lawful money of the United States of America.

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“Domestic Subsidiaries” shall mean all Subsidiaries incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia.

“Environmental Laws” shall mean all former, current and future Federal, state, local and foreign laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives, orders (including consent orders), and agreements in each case, relating to protection of the environment, natural resources, human health and safety or the presence, Release of, or exposure to, Hazardous Materials, or the generation, manufacture, processing, distribution, use, treatment, storage, transport, recycling or handling of, or the arrangement for such activities with respect to, Hazardous Materials.

“Environmental Liability” shall mean all liabilities, obligations, damages, losses, claims, actions, suits, judgments, orders, fines, penalties, fees, expenses and costs (including administrative oversight costs, natural resource damages and remediation costs), whether contingent or otherwise, arising out of or relating to (a) compliance or non-compliance with any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” shall mean shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity interests in any person.

“Equity Issuance” shall mean any issuance or sale by Holdings, the Borrower or any of their respective subsidiaries of any Equity Interests or any obligations convertible into or exchangeable for, or giving any person a right, option or warrant to acquire such Equity Interests or such convertible or exchangeable obligations, as applicable, except in each case for (a) any issuance or sale to any Permitted Investor (other than any such person acting in the capacity of an underwriter or placement agent with regard to such Equity Issuance), Holdings, the Borrower or any Subsidiary, (b) any issuance of directors’ qualifying shares and (c) sales or issuances of common stock of Holdings or stock fund units in the Deferred Compensation Plan to management, employees or consultants of Holdings, the Borrower or any Subsidiary under the Deferred Compensation Plan or any employee stock option or stock purchase plan or employee benefit plan in existence from time to time.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

“ERISA Affiliate” shall mean any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code, or solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” shall mean (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of

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ERISA with respect to the termination of any Plan (other than a standard termination pursuant to Section 4041(b) of ERISA) or the withdrawal or partial withdrawal of the Borrower or any of its ERISA Affiliates from any Plan or Multiemployer Plan; (e) the receipt by the Borrower or any of its ERISA Affiliates from the PBGC or a plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the adoption of any amendment to a Plan that would require the provision of security pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA; (g) the receipt by the Borrower or any of its ERISA Affiliates of any intent to withdraw from a Multiemployer Plan, or the receipt by any Multiemployer Plan from the Borrower or any of its ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; (h) the occurrence of a “prohibited transaction” with respect to which the Borrower or any of the Subsidiaries is a “disqualified person” (within the meaning of Section 4975 of the Code) or with respect to which the Borrower or any such Subsidiary could otherwise be liable; (i) any other event or condition with respect to a Plan or Multiemployer Plan that could result in liability of the Borrower or any Subsidiary; or (j) any Foreign Benefit Event.

“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” shall have the meaning assigned to such term in Article VII.

“Excess Cash Flow” shall mean, for any period, the excess of Consolidated EBITDA for such period minus the sum, without duplication, of (i) the amount of any Taxes paid in cash by the Borrower and the Subsidiaries with respect to such period, (ii) Consolidated Interest Expense for such period paid in cash, (iii) Capital Expenditures made in cash in accordance with Section 6.10 during such period, except to the extent financed with the proceeds of Indebtedness, equity issuances, casualty proceeds, condemnation proceeds or other proceeds that would not be included in Consolidated EBITDA, (iv) permanent repayments of Indebtedness (other than mandatory prepayments of Loans under Section 2.13) made by the Borrower and the subsidiaries during such period, but only to the extent that such prepayments by their terms cannot be reborrowed or redrawn and do not occur in connection with a refinancing of all or any portion of such Indebtedness, (v) the amount of net investments made in cash in accordance with Section 6.04(g) or (i) during such period, (vi) the amount of Restricted Payments made in cash by the Borrower in accordance with Section 6.06(a) (other than Section 6.06(a)(viii)) during such period, and (vii) any non-recurring fees, expenses or charges in connection with the consummation of the Merger Transactions or the

Amendment Transactions to the extent included in Consolidated EBITDA with respect to such period pursuant to clause (iv) of the definition of Consolidated EBITDA.

“*Excluded Taxes*” shall mean, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by (i) any Governmental Authority of the United States of America (or any political subdivision or taxing authority thereof or therein), or the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, or (ii) as a result of a present or former connection between the Administrative Agent or such Lender and the jurisdiction of the Governmental Authority imposing such tax (or any political subdivision or taxing authority

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thereof or therein) other than a connection arising solely as a result of entering into any Loan Document; (b) any branch profits taxes imposed by any Governmental Authority of the United States of America (or any political subdivision or taxing authority thereof or therein) or any similar tax imposed by any other jurisdiction described in clause (a) above, and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.21(a)), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender’s failure to comply with Section 2.20(f), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 2.20(a).

“*Existing Term Loans*” shall have the meaning assigned to such term in the preamble to this Agreement.

“*Federal Funds Effective Rate*” shall mean, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for the day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“*Fees*” shall mean the Commitment Fees, the Administrative Agent Fees, the L/C Participation Fees and the Issuing Bank Fees.

“*Financial Officer*” of any person shall mean the chief financial officer, principal accounting officer, Treasurer or Controller of such person.

“*First Restatement Date*” shall mean July 23, 2003.

“*Fixed Charge Coverage Ratio*” shall mean, for any period, the ratio of (a) Consolidated EBITDA for such period minus Capital Expenditures and Co-investments for such period to (b) the sum of Consolidated Interest Expense plus Restricted Payments made under Section 6.06(a)(ii) by the Borrower for such period.

“*Foreign Benefit Event*” shall mean, with respect to any Foreign Pension Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any applicable law, or in excess of the amount that would be permitted absent a waiver from a Governmental Authority, (b) the failure to make the required contributions or payments, under any applicable law, on or before the due date for such contributions or payments, (c) the receipt of a notice by a Governmental Authority relating to the intention to terminate any such Foreign Pension Plan or to appoint a trustee or similar official to administer any such Foreign Pension Plan, or alleging the insolvency of any such Foreign Pension Plan and (d) the incurrence of any liability in excess of \$5,000,000 (or the equivalent thereof in another currency) by Holdings, the Borrower or any of its Subsidiaries under applicable law on account of the complete or partial termination of such Foreign Pension Plan or the complete or partial withdrawal of any participating employer therein, or (e) the occurrence of any transaction that is prohibited under any applicable law and could reasonably be expected to result in the incurrence of any liability by Holdings, the Borrower or any of its Subsidiaries, or the imposition on Holdings, the Borrower or any of its Subsidiaries of

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any fine, excise tax or penalty resulting from any noncompliance with any applicable law, in each case in excess of \$5,000,000 (or the equivalent thereof in another currency).

“*Foreign Lender*” shall mean any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is located. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“*Foreign Pension Plan*” shall mean any plan, fund (including any superannuation fund) or other similar program established or maintained outside the United States by Holdings, the Borrower or any one or more of its Subsidiaries primarily for the benefit of employees of Holdings, the Borrower or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

“*Foreign Subsidiary*” shall mean any Subsidiary that is not a Domestic Subsidiary.

“*GAAP*” shall mean United States generally accepted accounting principles applied on a consistent basis.

“*Governmental Authority*” shall mean any Federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

“*Granting Lender*” shall have the meaning assigned to such term in Section 9.04(i).

“*Guarantee*” of or by any person shall mean any obligation, contingent or otherwise, of such person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other person (the “*primary obligor*”) in any manner, whether directly or indirectly, and including any obligation of such person, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligation, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment of such Indebtedness or other obligation or (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation; *provided, however*, that the term “*Guarantee*” shall not include endorsements for collection or deposit in the ordinary course of business.

“*Guarantors*” shall mean Holdings and the Subsidiary Guarantors.

“*Hazardous Materials*” shall mean (a) any petroleum products or byproducts and all other hydrocarbons, coal ash, radon gas, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, chlorofluorocarbons and all other ozone-depleting substances and (b) any chemical, material, substance or waste that is prohibited, limited or regulated by or pursuant to any Environmental Law.

“*Hedging Agreement*” shall mean any interest rate protection agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

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“*Holdco Note Documents*” shall mean the Holdco Notes, the indenture under which the Holdco Notes are issued and all other material instruments, agreements and other documents evidencing or governing the Holdco Notes or providing for any right in respect thereof.

“*Holdco Notes*” shall mean Holdings’ 16% Senior Unsecured Notes due 2011, in an initial aggregate principal amount of \$65,000,000.

“*Inactive Subsidiary*” shall mean (a) each Domestic Subsidiary that (i) has not conducted any business during the 12-month period preceding the date of determination, (ii) has no outstanding Indebtedness and, (iii) has total tangible assets of less than \$50,000, (b) each Foreign Subsidiary that has total tangible assets of less than \$250,000 and (c) each Subsidiary listed on Schedule 1.01(c), so long as after the Restatement Date such Subsidiary (i) engages in no business, (ii) incurs no Indebtedness and (iii) acquires no tangible assets.

“*Incremental Revolving Facility Amount*” shall mean, at any time the excess, if any, of (a) \$25,000,000 over (b) the sum of (i) the aggregate amount of all Incremental Term Loan Commitments established at or prior to such time pursuant to Section 2.25 and (ii) the aggregate increase in the Revolving Credit Commitments established prior to such time pursuant to Section 2.24.

“*Incremental Term Lender*” shall mean a Lender with an Incremental Term Loan Commitment or an outstanding Incremental Term Loan.

“*Incremental Term Loan Amount*” shall mean, at any time, the excess, if any, of (a) \$25,000,000 over (b) the sum of (i) the aggregate increase in the Revolving Credit Commitments established at or prior to such time pursuant to Section 2.24 and (ii) the aggregate amount of all Incremental Term Loan Commitments established prior to such time pursuant to Section 2.25.

“*Incremental Term Loan Assumption Agreement*” shall mean an Incremental Term Loan Assumption Agreement in form and substance reasonably satisfactory to the Administrative Agent, among the Borrower, the Administrative Agent and one or more Incremental Term Lenders.

“*Incremental Term Loan Commitment*” shall mean the commitment of any Lender, established pursuant to Section 2.25, to make Incremental Term Loans to the Borrower.

“*Incremental Term Loan Maturity Date*” shall mean the final maturity date of any Incremental Term Loan, as set forth in the applicable Incremental Term Loan Assumption Agreement.

“*Incremental Term Loan Repayment Dates*” shall mean the dates scheduled for the repayment of principal of any Incremental Term Loan, as set forth in the applicable Incremental Term Loan Assumption Agreement.

“*Incremental Term Loans*” shall mean Term Loans made by one or more Lenders to the Borrower pursuant to clause (c) of Section 2.01. Incremental Term Loans may be made in the form of additional Term Loans or, to the extent permitted by Section 2.25 and provided for in the relevant Incremental Term Loan Assumption Agreement, Other Term Loans.

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“*Indebtedness*” of any person shall mean, without duplication, (a) all obligations of such person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such person upon which interest charges are customarily paid, (d) all obligations of such person under conditional sale or other title retention agreements relating to property or assets purchased by such person, (e) all obligations of such person issued or assumed as the deferred purchase price of property or services (excluding (i) with respect to clause (e), trade accounts payable and accrued obligations incurred in the ordinary course of business and (ii) only with respect to clauses (a) through (e), accrued obligations in respect of the Deferred Compensation Plan), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such person, whether or not the obligations secured thereby have been assumed, (g) all Guarantees by such person of Indebtedness of others (other than Guarantees by a Co-Investment Subsidiary of any Indebtedness of any Co-Investment Vehicle; *provided* that neither such Guarantee nor the related Indebtedness is recourse to Holdings, the Borrower or any other Subsidiary (other than a Co-Investment Subsidiary)), (h) all Capital Lease Obligations of such person, (i) all obligations of such person as an account party in respect of letters of credit and (j) all obligations of such person in respect of bankers’ acceptances. The Indebtedness of any person shall include all Indebtedness of any partnership, or other entity in which such person is a general partner, or other equity holder with unlimited liability other than (x) Indebtedness which by its terms is expressly non-recourse to such person and (y) if such person is a Co-Investment Subsidiary, the Indebtedness of the related Co-Investment Vehicle. Notwithstanding the foregoing, (A) in connection with the purchase of any business, Indebtedness shall not include post-closing payment adjustments to which the seller may become entitled so long as (i) such payment is to be determined by a final closing balance sheet or depends on the performance of such business after the closing of the purchase, (ii) at the time of closing, the amount of any such payment is not determinable and (iii) to the extent such payment thereafter becomes fixed and determined, the amount is paid within 60 days thereafter, and (B) no Designated Real Estate Asset Guarantee of an obligation in clause (b) of the definition of the term “Designated Real Estate Asset Guarantee” shall be considered Indebtedness of Holdings, the Borrower or a Subsidiary unless and to the extent the beneficiary with respect to such guarantee shall seek to enforce such guarantee.

“*Indemnified Taxes*” shall mean Taxes other than Excluded Taxes.

“*Insignia*” shall mean Insignia Financial Group, Inc., a Delaware corporation.

“*Insignia Merger*” shall mean the merger of Apple Acquisition Corp., a Delaware corporation and wholly owned subsidiary of the Borrower, with and into Insignia on July 23, 2003, with Insignia surviving as a wholly owned Subsidiary of the Borrower.

“*Insignia Merger Agreement*” shall mean the Amended and Restated Agreement and Plan of Merger, dated as of May 28, 2003, among the Borrower, Holdings, Insignia Merger Sub and Insignia, and all other material documents entered into or delivered in connection with the Insignia Merger Agreement.

“*Insignia Transaction Documents*” shall mean (a) the Insignia Merger Agreement, (b) the Island Purchase Agreement, (c) any other agreements executed pursuant to the Insignia Merger Agreement or the Island Purchase Agreement and (d) the Senior Unsecured Note Documents.

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“*Interest Coverage Ratio*” shall mean, for any period, the ratio of (a) Consolidated EBITDA for such period to (b) the sum of Consolidated Interest Expense plus Restricted Payments made under Section 6.06(a)(ii) by the Borrower for such period.

“*Interest Payment Date*” shall mean (a) with respect to any ABR Loan, the last Business Day of each March, June, September and December and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months’ duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months’ duration been applicable to such Borrowing.

“*Interest Period*” shall mean, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is 1, 2, 3 or 6 months thereafter (or 9 or 12 months thereafter if, at the time of the relevant Borrowing, all Lenders participating therein agree to make an interest period of such duration available), as the Borrower may elect; *provided, however*, that if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“*Island*” shall mean Island Fund I LLC, a Delaware limited liability company.

“*Island Purchase Agreement*” shall mean the Purchase Agreement dated as of May 28, 2003, among Insignia, the Borrower, Holdings, Apple Acquisition Corp. and Island.

“*Island Transaction*” shall mean the sale by Insignia and certain of its subsidiaries to Island of certain real estate investment assets of Insignia, pursuant to the Island Purchase Agreement.

“*Issuing Bank*” shall mean, as the context may require, (a) Credit Suisse First Boston, in its capacity as the issuer of Letters of Credit hereunder, and (b) any other Lender that may become an Issuing Bank pursuant to Section 2.23(i) or (k), with respect to Letters of Credit issued by such Lender. The Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“*Issuing Bank Fees*” shall have the meaning assigned to such term in Section 2.05(c).

“*JV Subsidiary*” shall mean a partially owned Subsidiary in which the Borrower or any Subsidiary has contributed assets or otherwise made an investment in (including of cash) with a fair market value (determined on the date of such contribution or investment, as the case may be) of \$500,000 or less in the aggregate; *provided*, that the aggregate fair market value (determined on the date of such contribution or investment, as the case may be) of all assets contributed, indebtedness assumed or investments made by the Borrower or Subsidiaries in all JV Subsidiaries shall not exceed in the aggregate \$3,000,000.

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“*L/C Commitment*” shall mean the commitment of the Issuing Bank to issue Letters of Credit pursuant to Section 2.23.

“*L/C Disbursement*” shall mean a payment or disbursement made by the Issuing Bank pursuant to a Letter of Credit.

“*L/C Exposure*” shall mean at any time the sum of (a) the aggregate undrawn and unexpired amount of all outstanding Letters of Credit at such time and (b) the aggregate principal amount of all L/C Disbursements that have not yet been reimbursed at such time. The L/C Exposure of any Revolving Credit Lender at any time shall equal its Pro Rata Percentage of the aggregate L/C Exposure at such time.

“*L/C Participation Fee*” shall have the meaning assigned to such term in Section 2.05(c).

“*Lenders*” shall mean (a) the persons listed on Schedule 2.01 (other than any such person that has ceased to be a party hereto pursuant to an Assignment and Acceptance) and (b) any person that has become a party hereto pursuant to an Assignment and Acceptance. Unless the context clearly indicates otherwise, the term “Lenders” shall include the Swingline Lender.

“*Letter of Credit*” shall mean any letter of credit issued pursuant to Section 2.23.

“*Leverage Ratio*” shall mean, on any date, the ratio of Total Debt less Available Cash on such date to Consolidated EBITDA for the period of four consecutive fiscal quarters most recently ended on or prior to such date.

“*LIBO Rate*” shall mean, with respect to any Eurodollar Borrowing for any Interest Period, the rate per annum determined by the Administrative Agent at approximately 11:00 a.m., London time, on the date that is two Business Days prior to the commencement of such Interest Period by reference to the British Bankers’ Association Interest Settlement Rates for deposits in dollars (as set forth by the Bloomberg Information Service or any successor thereto or any other service selected by the Administrative Agent which has been nominated by the British Bankers’ Association as an authorized information vendor for the purpose of displaying such rates) for a period equal to such Interest Period; *provided* that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the “LIBO Rate” shall be the interest rate per annum determined by the Administrative Agent to be the average of the rates per annum at which deposits in dollars are offered for such relevant Interest Period to major banks in the London interbank market in London, England by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the beginning of such Interest Period.

“*Lien*” shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest in or on such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities (other than a purchase right or right of first refusal with respect to Equity Interests in a JV Subsidiary).

“*Loan Documents*” shall mean this Agreement, the Amendment Agreement, the Letters of Credit, the Collateral Agreement, the Security Documents and each Incremental Term Loan Assumption Agreement.

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“*Loan Parties*” shall mean the Borrower and the Guarantors.

“*Loans*” shall mean the Revolving Loans, the Term Loans and the Swingline Loans.

“*Margin Stock*” shall have the meaning assigned to such term in Regulation U.

“*Material Adverse Effect*” shall mean a materially adverse effect on (a) the business, assets, operations or condition (financial or otherwise) of the Borrower and the Subsidiaries, taken as a whole, (b) the ability of the Borrower or any other Loan Party to perform any of its obligations under any Loan Document to which it is or will be a party or (c) the rights of or benefits available to the Lenders under any Loan Document.

“*Material Indebtedness*” shall mean Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Hedging Agreements, of any one or more of Holdings, the Borrower and the Subsidiaries in an aggregate principal amount exceeding \$7,500,000. For purposes of determining Material Indebtedness, the

“principal amount” of the obligations of Holdings, the Borrower or any Subsidiary in respect of any Hedging Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that Holdings, the Borrower or such Subsidiary would be required to pay if such Hedging Agreement were terminated at such time.

“Melody” shall mean L.J. Melody & Company, a Texas corporation.

“Melody Loan Arbitrage Facility” shall mean a credit facility provided to Melody by any depository bank in which Melody deposits payments relating to mortgage loans for which Melody is servicer or sub-servicer prior to distribution of such payments to or for the benefit of the borrower of such loans or the holders of such loans, so long as (i) Melody applies all proceeds of loans made under such credit facility to purchase Permitted Investments, and (ii) all such Permitted Investments purchased by Melody with the proceeds of loans thereunder (and proceeds thereof and distributions thereon) are pledged to the depository bank providing such credit facility, and such bank has a first priority perfected security interest therein, to secure loans made under such credit facility.

“Melody Mortgage Warehousing Facility” shall mean the credit facility provided by Residential Funding Corporation (“RFC”) or any substantially similar facility extended to any Mortgage Banking Subsidiary in connection with any Mortgage Banking Activities, pursuant to which RFC or another lender makes loans to Melody, the proceeds of which loans are applied by Melody (or any Mortgage Banking Subsidiary) to fund commercial mortgage loans originated and owned by Melody (or any Mortgage Banking Subsidiary) subject to a commitment (subject to customary exceptions) to purchase such mortgage loans by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or any other quasi-federal governmental entity so long as loans made by RFC or such other lender to Melody (or any Mortgage Banking Subsidiary) thereunder are secured by a pledge of commercial mortgage loans made by Melody (or any Mortgage Banking Subsidiary) with the proceeds of such loans, and RFC or such other lender has a perfected first priority security interest therein, to secure loans made under such credit facility.

“Melody Permitted Indebtedness” shall mean Indebtedness of Melody under the Melody Loan Arbitrage Facility, the Melody Mortgage Warehousing Facility and the Melody Working Capital Facility and Indebtedness of any Mortgage Banking Subsidiary under the Melody

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Mortgage Warehousing Facility that is, in all cases, non-recourse to the Borrower or any of the other Subsidiaries.

“Melody Working Capital Facility” shall mean a credit facility provided by a financial institution to Melody, so long as (i) the proceeds of loans thereunder are applied only to provide working capital to Melody, (ii) loans under such credit facility are unsecured, and (iii) the aggregate principal amount of loans outstanding under such credit facility at no time exceeds \$1,000,000.

“Merger Transactions” shall mean, collectively, the transactions that occurred on or prior to the First Restatement Date pursuant to the Insignia Transaction Documents, including (a) the consummation of the Insignia Merger, (b) the borrowing of the Additional Tranche B Term Loans (as defined in the Existing Credit Agreement) on the First Restatement Date, (c) the execution and delivery of the Senior Unsecured Note Documents and the issuance of the Senior Unsecured Notes, (d) the Cash Equity Contribution, (e) the execution and delivery of the Island Purchase Agreement and the consummation of the Island Transaction and (f) the payment of all fees and expenses paid in connection with the foregoing.

“Mortgage Banking Activities” shall mean the origination by a Mortgage Banking Subsidiary of mortgage loans in respect of commercial and multi-family residential real property, and the sale or assignment of such mortgage loans and the related mortgages to another person (other than the Borrower or any other Subsidiary) within sixty days after the origination thereof; *provided, however*, that in each case prior to origination of any mortgage loan, the Borrower or a Mortgage Banking Subsidiary, as the case may be, shall have entered into a legally binding and enforceable purchase and sale agreement with respect to such mortgage loan with a person that purchases such loans in the ordinary course of business.

“Mortgage Banking Subsidiary” shall mean Melody and its subsidiaries that are engaged in Mortgage Banking Activities.

“Multiemployer Plan” shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Cash Proceeds” shall mean (a) with respect to any Asset Sale, the cash proceeds (including cash proceeds subsequently received (as and when received) in respect of noncash consideration initially received), net of (i) selling expenses (including reasonable broker’s fees or commissions, legal fees, transfer and similar taxes and the Borrower’s good faith estimate of taxes paid or reasonably estimated to be payable in connection with such sale), (ii) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations or purchase price adjustment associated with such Asset Sale (*provided* that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds) and (iii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money which is secured by the asset sold in such Asset Sale and which is required to be repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such asset); *provided, however*, that, if (x) the Borrower shall deliver a certificate of a Financial Officer to the Administrative Agent at the time of receipt thereof setting forth the Borrower’s intent to reinvest such proceeds in assets of a kind then used or usable in the business of the Borrower and its Subsidiaries or in the Equity Interests of a person engaged in the same or related business as that of the Borrower or any Subsidiary within 270 days of receipt of such proceeds and (y) no Default or Event of Default shall have occurred and shall be continuing at the time of such certificate or at the proposed time

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of the application of such proceeds, such proceeds shall not constitute Net Cash Proceeds except to the extent not so used or contractually committed to be used at the end of such 270-day period, at which time such proceeds shall be deemed to be Net Cash Proceeds; and (b) with respect to any incurrence or disposition of Indebtedness or any Equity Issuance, the cash proceeds thereof, net of all taxes and customary fees, commissions, costs and other expenses incurred in connection therewith.

“Non-Recourse Indebtedness” shall mean Indebtedness of, or Guarantees by, a Co-investment Subsidiary; *provided* that (x) such Indebtedness is incurred solely in relation to the permitted investment activities of such Co-investment Subsidiary, (y) such Indebtedness is not Guaranteed by, or otherwise recourse to, Holdings, the Borrower or any Subsidiary other than a Co-investment Subsidiary and (z) the aggregate amount of such Indebtedness of all Co-investment Subsidiaries that shall qualify as “Non-Recourse Indebtedness” shall not exceed \$10,000,000 outstanding at any time.

“Obligations” shall have the meaning assigned to such term in the Collateral Agreement.

“Other Taxes” shall mean any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

“Other Term Loans” shall have the meaning assigned to such term in Section 2.25(a).

“PBGC” shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

“Perfection Certificate” shall mean the Perfection Certificate substantially in the form of Annex 2 to the Collateral Agreement.

“Permitted Acquisition” shall have the meaning assigned to such term in Section 6.04(g).

“Permitted Investments” shall mean:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from Standard & Poor’s Ratings Service or from Moody’s Investors Service, Inc.;

(c) investments in certificates of deposit, banker’s acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, the Administrative Agent or any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000;

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(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria of clause (c) above;

(e) investments in “money market funds” within the meaning of Rule 2a-7 of the Investment Company Act of 1940, as amended, substantially all of whose assets are invested in investments of the type described in clauses (a) through (d) above; and

(f) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments of a type analogous to the foregoing.

“Permitted Investors” shall mean (a) the Sponsors and any other person who is an Affiliate of any of the foregoing, (b) DLJ Investment Partners II, Inc. and any of its Affiliates and (c) any member of senior management of the Borrower on the First Restatement Date.

“person” shall mean any natural person, corporation, business trust, joint venture, association, company, limited liability company, partnership, Governmental Authority or other entity.

“Plan” shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 307 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Prime Rate” shall mean the rate of interest per annum publicly announced from time to time by Credit Suisse First Boston as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective on the date such change is publicly announced as being effective.

“Pro Forma Basis” shall mean, with respect to compliance with any test or covenant hereunder, in connection with or after the occurrence of any Permitted Acquisition or Restricted Payment permitted under Section 6.06(a)(ii), compliance with such covenant or test after giving effect to any such proposed Permitted Acquisition (including pro forma adjustments arising out of events which are directly attributable to the proposed Permitted Acquisition, are factually supportable and are expected to have a continuing impact, in each case determined on a basis consistent with Article 11 of Regulation S-X of the Securities Act of 1933, as amended, and as interpreted by the staff of the Securities and Exchange Commission using, for purposes of determining such compliance, the historical financial statements of all entities or assets so acquired or to be acquired and the consolidated financial statements of the Borrower and the Subsidiaries which shall be reformulated as if such Permitted Acquisition, and any other Permitted Acquisitions or Asset Sales that have been consummated during or after the end of the relevant period, and any Indebtedness or other liabilities incurred in connection with any such Permitted Acquisitions or otherwise after the end of the relevant period had been consummated or incurred, respectively, at the beginning of such period and assuming that any such Indebtedness bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the weighted average of the interest rates applicable to outstanding Loans during such period) or such proposed Restricted Payment.

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“Pro Forma Compliance” shall mean, at any date of determination, that the Borrower shall be in pro forma compliance with the covenants set forth in Sections 6.11, 6.12, 6.13 and 6.14 as of the last day of the most recent fiscal quarter-end (computed on the basis of (a) balance sheet amounts as of the most recently completed fiscal quarter, and (b) income statement amounts for the most recently completed period of four consecutive fiscal quarters, in each case, for which financial statements shall have been delivered to the Administrative Agent and calculated on a Pro Forma Basis).

“Pro Rata Percentage” of any Revolving Credit Lender at any time shall mean the percentage of the Total Revolving Credit Commitment represented by such Lender’s Revolving Credit Commitment. In the event the Revolving Credit Commitments shall have expired or been terminated, the Pro Rata Percentages shall be determined on the basis of the Revolving Credit Commitments most recently in effect.

“Register” shall have the meaning assigned to such term in Section 9.04(d).

“Regulation T” shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation U” shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation X” shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Related Fund” shall mean, with respect to any Lender, any other person that (x) invests in bank loans and (y) is advised or managed by the same investment advisor as such Lender, by an Affiliate of such investment advisor or by such Lender.

“Related Parties” shall mean, with respect to any specified person, such person’s Affiliates and the respective directors, officers, employees, agents and advisors of such person and such person’s Affiliates.

“Release” shall mean any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment or within or upon any building, structure, facility or fixture.

“Repayment Date” shall have the meaning assigned to such term in Section 2.11(a)(i).

“Required Lenders” shall mean, at any time, Lenders having Loans (excluding Swingline Loans), L/C Exposure, Swingline Exposure and unused Revolving Credit Commitments and Term Loan Commitments representing at least a majority of the sum of all Loans outstanding (excluding Swingline Loans), L/C Exposure, Swingline

Exposure and unused Revolving Credit Commitments and Term Loan Commitments at such time.

“*Responsible Officer*” of any person shall mean any executive officer or Financial Officer of such person and any other officer or similar official thereof responsible for the administration of the obligations of such person in respect of this Agreement.

“*Restatement Date*” shall mean the date occurring on or prior to October 14, 2003, on which each of the conditions specified in Section 4.02 is satisfied.

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“*Restricted Indebtedness*” shall mean Indebtedness of Holdings, the Borrower or any Subsidiary, the payment, prepayment, repurchase or defeasance of which is restricted under Section 6.09(b).

“*Restricted Payment*” shall mean any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in Holdings, the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interests in Holdings, the Borrower or any Subsidiary or any option, warrant or other right to acquire any such Equity Interests in Holdings, the Borrower or any Subsidiary.

“*Revolving Credit Borrowing*” shall mean a Borrowing comprised of Revolving Loans.

“*Revolving Credit Commitment*” shall mean, with respect to each Lender, the commitment of such Lender to make Revolving Loans hereunder as set forth on Schedule 2.01, or in the Assignment and Acceptance pursuant to which such Lender assumed its Revolving Credit Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04.

“*Revolving Credit Exposure*” shall mean, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Revolving Loans of such Lender, plus the aggregate amount at such time of such Lender’s L/C Exposure, plus the aggregate amount at such time of such Lender’s Swingline Exposure.

“*Revolving Credit Lender*” shall mean a Lender with a Revolving Credit Commitment or outstanding Revolving Credit Exposure.

“*Revolving Credit Maturity Date*” shall mean July 20, 2007.

“*Revolving Loans*” shall mean the revolving loans made by the Lenders to the Borrower pursuant to clause (c) of Section 2.01.

“*Secured Parties*” shall have the meaning assigned to such term in the Collateral Agreement.

“*Security Documents*” shall mean the Collateral Agreement and each of the security agreements and other instruments and documents executed and delivered pursuant to any of the foregoing or pursuant to Section 5.09.

“*Senior Secured Leverage Ratio*” shall mean, on any date, the ratio of Total Debt less the sum of (a) the aggregate outstanding principal amount of the Senior Subordinated Notes and the Senior Unsecured Notes plus (b) Available Cash on such date to Consolidated EBITDA for the period of four consecutive fiscal quarters most recently ended on or prior to such date.

“*Senior Subordinated Note Documents*” shall mean the Senior Subordinated Notes, the Senior Subordinated Note Indenture and all other material instruments, agreements and other documents evidencing or governing the Senior Subordinated Notes or providing for any right in respect thereof.

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“*Senior Subordinated Note Indenture*” shall mean the indenture dated as of June 7, 2001, between the Borrower, Holdings and First State Street Bank, as trustee, as in effect on the Closing Date and as thereafter amended from time to time in accordance with the requirements thereof and of this Agreement.

“*Senior Subordinated Notes*” shall mean the Borrower’s 11-1/4% Senior Subordinated Notes Due June 15, 2011, issued pursuant to the Senior Subordinated Note Indenture and any notes issued by the Borrower in exchange for, and as contemplated by, the Senior Subordinated Notes with substantially identical terms as the Senior Subordinated Notes.

“*Senior Unsecured Note Documents*” shall mean the Senior Unsecured Notes, the Senior Unsecured Note Indenture and all other material instruments, agreements and other documents evidencing or governing the Senior Unsecured Notes or providing for any right in respect thereof.

“*Senior Unsecured Note Indenture*” shall mean the indenture dated as of May 22, 2003, between the Borrower, Holdings and U.S. Bank National Association, as trustee, as in effect on the Restatement Date and as thereafter amended from time to time in accordance with the requirements thereof and of this Agreement.

“*Senior Unsecured Notes*” shall mean the Borrower’s 9.75% Senior Unsecured Notes Due May 15, 2010, issued pursuant to the Senior Unsecured Note Indenture and any notes issued by the Borrower in exchange for, and as contemplated by, the Senior Unsecured Notes with substantially identical terms as the Senior Unsecured Notes.

“*Sponsors*” shall mean Blum Strategic Partners, L.P. and Freeman Spogli & Co. Incorporated.

“*SPC*” shall have the meaning assigned to such term in Section 9.04(i).

“*Special Co-investment Subsidiary*” shall mean any wholly-owned Co-investment Subsidiary that is or could become an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940 as a result of becoming a Subsidiary Guarantor or a guarantor under the Senior Subordinated Note Indenture or the Senior Unsecured Note Indenture.

“*Statutory Reserves*” shall mean a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board and any other banking authority, domestic or foreign, to which the Administrative Agent or any Lender (including any branch, Affiliate, or other fronting office making or holding a Loan) is subject for Eurocurrency Liabilities (as defined in Regulation D of the Board). Eurodollar Loans shall be deemed to constitute Eurocurrency Liabilities as defined in Regulation D of the Board) and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D. Statutory Reserves shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“*subsidiary*” shall mean, with respect to any person (herein referred to as the “parent”), any corporation, partnership, association or other business entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary

voting power or more than 50% of the general partnership interests (other than the general partnership interests owned controlled or held by the Borrower or any Subsidiary in any Co-investment Vehicle or in any person which is not Controlled by the Borrower or any Subsidiary) are, at the time any determination is being made, owned, Controlled or held.

“*Subsidiary*” shall mean any subsidiary of the Borrower; *provided, however*, that no Designated Real Estate Asset Subsidiary shall be deemed to be a Subsidiary for purposes of this Agreement or the other Loan Documents.

“*Subsidiary Guarantor*” shall mean each Domestic Subsidiary listed on Schedule 1.01(a), and each other Subsidiary that is or becomes a party to a Collateral Agreement.

“*Swingline Commitment*” shall mean the commitment of the Swingline Lender to make loans pursuant to Section 2.22, as the same may be reduced from time to time pursuant to Section 2.09.

“*Swingline Exposure*” shall mean at any time the aggregate principal amount at such time of all outstanding Swingline Loans. The Swingline Exposure of any Revolving Credit Lender at any time shall equal its Pro Rata Percentage of the aggregate Swingline Exposure at such time.

“*Swingline Lender*” shall mean Credit Suisse First Boston, acting through its Cayman Islands branch, in its capacity as lender of Swingline Loans hereunder.

“*Swingline Loan*” shall mean any loan made by the Swingline Lender pursuant to Section 2.22.

“*Synthetic Purchase Agreement*” shall mean any swap, derivative or other agreement or combination of agreements pursuant to which Holdings, the Borrower or any Subsidiary is or may become obligated to make (a) any payment in connection with a purchase by any third party from a person other than Holdings, the Borrower or any Subsidiary of any Equity Interest or Restricted Indebtedness or (b) any payment (other than on account of a permitted purchase by it of any Equity Interest or Restricted Indebtedness) the amount of which is determined by reference to the price or value at any time of any Equity Interest or Restricted Indebtedness; *provided* that no phantom stock or similar plan providing for payments only to current or former directors, officers, employees or consultants of Holdings, the Borrower or the Subsidiaries (or to their heirs or estates) shall be deemed to be a Synthetic Purchase Agreement.

“*Taxes*” shall mean any and all present or future taxes, levies, imposts, duties, deductions, charges, liabilities or withholdings imposed by any Governmental Authority.

“*Term Borrowing*” shall mean a Borrowing comprised of Term Loans or Incremental Term Loans.

“*Term Loan Commitment*” shall mean, with respect to each Lender, (a) the commitment of such Lender to make Term Loans hereunder as set forth on Schedule 2.01, or in the Assignment and Acceptance pursuant to which such Lender assumed its Term Loan Commitment, as applicable, as the same may be (i) reduced from time to time pursuant to Section 2.09 and (ii) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04 and (b) any Incremental Term Loan Commitment.

“*Term Loan Repayment Dates*” shall mean the Repayment Dates and the Incremental Term Loan Repayment Dates.

“*Term Loans*” shall mean the term loans made by the Lenders to the Borrower pursuant to clause (a) of Section 2.01. Unless the context shall otherwise require, the term “Term Loans” shall include any Incremental Term Loans.

“*Term Loan Maturity Date*” shall mean December 31, 2008.

“*Total Debt*” shall mean, at any time, the total Indebtedness of the Borrower and the Subsidiaries at such time, determined on a consolidated basis (excluding (a) Melody Permitted Indebtedness, (b) Non-Recourse Indebtedness, (c) the UK Acquisition Notes, to the extent the bank guarantee in respect thereof is cash collateralized as permitted hereunder, and (d) Indebtedness of the type described in clause (i) of the definition of such term, except to the extent of any unreimbursed drawings thereunder).

“*Total Revolving Credit Commitment*” shall mean, at any time, the aggregate amount of the Revolving Credit Commitments, as in effect at such time. The Total Revolving Credit Commitment in effect on the Restatement Date is \$90,000,000.

“*Type*”, when used in respect of any Loan or Borrowing, shall refer to the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term “*Rate*” shall include the Adjusted LIBO Rate and the Alternate Base Rate.

“*UK Acquisition Notes*” shall mean (a) the floating rate guaranteed loan notes due April 30, 2010, issued by Insignia to the vendors of Richard Ellis Group Limited pursuant to an instrument dated March 26, 2001 and (b) the 3% guaranteed unsecured loan notes due April 30, 2006, issued by Insignia to the vendors of St. Quintin Holdings Limited pursuant to an instrument dated March 26, 2001, each of which is fully guaranteed as to principal and interest by the Royal Bank of Scotland plc (such guarantee secured by restricted cash deposits by Insignia or its Subsidiaries with the Royal Bank of Scotland plc pursuant to Memoranda of Cash Deposits).

“*wholly owned Subsidiary*” of any person shall mean a subsidiary of such person of which securities (except for directors’ qualifying shares) or other ownership interests representing 100% of the Equity Interests are, at the time any determination is being made, owned, controlled or held by such person or one or more wholly owned Subsidiaries of such person or by such person and one or more wholly owned Subsidiaries of such person.

“*Withdrawal Liability*” shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. **Terms Generally.** The definitions in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”; and the words “asset” and “property” shall be construed as having the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. All references herein to Articles, Sections, Exhibits and



otherwise expressly provided herein, (a) any reference in this Agreement to any Loan Document shall mean such document as amended, restated, supplemented or otherwise modified from time to time and (b) all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided, however*, that if the Borrower notifies the Administrative Agent that the Borrower wishes to amend any covenant in Article VI or any related definition to eliminate the effect of any change in GAAP occurring after the date of this Agreement on the operation of such covenant (or if the Administrative Agent notifies the Borrower that the Required Lenders wish to amend Article VI or any related definition for such purpose), then the Borrower's compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Borrower and the Required Lenders.

**SECTION 1.03. Classification of Loans and Borrowings.** For purposes of this Agreement, Loans may be classified and referred to by Class *e.g.*, a "Revolving Loan") or by Type (*e.g.*, a "Eurodollar Loan") or by Class and Type (*e.g.*, a "Eurodollar Revolving Loan"). Borrowings also may be classified and referred to by Class *e.g.*, a "Revolving Borrowing") or by Type (*e.g.*, a "Eurodollar Borrowing") or by Class and Type (*e.g.*, a "Eurodollar Revolving Borrowing").

**SECTION 1.04. Pro Forma Calculations.** With respect to any period during which any Permitted Acquisition occurs as permitted pursuant to the terms hereof, for purposes of determining compliance or Pro Forma Compliance with the covenants set forth in Sections 6.11, 6.12, 6.13 and 6.14, the Interest Coverage Ratio, Fixed Charge Coverage Ratio, the Leverage Ratio and the Senior Secured Leverage Ratio shall be calculated with respect to such periods and such Permitted Acquisition on a Pro Forma Basis.

**SECTION 1.05. Designation of Obligations.** The Obligations, including the Obligations in respect of the Term Loans, are hereby designated as "Designated Senior Indebtedness" for all purposes of the Senior Subordinated Note Indenture.

## ARTICLE II

### *The Credits*

**SECTION 2.01. Commitments.** (a) Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender agrees, severally and not jointly, (a) if such Lender has a Term Loan Commitment, to make a Term Loan to the Borrower on the Restatement Date in a principal amount not to exceed its Term Loan Commitment, (b) if such Lender has a Revolving Credit Commitment, to make Revolving Loans to the Borrower, at any time and from time to time on or after the Closing Date and prior the earlier of the Revolving Credit Maturity Date and the termination of the Revolving Credit Commitment of such Lender in accordance with the terms hereof, in an aggregate principal amount at any time outstanding that will not result in such Lender's Revolving Credit Exposure exceeding such Lender's Revolving Credit Commitment, and (c) if such lender has an Incremental Term Loan Commitment, to make Incremental Term Loans to the Borrower, in an aggregate principal amount not to exceed its Incremental Term Loan Commitment. Within the limits set forth in clause (b) of the preceding sentence and subject to the terms, conditions and limitations set forth herein, the Borrower may

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borrow, pay or prepay and reborrow Revolving Loans. Amounts paid or prepaid in respect of Term Loans may not be reborrowed. The Borrower and the Lenders acknowledge the making of Revolving Loans prior to the Restatement Date under the Existing Credit Agreement and agree, to the extent outstanding on the Restatement Date, such Revolving Loans shall continue to be outstanding pursuant to the terms and conditions of this Agreement and the other Loan Documents.

**SECTION 2.02. Loans.** (a) Each Loan (other than Swingline Loans) shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their respective applicable Commitments; *provided, however*, that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). Except for Loans deemed made pursuant to Section 2.02(f), the Loans comprising any Borrowing shall be in an aggregate principal amount that is (i) an integral multiple of \$1,000,000 and not less than \$5,000,000 (except with respect to any Incremental Term Borrowing, to the extent otherwise provided in the related Incremental Term Loan Assumption Agreement) or (ii) equal to the remaining available balance of the applicable Commitments.

(b) Subject to Sections 2.08 and 2.15, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request pursuant to Section 2.03. Each Lender may at its option make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement. Borrowings of more than one Type may be outstanding at the same time; *provided, however*, that the Borrower shall not be entitled to request any Borrowing that, if made, would result in more than 10 Eurodollar Borrowings outstanding hereunder at any time. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(c) Except with respect to Loans deemed made pursuant to Section 2.02(f), each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to such account in New York City as the Administrative Agent may designate not later than 2:00 p.m., New York City time, and the Administrative Agent shall promptly credit the amounts so received to an account in the name of the Borrower, designated by the Borrower in the applicable Borrowing Request, or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met, return the amounts so received to the respective Lenders.

(d) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (c) above and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent

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at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender for the first three days, a rate determined by the Administrative Agent to represent its cost of overnight or short-term funds and for each day thereafter, the Applicable Base Rate (which determination shall be conclusive absent manifest error). If such Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement.

(e) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request any Revolving Credit Borrowing if (i) the Interest Period requested with respect thereto would end after the Revolving Credit Maturity Date or (ii) any Swingline Loan would be outstanding after giving effect to the use of proceeds of such Borrowing.

(f) If the Issuing Bank shall not have received from the Borrower the payment required to be made by Section 2.23(e) within the time specified in such Section, the Issuing Bank will promptly notify the Administrative Agent of the L/C Disbursement and the Administrative Agent will promptly notify each Revolving Credit Lender of such L/C Disbursement and its Pro Rata Percentage thereof. Each Revolving Credit Lender shall pay by wire transfer of immediately available funds to the Administrative Agent

not later than 2:00 p.m., New York City time, on such date (or, if such Revolving Credit Lender shall have received such notice later than 12:00 (noon), New York City time, on any day, not later than 10:00 a.m., New York City time, on the immediately following Business Day), an amount equal to such Lender's Pro Rata Percentage of such L/C Disbursement (it being understood that such amount shall be deemed to constitute an ABR Revolving Loan of such Lender and such payment shall be deemed to have reduced the L/C Exposure), and the Administrative Agent will promptly pay to the Issuing Bank amounts so received by it from the Revolving Credit Lenders. The Administrative Agent will promptly pay to the Issuing Bank any amounts received by it from the Borrower pursuant to Section 2.23(e) prior to the time that any Revolving Credit Lender makes any payment pursuant to this paragraph (f); any such amounts received by the Administrative Agent thereafter will be promptly remitted by the Administrative Agent to the Revolving Credit Lenders that shall have made such payments and to the Issuing Bank, as their interests may appear. If any Revolving Credit Lender shall not have made its Pro Rata Percentage of such L/C Disbursement available to the Administrative Agent as provided above, such Lender and the Borrower severally agree to pay interest on such amount, for each day from and including the date such amount is required to be paid in accordance with this paragraph to but excluding the date such amount is paid, to the Administrative Agent for the account of the Issuing Bank at (i) in the case of the Borrower, a rate per annum equal to the interest rate applicable to Revolving Loans pursuant to Section 2.06(a), and (ii) in the case of such Lender, for the first such day, the Federal Funds Effective Rate, and for each day thereafter, the Alternate Base Rate.

**SECTION 2.03. Borrowing Procedure.** In order to request a Borrowing (other than a Swingline Loan or a deemed Borrowing pursuant to Section 2.02(f), as to which this Section 2.03 shall not apply), the Borrower shall hand deliver or fax to the Administrative Agent a duly completed Borrowing Request (a) in the case of a Eurodollar Borrowing, not later than 1:00 p.m., New York City time, three Business Days before a proposed Borrowing, and (b) in the case of an ABR Borrowing, not later than 12:00 noon, New York City time, on the Business Day of a proposed Borrowing. Each Borrowing Request shall be irrevocable, shall be signed by or on behalf of the Borrower and shall specify the following information: (i) whether the Borrowing then being requested is to be a Term Borrowing, an Incremental Term Borrowing or a Revolving Credit Borrowing, and whether such Borrowing is to be a Eurodollar Borrowing or an ABR

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Borrowing; (ii) the date of such Borrowing (which shall be a Business Day); (iii) the number and location of the account to which funds are to be disbursed (which shall be an account that complies with the requirements of Section 2.02(c)); (iv) the amount of such Borrowing; and (v) if such Borrowing is to be a Eurodollar Borrowing, the Interest Period with respect thereto; *provided, however*, that, notwithstanding any contrary specification in any Borrowing Request, each requested Borrowing shall comply with the requirements set forth in Section 2.02. If no election as to the Type of Borrowing is specified in any such notice, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period with respect to any Eurodollar Borrowing is specified in any such notice, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent shall promptly advise the applicable Lenders of any notice given pursuant to this Section 2.03 (and the contents thereof), and of each Lender's portion of the requested Borrowing.

**SECTION 2.04. Evidence of Debt; Repayment of Loans.** (a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender (i) the principal amount of each Term Loan of such Lender as provided in Section 2.11 and (ii) the then unpaid principal amount of each Revolving Loan of such Lender on the Revolving Credit Maturity Date. The Borrower hereby promises to pay to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the Revolving Credit Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower or any Guarantor and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraphs (b) and (c) above shall be *prima facie* evidence of the existence and amounts of the obligations therein recorded; *provided, however*, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with their terms.

(e) Any Lender may request that Loans made by it hereunder be evidenced by a promissory note. In such event, the Borrower shall execute and deliver to such Lender a promissory note payable to such Lender and its registered assigns and in a form and substance reasonably acceptable to the Administrative Agent and the Borrower. Notwithstanding any other provision of this Agreement, in the event any Lender shall request and receive such a promissory note, the interests represented by such note shall at all times (including after any assignment of all or part of such interests pursuant to Section 9.04) be represented by one or more promissory notes payable to the payee named therein or its registered assigns.

**SECTION 2.05. Fees.** (a) The Borrower agrees to pay to each Lender, through the Administrative Agent, on the last Business Day of March, June, September and December in each year and on each date on which the Revolving Credit Commitment of such Lender shall expire or be terminated as provided herein, a commitment fee (a "Commitment Fee") equal to 3/4 of 1%

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per annum on the daily unused amount of the Revolving Credit Commitments of such Lender during the preceding quarter (or other period ending with the Revolving Credit Maturity Date or the date on which the Commitments of such Lender shall expire or be terminated). All Commitment Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days. The Commitment Fee due to each Lender shall commence to accrue on the Restatement Date and shall cease to accrue on the date on which the Revolving Credit Commitment of such Lender shall expire or be terminated as provided herein. For purposes of calculating Commitment Fees only, no portion of the Revolving Credit Commitments shall be deemed utilized under Section 2.17 as a result of outstanding Swingline Loans.

(b) The Borrower agrees to pay to the Administrative Agent, for its own account, the administrative fees at the times and in the amounts agreed to by the Borrower and the Administrative Agent from time to time (the "Administrative Agent Fees").

(c) The Borrower agrees to pay (i) to each Revolving Credit Lender, through the Administrative Agent, on the last Business Day of March, June, September and December of each year and on the date on which the Revolving Credit Commitment of such Lender shall be terminated as provided herein, a fee (an "L/C Participation Fee") calculated on such Lender's Pro Rata Percentage of the daily aggregate L/C Exposure (excluding the portion thereof attributable to unreimbursed L/C Disbursements) during the preceding quarter (or shorter period commencing with the date hereof or ending with the Revolving Credit Maturity Date or the date on which all Letters of Credit have been canceled or have expired and the Revolving Credit Commitments of all Lenders shall have been terminated) at a rate per annum equal to the Applicable Percentage from time to time used to determine the interest rate on Revolving Credit Borrowings comprised of Eurodollar Loans pursuant to Section 2.06, and (ii) to the Issuing Bank with respect to each Letter of Credit the standard fronting, issuance and drawing fees as agreed by the Issuing Bank and the Borrower (the "Issuing Bank Fees"). All L/C Participation Fees and Issuing Bank Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

(d) All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, if and as appropriate, among the Lenders, except that the Issuing Bank Fees shall be paid directly to the Issuing Bank. Once paid, none of the Fees shall be refundable under any circumstances.

**SECTION 2.06. Interest on Loans.** (a) Subject to the provisions of Section 2.07, the Loans comprising each ABR Borrowing, including each Swingline Loan, shall

bear interest (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, when the Alternate Base Rate is determined by reference to the Prime Rate and over a year of 360 days at all other times) at a rate per annum equal to the Alternate Base Rate plus the Applicable Percentage in effect from time to time.

(b) Subject to the provisions of Section 2.07, the Loans comprising each Eurodollar Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal to the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Percentage in effect from time to time.

(c) Interest on each Loan shall be payable on the Interest Payment Dates applicable to such Loan except as otherwise provided in this Agreement. The applicable Alternate Base Rate or Adjusted LIBO Rate for each Interest Period or day within an Interest Period, as the case may be, shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

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**SECTION 2.07. *Default Interest.*** If the Borrower shall default in the payment of the principal of or interest on any Loan or any other amount becoming due hereunder, by acceleration or otherwise, or under any other Loan Document, the Borrower shall on demand from time to time pay interest, to the extent permitted by law, on such defaulted amount to but excluding the date of actual payment (after as well as before judgment) (a) in the case of overdue principal, at the rate otherwise applicable to such Loan pursuant to Section 2.06 plus 2.00% per annum and (b) in all other cases, at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, when determined by reference to the Prime Rate and over a year of 360 days at all other times) equal to the rate that would be applicable to an ABR Revolving Loan plus 2.00%.

**SECTION 2.08. *Alternate Rate of Interest.*** In the event, and on each occasion, that on the day two Business Days prior to the commencement of any Interest Period for a Eurodollar Borrowing the Administrative Agent shall have determined that dollar deposits in the principal amounts of the Loans comprising such Borrowing are not generally available in the London interbank market, or that the rates at which such dollar deposits are being offered will not adequately and fairly reflect the cost to the Required Lenders of making or maintaining its Eurodollar Loan during such Interest Period, or that reasonable means do not exist for ascertaining the Adjusted LIBO Rate, the Administrative Agent shall, as soon as practicable thereafter, give written or fax notice of such determination to the Borrower and the Lenders. In the event of any such determination, until the Administrative Agent shall have advised the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, any request by the Borrower for a Eurodollar Borrowing pursuant to Section 2.03 or 2.10 shall be deemed to be a request for an ABR Borrowing. Each determination by the Administrative Agent under this Section 2.08 shall be conclusive absent manifest error.

**SECTION 2.09. *Termination and Reduction of Commitments.*** (a) The Term Loan Commitments shall automatically terminate upon the earlier to occur of (i) the making of the Term Loans on the Restatement Date and (ii) 5:00 p.m., New York City time, on October 31, 2003. The Revolving Credit Commitments, the Swingline Commitment and the L/C Commitment shall automatically terminate on the Revolving Credit Maturity Date.

(b) Upon at least three Business Days' prior irrevocable written or fax notice (or telephone notice promptly confirmed by a written notice) to the Administrative Agent, the Borrower may, without premium or penalty, at any time in whole permanently terminate, or from time to time in part permanently reduce, the Term Loan Commitments or the Revolving Credit Commitments; *provided, however*, that (i) each partial reduction of the Term Loan Commitments or the Revolving Credit Commitments shall be in an integral multiple of \$1,000,000 and in a minimum amount of \$5,000,000 and (ii) the Total Revolving Credit Commitment shall not be reduced to an amount that is less than the sum of the Aggregate Revolving Credit Exposure at the time.

(c) Each reduction in the Term Loan Commitments or the Revolving Credit Commitments hereunder shall be made ratably among the Lenders in accordance with their respective applicable Commitments. The Borrower shall pay to the Administrative Agent for the account of the applicable Lenders, on the date of each termination or reduction, the Commitment Fees on the amount of the Commitments so terminated or reduced accrued to but excluding the date of such termination or reduction.

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**SECTION 2.10. *Conversion and Continuation of Borrowings.*** The Borrower shall have the right at any time upon prior irrevocable notice to the Administrative Agent (a) not later than 1:00 p.m., New York City time, two Business Days prior to conversion, to convert any Eurodollar Borrowing into an ABR Borrowing, (b) not later than 1:00 p.m., New York City time, three Business Days prior to conversion or continuation, to convert any ABR Borrowing into a Eurodollar Borrowing or to continue any Eurodollar Borrowing as a Eurodollar Borrowing for an additional Interest Period, and (c) not later than 1:00 p.m., New York City time, three Business Days prior to conversion, to convert the Interest Period with respect to any Eurodollar Borrowing to another permissible Interest Period, subject in each case to the following:

(i) each conversion or continuation shall be made pro rata among the Lenders in accordance with the respective principal amounts of the Loans comprising the converted or continued Borrowing;

(ii) if less than all the outstanding principal amount of any Borrowing shall be converted or continued, then each resulting Borrowing shall satisfy the limitations specified in Sections 2.02(a) and 2.02(b) regarding the principal amount and maximum number of Borrowings of the relevant Type;

(iii) each conversion shall be effected by each Lender and the Administrative Agent by recording for the account of such Lender the new Loan of such Lender resulting from such conversion and reducing the Loan (or portion thereof) of such Lender being converted by an equivalent principal amount; accrued interest on any Eurodollar Loan (or portion thereof) being converted shall be paid by the Borrower at the time of conversion;

(iv) if any Eurodollar Borrowing is converted at a time other than the end of the Interest Period applicable thereto, the Borrower shall pay, upon demand, any amounts due to the Lenders pursuant to Section 2.16;

(v) any portion of a Borrowing maturing or required to be repaid in less than one month may not be converted into or continued as a Eurodollar Borrowing;

(vi) any portion of a Eurodollar Borrowing that cannot be converted into or continued as a Eurodollar Borrowing by reason of the immediately preceding clause shall be automatically converted at the end of the Interest Period in effect for such Borrowing into an ABR Borrowing;

(vii) no Interest Period may be selected for any Eurodollar Term Borrowing that would end later than a Term Loan Repayment Date occurring on or after the first day of such Interest Period if, after giving effect to such selection, the aggregate outstanding amount of (A) the Eurodollar Term Borrowings comprised of Term Loans or Other Term Loans, as applicable, with Interest Periods ending on or prior to such Term Loan Repayment Date and (B) the ABR Term Borrowings comprised of Term Loans or Other Term Loans, as applicable, would not be at least equal to the principal amount of Term Borrowings to be paid on such Term Loan Repayment Date; and

(viii) upon notice to the Borrower from the Administrative Agent given at the request of the Required Lenders, after the occurrence and during the continuance of a Default or Event of Default, no outstanding Loan may be converted into, or continued as, a Eurodollar Loan and any outstanding Eurodollar Borrowing shall, at the end of the

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Interest Period applicable thereto (unless repaid pursuant to the terms hereof), automatically be converted to an ABR Borrowing.

Each notice pursuant to this Section 2.10 shall be irrevocable and shall refer to this Agreement and specify (i) the identity and amount of the Borrowing that the Borrower requests be converted or continued, (ii) whether such Borrowing is to be converted to or continued as a Eurodollar Borrowing or an ABR Borrowing, (iii) if such notice requests a conversion, the date of such conversion (which shall be a Business Day) and (iv) if such Borrowing is to be converted to or continued as a Eurodollar Borrowing, the Interest Period with respect thereto. If no Interest Period is specified in any such notice with respect to any conversion to or continuation as a Eurodollar Borrowing, the Borrower shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent shall advise the Lenders of any notice given pursuant to this Section 2.10 and of each Lender's portion of any converted or continued Borrowing. If the Borrower shall not have given notice in accordance with this Section 2.10 to continue any Borrowing into a subsequent Interest Period (and shall not otherwise have given notice in accordance with this Section 2.10 to convert such Borrowing), such Borrowing shall, at the end of the Interest Period applicable thereto (unless repaid pursuant to the terms hereof), automatically be converted to an ABR Borrowing.

SECTION 2.11. **Repayment of Term Borrowings.** (a) (i) The Borrower shall pay to the Administrative Agent, for the account of the Lenders, on the dates set forth below, or if any such date is not a Business Day, on the next preceding Business Day (each such date being a "Repayment Date"), a principal amount of the Term Loans (as adjusted from time to time pursuant to Sections 2.11(b), 2.12, 2.13(f) and 2.25(d)) equal to the amount set forth below for such date, together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment:

<u>Date</u>	<u>Amount</u>
December 31, 2003	\$ 2,500,000
March 31, 2004	\$ 2,500,000
June 30, 2004	\$ 2,500,000
September 30, 2004	\$ 2,500,000
December 31, 2004	\$ 2,500,000
March 31, 2005	\$ 2,500,000
June 30, 2005	\$ 2,500,000
September 30, 2005	\$ 2,500,000
December 31, 2005	\$ 2,500,000
March 31, 2006	\$ 2,500,000
June 30, 2006	\$ 2,500,000

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<u>Date</u>	<u>Amount</u>
September 30, 2006	\$ 2,500,000
December 31, 2006	\$ 2,500,000
March 31, 2007	\$ 2,500,000
June 30, 2007	\$ 2,500,000
September 30, 2007	\$ 2,500,000
December 31, 2007	\$ 2,500,000
March 31, 2008	\$ 2,500,000
June 30, 2008	\$ 2,500,000
September 30, 2008	\$ 2,500,000
Term Loan Maturity Date	\$ 250,000,000

(ii) The Borrower shall pay to the Administrative Agent, for the account of the Lenders, on each Incremental Term Loan Repayment Date, a principal amount of the Other Term Loans (as adjusted from time to time pursuant to Sections 2.11(b), 2.12 and 2.13(f)) equal to the amount set forth for such date in the applicable Incremental Term Loan Assumption Agreement, together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment.

(b) In the event and on each occasion that any Term Loan Commitments shall be reduced or shall expire or terminate other than as a result of the making of a Term Loan, the installments payable on each Term Loan Repayment Date shall be reduced pro rata by an aggregate amount equal to the amount of such reduction, expiration or termination.

(c) To the extent not previously paid, all Term Loans and Other Term Loans shall be due and payable on the Term Loan Maturity Date and Incremental Term Loan Maturity Date, respectively, together with accrued and unpaid interest on the principal amount to be paid to but excluding the date of payment.

(d) All repayments pursuant to this Section 2.11 shall be subject to Section 2.16, but shall otherwise be without premium or penalty.

SECTION 2.12. **Prepayment.** (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, upon at least three Business Days' prior written or fax notice (or telephone notice promptly confirmed by written or fax notice) in the case of Eurodollar Loans, or written or fax notice (or

(b) Optional prepayments of Term Loans shall be allocated pro rata among the then outstanding Term Loans and Other Term Loans and applied, first, to the scheduled installments of principal due in respect of the Term Loans and Other Term Loans within the 12 months following such prepayment, then pro rata against the remaining scheduled installments of principal due in respect of the Term Loans and Other Term Loans under Sections 2.11(a)(i) and (ii), respectively.

(c) Each notice of prepayment shall specify the prepayment date and the principal amount of each Borrowing (or portion thereof) to be prepaid, shall be irrevocable and shall commit the Borrower to prepay such Borrowing by the amount stated therein on the date stated therein. All prepayments under this Section 2.12 shall be subject to Section 2.16 but otherwise without premium or penalty. All prepayments under this Section 2.12 shall be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment.

**SECTION 2.13. *Mandatory Prepayments.*** (a) In the event of any termination of all the Revolving Credit Commitments, the Borrower shall, on the date of such termination, repay or prepay all its outstanding Revolving Credit Borrowings and all outstanding Swingline Loans and replace all outstanding Letters of Credit and/or deposit an amount equal to the L/C Exposure in cash in a cash collateral account established with the Collateral Agent for the benefit of the Secured Parties. If as a result of any partial reduction of the Revolving Credit Commitments the Aggregate Revolving Credit Exposure would exceed the Total Revolving Credit Commitment after giving effect thereto, then the Borrower shall, on the date of such reduction, repay or prepay Revolving Credit Borrowings or Swingline Loans (or a combination thereof) and/or cash collateralize Letters of Credit in an amount sufficient to eliminate such excess.

(b) Not later than the third Business Day following the completion of any Asset Sale, the Borrower shall apply 100% of the Net Cash Proceeds received with respect thereto to prepay (i) outstanding Term Loans in accordance with Section 2.13(f) and (ii) after the payment in full of the outstanding Term Loans, outstanding Revolving Loans (without any reduction in Revolving Credit Commitments).

(c) In the event and on each occasion that an Equity Issuance occurs, the Borrower shall, substantially simultaneously with (and in any event not later than the third Business Day next following) the occurrence of such Equity Issuance, apply 100% of the Net Cash Proceeds therefrom to prepay outstanding Term Loans in accordance with Section 2.13(f).

(d) No later than the earlier of (i) 45 days after the end of the second fiscal quarter of each fiscal year of the Borrower (commencing with the fiscal year ending on December 31, 2003), and (ii) the date on which the financial statements with respect to such fiscal quarter are delivered pursuant to Section 5.04(b), the Borrower shall prepay outstanding Term Loans in accordance with Section 2.13(f) in an aggregate principal amount equal to (A) 75% of Excess Cash Flow for the period of twelve consecutive months then ended if the Leverage Ratio at the end of such period shall have been greater than or equal to 2.0 to 1.0, or (B) 50% of Excess Cash Flow for the period of twelve consecutive months then ended if the Leverage Ratio at the end of such period of twelve consecutive months shall have been less than 2.0 to 1.0.

(e) In the event that any Loan Party or any subsidiary of a Loan Party shall receive Net Cash Proceeds from the incurrence or disposition of Indebtedness (other than Indebtedness permitted pursuant to Section 6.01), the Borrower shall, substantially simultaneously with (and in any event not later than the third Business Day next following) the receipt of such Net Cash

Proceeds by such Loan Party or such subsidiary, apply an amount equal to 100% of such Net Cash Proceeds to prepay outstanding Term Loans in accordance with Section 2.13(f).

(f) Mandatory prepayments of outstanding Term Loans under this Agreement shall be allocated pro rata among the then outstanding Term Loans and Other Term Loans, and applied pro rata against the remaining scheduled installments of principal due in respect of Term Loans and Other Term Loans under Sections 2.11(a)(i) and (ii), respectively.

(g) The Borrower shall deliver to the Administrative Agent, at the time of each prepayment required under this Section 2.13, (i) a certificate signed by a Financial Officer of the Borrower setting forth in reasonable detail the calculation of the amount of such prepayment and (ii) to the extent practicable, at least three days' prior written notice of such prepayment. Each notice of prepayment shall specify the prepayment date, the Type of each Loan being prepaid and the principal amount of each Loan (or portion thereof) to be prepaid. All prepayments of Borrowings under this Section 2.13 shall be subject to Section 2.16, but shall otherwise be without premium or penalty.

(h) [Intentionally Omitted]

(i) For a period of 45 consecutive days (the "*Cleanup Period*") commencing on any day in the month of December of each year, chosen at the option of the Borrower, the Borrower shall ensure that no Revolving Loans or Swingline Loans are outstanding under this Agreement. In order to comply with the previous sentence, the Borrower shall, if necessary, prepay in full the aggregate principal amount of all Revolving Loans and Swingline Loans outstanding at the commencement of the Cleanup Period and shall not during the Cleanup Period request any Revolving Loans or Swingline Loans; *provided* that such limitation shall not affect the ability of the Borrower to request a Letter of Credit during the Cleanup Period. The obligations of the Borrower under this paragraph are in addition to, and shall not in any manner limit, any other obligation of the Borrower hereunder to prepay or repay Revolving Loans and Swingline Loans.

**SECTION 2.14. *Reserve Requirements; Change in Circumstances.*** (a) Notwithstanding any other provision of this Agreement, if any Change in Law shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of or credit extended by any Lender or the Issuing Bank (except any such reserve requirement which is reflected in the Adjusted LIBO Rate) or shall impose on such Lender or the Issuing Bank or the London interbank market any other condition affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein (other than any change to the basis or rate of taxation applicable to any Lender), and the result of any of the foregoing shall be to increase the cost to such Lender or the Issuing Bank of making or maintaining any Eurodollar Loan or increase the cost to any Lender of issuing or maintaining any Letter of Credit or purchasing or maintaining a participation therein or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or otherwise) by an amount deemed by such Lender or the Issuing Bank to be material, then the Borrower will pay to such Lender or the Issuing Bank, as the case may be, upon demand such additional amount or amounts (without duplication of amounts paid by the Borrower pursuant to Section 2.20) as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank shall have determined that any Change in Law regarding capital adequacy has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's

of Credit issued by the Issuing Bank pursuant hereto to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy) by an amount deemed by such Lender or the Issuing Bank to be material, then from time to time the Borrower shall pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as applicable, as specified in paragraph (a) or (b) above, and setting forth in reasonable detail the basis on which such amount or amounts were calculated shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or the Issuing Bank the amount shown as due on any such certificate delivered by it within 20 days after its receipt of the same.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; *provided* that the Borrower shall not be under any obligation to compensate any Lender or the Issuing Bank under paragraph (a) or (b) above with respect to increased costs or reductions with respect to any period prior to the date that is 120 days prior to such request if such Lender or the Issuing Bank knew or could reasonably have been expected to know of the circumstances giving rise to such increased costs or reductions and of the fact that such circumstances would result in a claim for increased compensation by reason of such increased costs or reductions; *provided further* that the foregoing limitation shall not apply to any increased costs or reductions arising out of the retroactive application of any Change in Law within such 120-day period. The protection of this Section shall be available to each Lender and the Issuing Bank regardless of any possible contention of the invalidity or inapplicability of the Change in Law that shall have occurred or been imposed.

**SECTION 2.15. *Change in Legality.*** (a) Notwithstanding any other provision of this Agreement, if any Change in Law shall make it unlawful for any Lender to make or maintain any Eurodollar Loan or to give effect to its obligations as contemplated hereby with respect to any Eurodollar Loan, then, by written notice to the Borrower and to the Administrative Agent:

(i) such Lender may declare that Eurodollar Loans will not thereafter (for the duration of such unlawfulness) be made by such Lender hereunder (or be continued for additional Interest Periods and ABR Loans will not thereafter (for such duration) be converted into Eurodollar Loans), whereupon any request for a Eurodollar Borrowing (or to convert an ABR Borrowing to a Eurodollar Borrowing or to continue a Eurodollar Borrowing for an additional Interest Period) shall, as to such Lender only, be deemed a request for an ABR Loan (or a request to continue an ABR Loan as such or to convert a Eurodollar Loan into an ABR Loan, as the case may be), unless such declaration shall be subsequently withdrawn; and

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(ii) such Lender may require that all outstanding Eurodollar Loans made by it be converted to ABR Loans, in which event all such Eurodollar Loans shall be automatically converted to ABR Loans as of the effective date of such notice as provided in paragraph (b) below.

In the event any Lender shall exercise its rights under (i) or (ii) above, all payments and prepayments of principal that would otherwise have been applied to repay the Eurodollar Loans that would have been made by such Lender or the converted Eurodollar Loans of such Lender shall instead be applied to repay the ABR Loans made by such Lender in lieu of, or resulting from the conversion of, such Eurodollar Loans.

(b) For purposes of this Section 2.15, a notice to the Borrower by any Lender shall be effective as to each Eurodollar Loan made by such Lender, if lawful, on the last day of the Interest Period then applicable to such Eurodollar Loan; in all other cases such notice shall be effective on the date of receipt by the Borrower.

**SECTION 2.16. *Indemnity.*** The Borrower shall indemnify each Lender against any loss or expense that such Lender may sustain or incur as a consequence of (a) any event, other than a default by such Lender in the performance of its obligations hereunder, which results in (i) such Lender receiving or being deemed to receive any amount on account of the principal of any Eurodollar Loan prior to the end of the Interest Period in effect therefor, (ii) the conversion of any Eurodollar Loan to an ABR Loan, or the conversion of the Interest Period with respect to any Eurodollar Loan, in each case other than on the last day of the Interest Period in effect therefor, or (iii) any Eurodollar Loan to be made by such Lender (including any Eurodollar Loan to be made pursuant to a conversion or continuation under Section 2.10) not being made after notice of such Loan shall have been given by the Borrower hereunder (any of the events referred to in this clause (a) being called a "*Breakage Event*") or (b) any default in the making of any payment or prepayment of any Eurodollar Loan required to be made hereunder. In the case of any Breakage Event, such loss shall include an amount equal to the excess, as reasonably determined by such Lender, of (i) its cost of obtaining funds for the Eurodollar Loan that is the subject of such Breakage Event for the period from the date of such Breakage Event to the last day of the Interest Period in effect (or that would have been in effect) for such Loan over (ii) the amount of interest likely to be realized by such Lender in redeploying the funds released or not utilized by reason of such Breakage Event for such period. A certificate of any Lender setting forth any amount or amounts which such Lender is entitled to receive pursuant to this Section 2.16, and setting forth in reasonable detail the basis on which such amount or amounts were calculated, shall be delivered to the Borrower and shall be conclusive absent manifest error.

**SECTION 2.17. *Pro Rata Treatment.*** Except as provided below in this Section 2.17 with respect to Swingline Loans and as required under Sections 2.13(h) and 2.15, each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans, each payment of the Commitment Fees, each reduction of the Term Loan Commitments or the Revolving Credit Commitments and each conversion of any Borrowing to or continuation of any Borrowing as a Borrowing of any Type shall be allocated pro rata among the Lenders in accordance with their respective applicable Commitments (or, if such Commitments shall have expired or been terminated, in accordance with the respective principal amounts of their outstanding Loans). For purposes of determining the available Revolving Credit Commitments of the Lenders at any time, each outstanding Swingline Loan shall be deemed to have utilized the Revolving Credit Commitments of the Lenders (including those Lenders which shall not have made Swingline Loans) pro rata in accordance with such respective Revolving

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Credit Commitments. Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole dollar amount.

**SECTION 2.18. *Sharing of Setoffs.*** Each Lender agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim against the Borrower or any other Loan Party, or pursuant to a secured claim under Section 506 of Title 11 of the United States Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means, obtain payment (voluntary or involuntary) in respect of any Loan or Loans or L/C Disbursement as a result of which the unpaid principal portion of its Loans and participations in L/C Disbursements shall be proportionately less than the unpaid principal portion of the Loans and participations in L/C Disbursements of any other Lender, it shall be deemed simultaneously to have purchased from such other Lender at face value, and shall promptly pay to such other Lender the purchase price for, a participation in the Loans and L/C Exposure of such other Lender, so that the aggregate unpaid principal amount of the Loans and L/C Exposure and participations in Loans and L/C Exposure held by each Lender shall be in the same proportion to the aggregate unpaid principal amount of all Loans and L/C Exposure then outstanding as the principal amount of its Loans and L/C Exposure prior to such exercise of banker's lien, setoff or counterclaim or other event was to the principal amount of all Loans and L/C Exposure outstanding prior to such exercise of banker's lien, setoff or counterclaim or other event; *provided, however*, that if any such purchase or purchases or adjustments shall be made pursuant to this Section 2.18 and the payment giving rise thereto shall thereafter be recovered, such purchase or purchases or adjustments shall be rescinded to the extent of such recovery and the purchase price or prices or adjustment restored without interest. The Borrower and Holdings expressly consent to the foregoing arrangements and agree that any Lender holding a participation in a Loan or L/C Disbursement deemed to have been so purchased may exercise any and all rights of banker's lien, setoff or counterclaim with respect to any and all moneys owing by

the Borrower and Holdings to such Lender by reason thereof as fully as if such Lender had made a Loan directly to the Borrower in the amount of such participation.

**SECTION 2.19. *Payments.*** (a) The Borrower shall make each payment (including principal of or interest on any Borrowing or any L/C Disbursement or any Fees or other amounts) hereunder and under any other Loan Document not later than 2:00 p.m., New York City time, on the date when due in immediately available dollars, without setoff, defense or counterclaim. Each such payment (other than (i) Issuing Bank Fees, which shall be paid directly to the Issuing Bank, and (ii) principal of and interest on Swingline Loans, which shall be paid directly to the Swingline Lender except as otherwise provided in Section 2.22(e)) shall be made to the Administrative Agent at its offices at Eleven Madison Avenue, New York, NY 10010.

(b) Except as otherwise expressly provided herein, whenever any payment (including principal of or interest on any Borrowing or any Fees or other amounts) hereunder or under any other Loan Document shall become due, or otherwise would occur, on a day that is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or Fees, if applicable.

**SECTION 2.20. *Taxes.*** (a) Any and all payments by or on account of any obligation of the Borrower or any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; *provided* that if the Borrower or any Loan Party shall be required to deduct any Indemnified Taxes or Other Taxes

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from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to Indemnified Taxes and Other Taxes payable under this Section) the Administrative Agent or such Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower or such Loan Party shall make such deductions and (iii) the Borrower or such Loan Party shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Borrower shall indemnify the Administrative Agent and each Lender, within 15 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower or any Loan Party hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender, or by the Administrative Agent on its behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) If the Borrower determines in good faith that a reasonable basis exists for contesting a Tax, the relevant Lender (or participant), or the Administrative Agent, as applicable, shall cooperate with the Borrower in challenging such Tax at the Borrower's expense if requested by the Borrower. If a Lender (or participant) or the Administrative Agent receives a refund (including pursuant to a claim for refund made pursuant to the preceding sentence) in respect of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.20, it shall within 30 days from the date of such receipt pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.20 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of such Lender (or participant) or the Administrative Agent (together with any interest paid by the relevant Governmental Authority with respect to such refund); *provided, however*, that the Borrower, upon the request of such Lender (or participant) or the Administrative Agent, agrees to repay the amount paid over to the Borrower (plus penalties, interest or other charges) to such Lender (or participant) or the Administrative Agent in the event such Lender (or participant) or the Administrative Agent is required to repay such refund to such Governmental Authority.

(e) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower or any other Loan Party to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is located, or pursuant to any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to

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the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate and shall deliver to the Borrower and the Administrative Agent two further copies of any such form or certification (or any applicable successor form) on or before the date that any such form or certification expires or becomes obsolete and after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrower. Each Lender that shall become a participant or a Lender pursuant to Section 9.04 shall, upon the effectiveness of the related transfer, be required to provide all the forms and statements required pursuant to this Section 2.20(f) provided that in the case of a participant such participant shall furnish all such required forms and statements to the Lender from which the related participation shall have been purchased.

**SECTION 2.21. *Assignment of Commitments Under Certain Circumstances; Duty to Mitigate.*** (a) In the event (i) any Lender or the Issuing Bank delivers a certificate requesting compensation pursuant to Section 2.14, (ii) any Lender or the Issuing Bank delivers a notice described in Section 2.15, (iii) the Borrower is required to pay any additional amount to any Lender or the Issuing Bank or any Governmental Authority on account of any Lender or the Issuing Bank pursuant to Section 2.20 or (iv) any Lender refuses to consent to a proposed amendment, waiver, consent or other modification of this Agreement or any other Loan Document which has been approved by the Required Lenders and which additionally requires the consent of such Lender for approval pursuant to Section 9.08(b), the Borrower may, at its sole expense and effort, upon notice to such Lender or the Issuing Bank and the Administrative Agent, require such Lender or the Issuing Bank to transfer and assign, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all of its interests, rights and obligations under this Agreement to an assignee that shall assume such assigned obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (x) such assignment shall not conflict with any law, rule or regulation or order of any court or other Governmental Authority having jurisdiction, (y) the Borrower shall have received the prior written consent of the Administrative Agent (and, if a Revolving Credit Commitment is being assigned, of the Issuing Bank and the Swingline Lender), which consent shall not unreasonably be withheld, and (z) the Borrower or such assignee shall have paid to the affected Lender or the Issuing Bank in immediately available funds an amount equal to the sum of the principal of and interest accrued to the date of such payment on the outstanding Loans or L/C Disbursements of such Lender or the Issuing Bank, respectively, plus all Fees and other amounts accrued for the account of such Lender or the Issuing Bank hereunder (including any amounts under Section 2.14 and Section 2.16); provided further that, if prior to any such transfer and assignment the circumstances or event that resulted in such Lender's or the Issuing Bank's claim for compensation under Section 2.14 or notice under Section 2.15 or the amounts paid pursuant to Section 2.20, as the case may be, cease to cause such Lender or the Issuing Bank to suffer increased costs or reductions in amounts received or receivable or reduction in return on capital, or cease to have the consequences specified in Section 2.15, or cease to result in amounts being payable under Section 2.20, as the case may be (including as a result of any action taken by such Lender or the Issuing Bank pursuant to paragraph (b) below), or if such Lender or the Issuing Bank shall waive its right to claim further compensation under Section 2.14 in respect of such circumstances or event or shall withdraw its notice under Section 2.15 or shall waive its right to further payments under Section 2.20 in respect of such circumstances or event or shall consent to the proposed amendment, waiver, consent or other modification, as the case may be, then such Lender or the Issuing Bank shall not thereafter be required to make any such transfer and assignment hereunder.

(b) If (i) any Lender or the Issuing Bank shall request compensation under Section 2.14, (ii) any Lender or the Issuing Bank delivers a notice described in Section 2.15 or (iii) the Borrower is required to pay any additional amount to any Lender or the Issuing Bank or any Governmental Authority on account of any Lender or the Issuing Bank, pursuant to Section 2.20, then such Lender or the Issuing Bank shall use reasonable efforts (which shall not require such Lender or the Issuing Bank to incur an unreimbursed loss or unreimbursed cost or expense or otherwise take any action inconsistent with its internal policies or legal or regulatory restrictions or suffer any disadvantage or burden deemed by it to be significant) (x) to file any certificate or document reasonably requested in writing by the Borrower or (y) to assign its rights and delegate and transfer its obligations hereunder to another of its offices, branches or affiliates, if such filing or assignment would reduce its claims for compensation under Section 2.14 or enable it to withdraw its notice pursuant to Section 2.15 or would reduce amounts payable pursuant to Section 2.20, as the case may be, in the future. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or the Issuing Bank in connection with any such filing or assignment, delegation and transfer.

**SECTION 2.22. *Swingline Loans.*** (a) *Swingline Commitment.* Subject to the terms and conditions and relying upon the representations and warranties herein set forth, the Swingline Lender agrees to make loans to the Borrower at any time and from time to time on and after the Closing Date and until the earlier of the Revolving Credit Maturity Date and the termination of the Revolving Credit Commitments in accordance with the terms hereof, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of all Swingline Loans exceeding \$10,000,000 in the aggregate or (ii) the Aggregate Revolving Credit Exposure, after giving effect to any Swingline Loan, exceeding the Total Revolving Credit Commitment. Each Swingline Loan shall be in a principal amount that is an integral multiple of \$250,000. The Swingline Commitment may be terminated or reduced from time to time as provided herein. Within the foregoing limits, the Borrower may borrow, pay or prepay and reborrow Swingline Loans hereunder, subject to the terms, conditions and limitations set forth herein.

(b) *Swingline Loans.* The Borrower shall notify the Administrative Agent by fax, or by telephone (confirmed by fax), not later than 12:00 noon, New York City time, on the day of a proposed Swingline Loan. Such notice shall be delivered on a Business Day, shall be irrevocable and shall refer to this Agreement and shall specify the requested date (which shall be a Business Day) and amount of such Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of any notice received from the Borrower pursuant to this paragraph (b). The Swingline Lender shall make each Swingline Loan available to the Borrower by means of a credit to an account in the name of the Borrower as designated by the Borrower in such notice by 3:00 p.m., New York City time, on the date such Swingline Loan is so requested.

(c) *Prepayment.* The Borrower shall have the right at any time and from time to time to prepay any Swingline Loan, in whole or in part, upon giving written or fax notice (or telephone notice promptly confirmed by written, or fax notice) to the Swingline Lender and to the Administrative Agent before 2:00 p.m., New York City time, on the date of prepayment at the Swingline Lender's address for notices specified on Schedule 2.01. All principal payments of Swingline Loans shall be accompanied by accrued interest on the principal amount being repaid to the date of payment.

(d) *Interest.* Each Swingline Loan shall be an ABR Loan and, subject to the provisions of Section 2.07, shall bear interest as provided in Section 2.06(a).

(e) *Participations.* The Swingline Lender may by written notice given to the Administrative Agent not later than 10:00 a.m., New York City time, on any Business Day require the Revolving Credit Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Revolving Credit Lenders will participate. The Administrative Agent will, promptly upon receipt of such notice, give notice to each Revolving Credit Lender, specifying in such notice such Lender's Pro Rata Percentage of such Swingline Loan or Loans. In furtherance of the foregoing, each Revolving Credit Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Revolving Credit Lender's Pro Rata Percentage of such Swingline Loan or Loans. Each Revolving Credit Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or an Event of Default, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Credit Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.02(c) with respect to Loans made by such Lender (and Section 2.02(c) shall apply, *mutatis mutandis*, to the payment obligations of the Lenders) and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Lenders. The Administrative Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrower (or other party liable for obligations of the Borrower) of any default in the payment thereof.

**SECTION 2.23. *Letters of Credit.*** (a) *General.* The Borrower may request the issuance of a Letter of Credit for its own account or for the account of any of its wholly owned Subsidiaries (in which case the Borrower and such wholly owned Subsidiary shall be co-applicants with respect to such Letter of Credit), in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time while the Revolving Credit Commitments remain in effect. This Section shall not be construed to impose an obligation upon the Issuing Bank to issue any Letter of Credit that is inconsistent with the terms and conditions of this Agreement.

(b) *Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions.* In order to request the issuance of a Letter of Credit (or to amend, renew or extend an existing Letter of Credit), the Borrower shall hand deliver or fax to the Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, the date of issuance, amendment, renewal or extension, the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) below), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare such Letter of Credit. A Letter of Credit shall be

issued, amended, renewed or extended only if, and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that, after giving effect to such issuance, amendment, renewal or extension (i) the L/C Exposure shall not exceed \$30,000,000 and (ii) the Aggregate Revolving Credit Exposure shall not exceed the Total Revolving Credit Commitment.

(c) *Expiration Date.* Each Letter of Credit shall expire at the close of business on the earlier of the date that is one year after the date of the issuance of such Letter of Credit and the date that is five Business Days prior to the Revolving Credit Maturity Date, unless such Letter of Credit expires by its terms on an earlier date; *provided, however,* that a Letter of Credit may, upon the request of the Borrower, include a provision whereby such Letter of Credit shall be renewed automatically for additional consecutive periods of 12 months or less (but not beyond the date that is five Business Days prior to the Revolving Credit Maturity Date) unless the Issuing Bank notifies the beneficiary thereof at least 30 days prior to the then applicable expiration date that such Letter of Credit will not be renewed.

(d) *Participations.* By the issuance of a Letter of Credit and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Revolving Credit Lender, and each such Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Pro Rata Percentage of the aggregate amount available to be drawn under such Letter of Credit, effective upon the issuance of such Letter of Credit. In consideration and in furtherance



of the foregoing, each Revolving Credit Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Pro Rata Percentage of each L/C Disbursement made by the Issuing Bank and not reimbursed by the Borrower (or, if applicable, another party pursuant to its obligations under any other Loan Document) forthwith on the date due as provided in Section 2.02(f). Each Revolving Credit Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or an Event of Default, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(c) *Reimbursement.* If the Issuing Bank shall make any L/C Disbursement in respect of a Letter of Credit, the Borrower shall pay to the Issuing Bank an amount equal to such L/C Disbursement on the same Business Day on which the Borrower shall have received notice from the Issuing Bank that payment of such draft will be made, or, if the Borrower shall have received such notice later than 1:00 p.m., New York City time, on any Business Day, not later than 1:00 p.m., New York City time, on the immediately following Business Day; *provided* that to satisfy its reimbursement obligation under this paragraph (c), the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.22 an ABR Revolving Loan or Swingline Loan to be made by the Revolving Credit Lenders or the Swingline Lender, respectively, in the aggregate amount of any such L/C Disbursement.

(f) *Obligations Absolute.* The Borrower's obligations to reimburse L/C Disbursements as provided in paragraph (c) above shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under any and all circumstances whatsoever, and irrespective of:

(i) any lack of validity or enforceability of any Letter of Credit or any Loan Document, or any term or provision therein;

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(ii) any amendment or waiver of or any consent to departure from all or any of the provisions of any Letter of Credit or any Loan Document;

(iii) the existence of any claim, setoff, defense or other right that the Borrower, any other party guaranteeing, or otherwise obligated with, the Borrower, any Subsidiary or other Affiliate thereof or any other person may at any time have against the beneficiary under any Letter of Credit, the Issuing Bank, the Administrative Agent or any Lender or any other person, whether in connection with this Agreement, any other Loan Document or any other related or unrelated agreement or transaction;

(iv) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(v) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit; and

(vi) any other act or omission to act or delay of any kind of the Issuing Bank, the Lenders, the Administrative Agent or any other person or any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of the Borrower's obligations hereunder.

Without limiting the generality of the foregoing, it is expressly understood and agreed that the absolute and unconditional obligation of the Borrower hereunder to reimburse L/C Disbursements will not be excused by the gross negligence or wilful misconduct of the Issuing Bank. However, the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Bank's gross negligence or wilful misconduct in determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof; it is understood that the Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary and, in making any payment under any Letter of Credit (i) the Issuing Bank's exclusive reliance on the documents presented to it under such Letter of Credit as to any and all matters set forth therein, including reliance on the amount of any draft presented under such Letter of Credit, whether or not the amount due to the beneficiary thereunder equals the amount of such draft and whether or not any document presented pursuant to such Letter of Credit proves to be insufficient in any respect, if such document on its face appears to be in order, and whether or not any other statement or any other document presented pursuant to such Letter of Credit proves to be forged or invalid or any statement therein proves to be inaccurate or untrue in any respect whatsoever and (ii) any noncompliance in any immaterial respect of the documents presented under such Letter of Credit with the terms thereof shall, in each case, be deemed not to constitute wilful misconduct or gross negligence of the Issuing Bank.

(g) *Disbursement Procedures.* The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall as promptly as possible give telephonic notification, confirmed by fax, to the Administrative Agent and the Borrower of such demand for payment and whether the Issuing Bank has made or will make an L/C Disbursement thereunder; *provided* that any failure

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to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Issuing Bank and the Revolving Credit Lenders with respect to any such L/C Disbursement. The Administrative Agent shall promptly give each Revolving Credit Lender notice thereof.

(h) *Interim Interest.* If the Issuing Bank shall make any L/C Disbursement in respect of a Letter of Credit, then, unless the Borrower shall reimburse such L/C Disbursement in full on such date, the unpaid amount thereof shall bear interest for the account of the Issuing Bank, for each day from and including the date of such L/C Disbursement, to but excluding the earlier of the date of payment by the Borrower or the date on which interest shall commence to accrue thereon as provided in Section 2.02(f), at the rate per annum that would apply to such amount if such amount were an ABR Revolving Loan.

(i) *Resignation or Removal of the Issuing Bank.* The Issuing Bank may resign at any time by giving 30 days' prior written notice to the Administrative Agent, the Lenders and the Borrower, and may be removed at any time by the Borrower by notice to the Issuing Bank, the Administrative Agent and the Lenders. Subject to the next succeeding paragraph, upon the acceptance of any appointment as the Issuing Bank hereunder by a Lender that shall agree to serve as successor Issuing Bank, such successor shall succeed to and become vested with all the interests, rights and obligations of the retiring Issuing Bank and the retiring Issuing Bank shall be discharged from its obligations to issue additional Letters of Credit hereunder. At the time such removal or resignation shall become effective, the Borrower shall pay all accrued and unpaid fees pursuant to Section 2.05(c)(ii). The acceptance of any appointment as the Issuing Bank hereunder by a successor Lender shall be evidenced by an agreement entered into by such successor, in a form satisfactory to the Borrower and the Administrative Agent, and, from and after the effective date of such agreement, (i) such successor Lender shall have all the rights and obligations of the previous Issuing Bank under this Agreement and the other Loan Documents and (ii) references herein and in the other Loan Documents to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the resignation or removal of the Issuing Bank hereunder, the retiring Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation or removal, but shall not be required to issue additional Letters of Credit.

(j) *Cash Collateralization.* If any Event of Default shall occur and be continuing, the Borrower shall, on the Business Day it receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Credit Lenders holding participations in outstanding Letters of Credit representing greater than 50% of the aggregate undrawn amount of all outstanding Letters of Credit) thereof and of the amount to be deposited, deposit in an account with the

Collateral Agent, for the benefit of the Revolving Credit Lenders, an amount in cash equal to the L/C Exposure as of such date. Such deposit shall be held by the Collateral Agent as collateral for the payment and performance of the Obligations. The Collateral Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits in Permitted Investments, which investments shall be made at the option and sole discretion of the Collateral Agent, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall (i) automatically be applied by the Administrative Agent to reimburse the Issuing Bank for L/C Disbursements for which it has not been reimbursed, (ii) be held for the satisfaction of the reimbursement obligations of the Borrower for the L/C Exposure at such time and (iii) if the maturity of the

Loans has been accelerated (but subject to the consent of Revolving Credit Lenders holding participations in outstanding Letters of Credit representing greater than 50% of the aggregate undrawn amount of all outstanding Letters of Credit), be applied to satisfy the Obligations. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

(k) *Additional Issuing Banks.* The Borrower may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld) and such Lender, designate one or more additional Lenders to act as an issuing bank under the terms of this Agreement. Any Lender designated as an issuing bank pursuant to this paragraph (k) shall be deemed (in addition to being a Lender) to be the Issuing Bank with respect to Letters of Credit issued or to be issued by such Lender, and all references herein and in the other Loan Documents to the term "Issuing Bank" shall, with respect to such Letters of Credit, be deemed to refer to such Lender in its capacity as Issuing Bank, as the context shall require.

**SECTION 2.24. Increase in Revolving Credit Commitments.** (a) The Borrower may, by written notice to the Administrative Agent from time to time, request that the Total Revolving Credit Commitment be increased by an amount not to exceed the Incremental Revolving Facility Amount at such time. Upon the approval of such request by the Administrative Agent (which approval shall not be unreasonably withheld), the Administrative Agent shall deliver a copy thereof to each Revolving Credit Lender. Such notice shall set forth the amount of the requested increase in the Total Revolving Credit Commitment (which shall be in minimum increments of \$5,000,000 and a minimum amount of \$10,000,000 or equal to the remaining Incremental Revolving Facility Amount) and the date on which such increase is requested to become effective (which shall be not less than 10 Business Days nor more than 60 days after the date of such notice and which, in any event, must be on or prior to the Revolving Credit Maturity Date), and shall offer each Revolving Credit Lender the opportunity to increase its Revolving Credit Commitment by its Pro Rata Percentage of the proposed increased amount. Each Revolving Credit Lender shall, by notice to the Borrower and the Administrative Agent given not more than 10 days after the date of the Administrative Agent's notice, either agree to increase its Revolving Credit Commitment by all or a portion of the offered amount (each Revolving Credit Lender so agreeing being an "*Increasing Revolving Lender*") or decline to increase its Revolving Credit Commitment (and any Revolving Credit Lender that does not deliver such a notice within such period of 10 days shall be deemed to have declined to increase its Revolving Credit Commitment) (each Revolving Credit Lender so declining or being deemed to have declined being a "*Non-Increasing Revolving Lender*"). In the event that, on the 10th day after the Administrative Agent shall have delivered a notice pursuant to the second sentence of this paragraph, the Revolving Credit Lenders shall have agreed pursuant to the preceding sentence to increase their Revolving Credit Commitments by an aggregate amount less than the increase in the Total Revolving Credit Commitment requested by the Borrower, the Borrower may arrange for one or more banks or other entities (any such bank or other entity referred to in this clause (a) being called an "*Augmenting Revolving Lender*"), which may include any Lender, to extend Revolving Credit Commitments or increase their existing Revolving Credit Commitments in an aggregate amount equal to the unsubscribed amount; *provided* that each Augmenting Revolving Lender, if not already a Revolving Credit Lender hereunder, shall be subject to the approval of the Administrative Agent, the Swingline Lender and the Issuing Bank (which approvals shall not be unreasonably withheld) and the Borrower and each Augmenting Revolving Lender shall execute all such documentation as the Administrative Agent shall reasonably specify to evidence its

Revolving Credit Commitment and/or its status as a Revolving Credit Lender hereunder. Any increase in the Total Revolving Credit Commitment may be made in an amount which is less than the increase requested by the Borrower if the Borrower is unable to arrange for, or chooses not to arrange for, Augmenting Revolving Lenders.

(b) Each of the parties hereto hereby agrees that the Administrative Agent may take any and all actions as may be reasonably necessary to ensure that, after giving effect to any increase in the Total Revolving Credit Commitment pursuant to this Section 2.24, the outstanding Revolving Loans (if any) are held by the Revolving Credit Lenders in accordance with their new Pro Rata Percentages. This may be accomplished at the discretion of the Administrative Agent (i) by requiring the outstanding Revolving Loans to be prepaid with the proceeds of a new Revolving Credit Borrowing, (ii) by causing Non-Increasing Revolving Lenders to assign portions of their outstanding Revolving Loans to Increasing Revolving Lenders and Augmenting Revolving Lenders, or (iii) by any combination of the foregoing. Any prepayment or assignment described in this paragraph (b) shall be subject to Section 2.16, but otherwise without premium or penalty.

(c) Notwithstanding the foregoing, no increase in the Total Revolving Credit Commitment (or in the Revolving Credit Commitment of any Revolving Credit Lender) or addition of a new Revolving Credit Lender shall become effective under this Section 2.24 unless, (i) on the date of such increase, the conditions set forth in paragraphs (b) and (c) of Section 4.01 shall be satisfied and the Administrative Agent shall have received a certificate to that effect dated such date and executed by a Financial Officer of the Borrower, and (ii) the Administrative Agent shall have received (with sufficient copies for each of the Revolving Credit Lenders) legal opinions, board resolutions and an officer's certificate consistent with those delivered on the Restatement Date under clauses (a)(i), (a)(ii), (c)(ii)(B) and (d) of Section 4.02.

**SECTION 2.25. Increase in Term Loan Commitments.** (a) The Borrower may, by written notice to the Administrative Agent from time to time, request Incremental Term Loan Commitments in an amount not to exceed the Incremental Term Loan Amount from one or more Incremental Term Lenders, which may include any existing Lender; *provided* that each Incremental Term Lender, if not already a Lender hereunder, shall be subject to the approval of the Administrative Agent (which approval shall not be unreasonably withheld). Such notice shall set forth (i) the amount of the Incremental Term Loan Commitments being requested (which shall be in minimum increments of \$5,000,000 and a minimum amount of \$10,000,000 or equal to the remaining Incremental Term Loan Amount), (ii) the date on which such Incremental Term Loan Commitments are requested to become effective (which shall not be less than 10 Business Days nor more than 60 days after the date of such notice), and (iii) whether such Incremental Term Loan Commitments are commitments to make additional Term Loans or commitments to make term loans with terms different from the Term Loans ("*Other Term Loans*").

(b) The Borrower and each Incremental Term Lender shall execute and deliver to the Administrative Agent an Incremental Term Loan Assumption Agreement and such other documentation as the Administrative Agent shall reasonably specify to evidence the Incremental Term Loan Commitment of such Incremental Term Lender. Each Incremental Term Loan Assumption Agreement shall specify the terms of the Incremental Term Loans to be made thereunder; *provided* that, without the prior written consent of the Required Lenders, (i) the interest rate spreads in respect of any Other Term Loans shall not exceed by more than 1/2 of 1% the Applicable Percentage for the Term Loans, (ii) the final maturity date of any Other Term Loans shall be no earlier than the Term Loan Maturity Date and (iii) the average life to maturity

of any Other Term Loans shall be no shorter than the average life to maturity of the Term Loans. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Incremental Term Loan Assumption Agreement. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Term Loan Assumption Agreement, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Incremental Term Loan Commitment evidenced thereby.

(c) Notwithstanding the foregoing, no Incremental Term Loan Commitment shall become effective under this Section 2.25 unless (i) on the date of such effectiveness, the conditions set forth in paragraphs (b) and (c) of Section 4.01 shall be satisfied and the Administrative Agent shall have received a certificate to that effect dated such date and executed by a Financial Officer of the Borrower, and (ii) the Administrative Agent shall have received (with sufficient copies for each of the Incremental Term Lenders) legal opinions, board resolutions and an officer's certificate consistent with those delivered on the Restatement Date under clauses (a)(i), (a)(ii), (c)(ii)(B) and (d) of Section 4.02.

(d) Each of the parties hereto hereby agrees that the Administrative Agent may take any and all action as may be reasonably necessary to ensure that all Incremental Term Loans (other than Other Term Loans), when originally made, are included in each Borrowing of outstanding Term Loans, as the case may be, on a pro rata basis. This may be accomplished at the discretion of the Administrative Agent by requiring each outstanding Eurodollar Term Borrowing to be converted into an ABR Term Borrowing on the date of each Incremental Term Loan, or by allocating a portion of each Incremental Term Loan to each outstanding Eurodollar Term Borrowing on a pro rata basis, even though as a result thereof such Incremental Term Loan may effectively have a shorter Interest Period than the Term Loans included in the Borrowing of which they are a part (and notwithstanding any other provision of this Agreement that would prohibit such an initial Interest Period). Any conversion of Eurodollar Term Loans to ABR Term Loans required by the preceding sentence shall be subject to Section 2.16. If any Incremental Term Loan is to be allocated to an existing Interest Period for a Eurodollar Term Borrowing then, subject to Section 2.07, the interest rate applicable to such Incremental Term Loan for the remainder of such Interest Period shall equal the Adjusted LIBO Rate for a period approximately equal to the remainder of such Interest Period (as determined by the Administrative Agent two Business Days before the date such Incremental Term Loan is made) plus the Applicable Percentage. In addition, to the extent any Incremental Term Loans are not Other Term Loans, the scheduled amortization payments under Section 2.11(a)(i) required to be made after the making of such Incremental Term Loans shall be ratably increased by the aggregate principal amount of such Incremental Term Loans.

## ARTICLE III

### *Representations and Warranties*

Each of Holdings and the Borrower, with respect to itself and its Subsidiaries, represents and warrants to the Administrative Agent, the Collateral Agent, the Issuing Bank and each of the Lenders that:

**SECTION 3.01. *Organization; Powers.*** Each of Holdings, the Borrower and the Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted, (c) is

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qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where the failure so to qualify could not reasonably be expected to result in a Material Adverse Effect, and (d) has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument contemplated hereby to which it is or will be a party and, in the case of the Borrower, to borrow hereunder.

**SECTION 3.02. *Authorization.*** The execution, delivery and performance by the Loan Parties of the Loan Documents to which each is or will be a party and the consummation by the Loan Parties of the Amendment Transactions (including the borrowings by the Borrower hereunder) (a) have been duly authorized by all requisite corporate and, if required, stockholder action and (b) will not (i) violate (A) any provision of law, statute, rule or regulation in any material respect, or of the certificate or articles of incorporation or other constitutive documents or by-laws of Holdings, the Borrower or any Subsidiary, (B) any order of any Governmental Authority or (C) any provision of any indenture, agreement or other instrument to which Holdings, the Borrower or any Subsidiary is a party or by which any of them or any of their property is or may be bound in any material respect, (ii) or give rise to any right to accelerate or to require the prepayment, repurchase or redemption of any obligation under any such indenture, agreement or other instrument or (iii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by Holdings, the Borrower or any Subsidiary (other than any Lien created hereunder or under the Security Documents).

**SECTION 3.03. *Enforceability.*** This Agreement has been duly executed and delivered by Holdings and the Borrower and constitutes, and each other Loan Document when executed and delivered by the each Loan Party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against such Loan Party in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, moratorium and other similar laws relating to or affecting creditors' rights generally and to general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

**SECTION 3.04. *Governmental Approvals.*** No action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the Amendment Transactions, except for such as have been made or obtained and are in full force and effect, and except where the failure to obtain such consent or approval to make such registration or filing or other action, in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**SECTION 3.05. *Financial Statements.*** The Borrower has heretofore furnished to the Lenders its consolidated balance sheets and statements of income, stockholder's equity and cash flows (i) as of and for the fiscal year ended December 31, 2002, audited by and accompanied by the opinion of Deloitte & Touche LLP, independent public accountants, and (ii) as of and for the fiscal quarter and the portion of the fiscal year ended June 30, 2003, certified by its chief financial officer. Such financial statements present fairly the financial condition and results of operations and cash flows of the Borrower and its consolidated Subsidiaries as of such dates and for such periods. Such balance sheets and the notes thereto disclose all material liabilities, direct or contingent, of the Borrower and its consolidated Subsidiaries as of the dates thereof. Such financial statements were prepared in accordance with GAAP applied on a consistent basis.

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**SECTION 3.06. *No Material Adverse Change.*** No event, change or condition has occurred that has had, or could reasonably be expected to have, a material adverse effect on the business, assets, operations or condition, financial or otherwise, of Holdings, the Borrower and the Subsidiaries, taken as a whole, since December 31, 2002.

**SECTION 3.07. *Title to Properties.*** Each of Holdings, the Borrower and the Subsidiaries has good and marketable title to, or valid leasehold interests in, all its material properties and assets necessary for the conduct of its business, except for minor defects in title that do not interfere in any material respect with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes. All such material properties and assets are free and clear of Liens, other than Liens expressly permitted by Section 6.02.

**SECTION 3.08. *Subsidiaries; Designated Real Estate Credit Support.***

(a) Schedule 3.08(a) sets forth as of the Restatement Date a list of all subsidiaries (other than Designated Real Estate Asset Subsidiaries) of Holdings, the percentage ownership interest of Holdings, the Borrower or other Subsidiaries therein and whether such Subsidiary is an Inactive Subsidiary. The shares of capital stock or other ownership interests so indicated on Schedule 3.08(a) are fully paid and non-assessable and are owned by Holdings or the Borrower, directly or indirectly, free and clear of all Liens (other than Liens created under the Security Documents).

(b) Schedule 3.08(b) sets forth, as of the Restatement Date, a true and correct description of all Designated Real Estate Credit Support.

SECTION 3.09. **Litigation; Compliance with Laws.** (a) Except as set forth on Schedule 3.09, there are not any actions, suits or proceedings at law or in equity or by or before any Governmental Authority now pending or, to the knowledge of Holdings or the Borrower, threatened against or affecting Holdings or the Borrower or any Subsidiary or any business, property or rights of any such person (i) that involve any Loan Document or the Amendment Transactions or (ii) that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Since the Restatement Date, there has been no change in the status of the matters disclosed on Schedule 3.09 that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

(c) None of Holdings, the Borrower or any of the Subsidiaries or any of their respective material properties or assets is in violation of, nor will the continued operation of their material properties and assets as currently conducted violate, any law, rule or regulation, or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority, where such violation or default could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10. **Agreements.** (a) None of Holdings, the Borrower or any of the Subsidiaries is a party to any agreement or instrument or subject to any corporate restriction that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(b) None of Holdings, the Borrower or any of the Subsidiaries is in default in any manner under any provision of any indenture or other agreement or instrument evidencing Material Indebtedness, or any other material agreement or instrument to which it is a party or by

which it or any of its properties or assets are or may be bound, where such default could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.11. **Federal Reserve Regulations.** (a) None of Holdings, the Borrower or any of the Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of the provisions of Regulation T, U or X.

SECTION 3.12. **Investment Company Act; Public Utility Holding Company Act** None of Holdings, the Borrower or any Subsidiary (other than any Co-investment Subsidiary) is (a) an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940 or (b) a "holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

SECTION 3.13. **Use of Proceeds.** The Borrower will (a) use the proceeds of the Term Loans only for the purposes specified in the preamble to this Agreement, (b) use the proceeds of the Revolving Loans and Swingline Loans and will request the issuance of Letters of Credit only for working capital and other general corporate purposes and (c) use the proceeds of Incremental Term Loans only as set forth in the applicable Incremental Term Loan Assumption Agreement.

SECTION 3.14. **Tax Returns.** Each of the Holdings, the Borrower and the Subsidiaries has filed or caused to be filed all Federal and all material state, local and foreign tax returns or materials required to have been filed by it and has paid or caused to be paid all material taxes due and payable by it and all assessments received by it, except taxes that are being contested in good faith by appropriate proceedings and for which Holdings, the Borrower or such Subsidiary, as applicable, shall have set aside on its books adequate reserves.

SECTION 3.15. **No Material Misstatements.** None of (a) the Confidential Information Memorandum or (b) any other information, report, financial statement, exhibit or schedule furnished by or on behalf of Holdings or the Borrower to the Administrative Agent or any Lender in connection with the negotiation of any Loan Document or included therein or delivered pursuant thereto contained, contains or will contain any material misstatement of fact or omitted, omits or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not misleading as of the time when made or delivered; *provided* that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection, each of Holdings and the Borrower represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, report, financial statement, exhibit or schedule.

SECTION 3.16. **Employee Benefit Plans.** (a) Each of the Borrower and its ERISA Affiliates is in compliance in all material respects with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder except for such non-compliance as could not reasonably be expected to result in a Material Adverse Effect. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, could reasonably be expected to result in a Material Adverse Effect. The present value of all benefit liabilities under all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the last

annual valuation dates applicable thereto, exceed the fair market value of the assets of all such underfunded Plans by an amount that could reasonably be expected to result in a Material Adverse Effect.

(b) Each Foreign Pension Plan is in compliance in all material respects with all requirements of law applicable thereto and the respective requirements of the governing documents for such plan except to the extent such non-compliance could not reasonably be expected to result in a Material Adverse Effect. With respect to each Foreign Pension Plan, none of the Holdings, its Subsidiaries or any of its directors, officers, employees or agents has engaged in a transaction that subject Holdings or any of its Subsidiaries, directly or indirectly, to a tax or civil penalty that could reasonably be expected to have a Material Adverse Effect. With respect to each Foreign Pension Plan, reserves have been established in the financial statements furnished to Lenders in respect of any unfunded liabilities in accordance with applicable law and prudent business practice or, where required, in accordance with ordinary accounting practices in the jurisdiction in which such Foreign Pension Plan is maintained, except for such failure as could not reasonably be expected to result in a Material Adverse Effect. The aggregate unfunded liabilities, with respect to such Foreign Pension Plans could not reasonably be expected to result in a Material Adverse Effect. There are no actions, suits or claims (other than routine claims for benefits) pending or threatened against the Holdings or any of its Affiliates with respect to any Foreign Pension Plan which could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

SECTION 3.17. **Environmental Matters.** Except with respect to any matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, none of Holdings, the Borrower or any of the Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

SECTION 3.18. **Insurance.** Schedule 3.18 sets forth a true, complete and correct description of all insurance maintained by the Borrower or by the Borrower for its Subsidiaries as of the Restatement Date. As of such date, such insurance is in full force and effect and all premiums have been duly paid. The Borrower and its Subsidiaries have insurance in such amounts and covering such risks and liabilities as are in accordance with normal industry practice.

SECTION 3.19. **Labor Matters.** As of the Restatement Date, there are no material strikes, lockouts or slowdowns against Holdings, the Borrower or any Subsidiary

pending or, to the knowledge of Holdings or the Borrower, threatened. The hours worked by and payments made to employees of Holdings, the Borrower and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters, except to the extent that such violations, in the aggregate, could not reasonably be expected to have a Material Adverse Effect. All payments due from Holdings, the Borrower or any Subsidiary, or for which any claim may be made against Holdings, the Borrower or any Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of Holdings, the Borrower or such Subsidiary, except to the extent that non-payment or non-accrual could not, in the aggregate, reasonably be expected to have a Material Adverse Effect. The consummation of the Amendment Transactions will not give rise to any right of termination or right of renegotiation on

the part of any union under any collective bargaining agreement to which Holdings, the Borrower or any Subsidiary is bound.

SECTION 3.20. **Solvency.** Immediately after the consummation of the Amendment Transactions to occur on the Restatement Date and immediately following the making of each Loan and after giving effect to the application of the proceeds of each Loan, (a) the fair value of the assets of Holdings and its subsidiaries, on a consolidated basis, and the assets of the Borrower and its subsidiaries, on a consolidated basis, at a fair valuation, will exceed their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of Holdings and its subsidiaries, on a consolidated basis, will be greater than the amount that will be required to pay the probable liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) Holdings and its subsidiaries, on a consolidated basis, will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) Holdings and its subsidiaries, on a consolidated basis, will not have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted following the Restatement Date.

SECTION 3.21. **Senior Indebtedness.** The Obligations constitute "Designated Senior Indebtedness" under and as defined in the Senior Subordinated Note Indenture.

#### ARTICLE IV

##### *Conditions of Lending*

SECTION 4.01. **All Credit Events.** The obligations of the Lenders (including the Swingline Lender) to make Loans and of the Issuing Bank to issue, amend, extend or renew any Letter of Credit (each such event being called a "Credit Event") are subject to the satisfaction of the following conditions on the date of each Credit Event:

(a) The Administrative Agent shall have received a notice of such Borrowing as required by Section 2.03 (or such notice shall have been deemed given in accordance with Section 2.03) or, in the case of the issuance, amendment, extension or renewal of a Letter of Credit, the Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance, amendment, extension or renewal of such Letter of Credit as required by Section 2.23(b) or, in the case of the Borrowing of a Swingline Loan, the Swingline Lender and the Administrative Agent shall have received a notice requesting such Swingline Loan as required by Section 2.22(b).

(b) The representations and warranties set forth in Article III hereof and in each other Loan Document shall be true and correct in all material respects on and as of the date of such Credit Event with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date.

(c) At the time of and immediately after such Credit Event, no Event of Default or Default shall have occurred and be continuing.

Each Credit Event shall be deemed to constitute a representation and warranty by the Borrower and Holdings on the date of such Credit Event as to the matters specified in paragraphs (b) and (c) of this Section 4.01.

SECTION 4.02. **Restatement Date.** On the Restatement Date:

(a) The Administrative Agent shall have received, on behalf of itself, the Lenders and the Issuing Bank, a favorable written opinion of (i) Dean E. Miller, Esq., Assistant General Counsel- Corporate of the Borrower, substantially to the effect set forth in Exhibit E-1, and (ii) Simpson Thacher & Bartlett LLP, counsel for Holdings and the Borrower, substantially to the effect set forth in Exhibit E-2, in each case (A) dated the Restatement Date, (B) addressed to the Issuing Bank, the Administrative Agent and the Lenders, and (C) covering such other matters relating to the Loan Documents and the Amendment Transactions as the Administrative Agent shall reasonably request, and Holdings and the Borrower hereby request such counsel to deliver such opinions.

(b) All legal matters incident to this Agreement, the Borrowings and extensions of credit hereunder and the other Loan Documents shall be reasonably satisfactory to the Lenders, to the Issuing Bank and to the Administrative Agent and, to the extent requested, the Lenders shall have received all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act.

(c) The Administrative Agent shall have received a certificate, dated the Restatement Date and signed by the Secretary or Assistant Secretary of each of Holdings and the Borrower, certifying that, except as set forth on any schedule attached thereto, (i) the certificate or articles of incorporation of each Loan Party previously delivered on the First Restatement Date (or such later date on which such person became a Loan Party) have not been amended since the date of the last amendment thereto shown on the certificate of good standing so furnished and (ii) the by-laws of each Loan Party as in effect and delivered to the Administrative Agent on the First Restatement Date (or such later date on which such person became a Loan Party) have not been amended.

(d) The Administrative Agent shall have received a certificate, dated the Restatement Date and signed by a Financial Officer of the Borrower, confirming compliance with the conditions precedent set forth in paragraphs (b) and (c) of Section 4.01.

(e) The Administrative Agent shall have received all Fees and other amounts due and payable on or prior to the Restatement Date, including, to the extent invoiced prior to the Restatement Date, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder or under any other Loan Document.

(f) The Amendment Agreement shall have become effective in accordance with its terms.

(g) Each document (including each Uniform Commercial Code financing statement) required by law or reasonably requested by the Administrative Agent to be filed, registered or recorded in order to create in favor of the Collateral Agent for the benefit of the Secured Parties a valid, legal and perfected first-priority (except to the extent otherwise provided therein) security interest in and lien on the Collateral (subject to any Lien expressly permitted by Section 6.02) described in the Collateral Agreement shall have been delivered to the Collateral Agent.

(h) The Lenders shall have received the audited and unaudited financial statements referred to in Section 3.05.

(i) The Existing Term Loans, together with accrued interest thereon, shall have been repaid, or shall be repaid simultaneously with the initial Borrowing of the Term Loans hereunder.

## ARTICLE V

### *Affirmative Covenants*

Each of Holdings and the Borrower covenants and agrees with each Lender that so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document shall have been paid in full and all Letters of Credit have been canceled or have expired and all amounts drawn thereunder have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, each of Holdings and the Borrower will, and will cause each of the Subsidiaries to:

**SECTION 5.01. *Existence; Businesses and Properties.*** (a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except as otherwise expressly permitted under Section 6.05.

(b) Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect: (i) do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises, authorizations, patents, copyrights, trademarks and trade names necessary to the conduct of its business; (ii) comply in all material respects with all applicable laws, rules, regulations and decrees and orders of any Governmental Authority, including Environmental Laws, whether now in effect or hereafter enacted; and (iii) at all times maintain and preserve all property necessary to the conduct of such business and keep such property in good repair, working order and condition and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith may be properly conducted at all times.

**SECTION 5.02. *Insurance.*** (a) Keep its insurable properties adequately insured at all times by financially sound and reputable insurers; maintain such other insurance, to such extent and against such risks, including fire and other risks insured against by extended coverage, as is customary with companies in the same or similar businesses operating in the same or similar locations, including public liability insurance against claims for personal injury or death or property damage occurring upon, in, about or in connection with the use of any properties owned, occupied or controlled by it; and maintain such other insurance as may be required by law.

(b) Cause all such policies covering any Collateral to be endorsed or otherwise amended to include a customary lender's loss payable endorsement, in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent, which endorsement shall provide that, from and after the Closing Date, if the insurance carrier shall have received written notice from the Administrative Agent or the Collateral Agent of the occurrence of an Event of Default, the insurance carrier shall pay all proceeds otherwise payable to the Borrower or the Loan Parties under such policies directly to the Collateral Agent; cause all such policies to

provide that neither the Borrower, the Administrative Agent, the Collateral Agent nor any other party shall be a coinsurer thereunder and to contain a "Replacement Cost Endorsement", without any deduction for depreciation, and such other provisions as the Administrative Agent or the Collateral Agent may reasonably require from time to time to protect their interests; deliver original or certified copies of all such policies to the Collateral Agent; cause each such policy to provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium upon not less than 10 days' prior written notice thereof by the insurer to the Administrative Agent and the Collateral Agent (giving the Administrative Agent and the Collateral Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason upon not less than 30 days' prior written notice thereof by the insurer to the Administrative Agent and the Collateral Agent; deliver to the Administrative Agent and the Collateral Agent, prior to the cancellation, modification or nonrenewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Administrative Agent and the Collateral Agent) together with evidence reasonably satisfactory to the Administrative Agent and the Collateral Agent of payment of the premium therefor.

**SECTION 5.03. *Obligations and Taxes.*** Pay its Material Indebtedness and other material obligations promptly and in accordance with their terms and pay and discharge promptly when due all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful material claims for labor, materials and supplies or otherwise that, if unpaid, might give rise to a Lien upon such properties or any part thereof; *provided, however,* that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and the Borrower shall have set aside on its books adequate reserves with respect thereto in accordance with GAAP and such contest operates to suspend collection of the contested obligation, tax, assessment or charge and enforcement of a Lien.

**SECTION 5.04. *Financial Statements, Reports, etc.*** In the case of the Borrower, furnish to the Administrative Agent (which shall furnish such statements, certificates or other documents received pursuant to this Section 5.04 to each Lender and Issuing Bank):

(a) within 90 days after the end of each fiscal year, its consolidated balance sheet and related statements of income, stockholders' equity and cash flows showing the financial condition of the Borrower and its consolidated Subsidiaries as of the close of such fiscal year and the results of its operations and the operations of such Subsidiaries during such year, together with comparative figures for the immediately preceding fiscal year, all audited by Deloitte & Touche LLP or other independent public accountants of recognized national standing and accompanied by an opinion of such accountants (which shall not be qualified in any material respect) to the effect that such consolidated financial statements fairly present the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, its consolidated balance sheet and related statements of income, stockholders' equity and cash flows showing the financial condition of the Borrower and its consolidated Subsidiaries as of the close of such fiscal quarter and the results of its

operations and the operations of such Subsidiaries during such fiscal quarter and the then elapsed portion of the fiscal year, and comparative figures for the same periods in the immediately preceding fiscal year, all certified by one of its Financial Officers as fairly presenting the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments;

(c) concurrently with any delivery of financial statements under paragraph (a) or (b) above, a certificate of a Financial Officer opining on or certifying such statements (i) certifying that no Event of Default or Default has occurred or, if such an Event of Default or Default has occurred, specifying the nature and extent

thereof and any corrective action taken or proposed to be taken with respect thereto and (ii) setting forth computations in reasonable detail satisfactory to the Administrative Agent demonstrating compliance with the covenants contained in Sections 6.11, 6.12, 6.13 and 6.14 and (x) in the case of a certificate delivered with the financial statements required by paragraph (b) above for the second fiscal quarter of each year, setting forth the Borrower's calculation of Excess Cash Flow;

(d) concurrently with any delivery of financial statements under clause (a) above, a certificate of the accounting firm that reported on such financial statements stating whether they obtained knowledge during the course of their examination of such financial statements of any Default or Event of Default (which certificate may be limited to the extent required by accounting rules or guidelines);

(e) no later than 45 days after the end of each fiscal year of the Borrower, a detailed consolidated budget for the then current fiscal year (including a projected consolidated balance sheet and related statements of projected operations and cash flows as of the end of and for such fiscal year and setting forth the assumptions used for purposes of preparing such budget) and, promptly when available, any significant revisions of such budget;

(f) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by Holdings, the Borrower or any Subsidiary with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed to its shareholders, as the case may be;

(g) promptly after the receipt thereof by Holdings or the Borrower or any of their respective subsidiaries, a copy of any "management letter" received by any such person from its certified public accountants and the management's response thereto;

(h) promptly, following a request by any Lender, provide all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act; and

(i) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of Holdings, the Borrower or any Subsidiary, or compliance with the terms of any Loan Document, as the Administrative Agent or any Lender may reasonably request.

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**SECTION 5.05. *Litigation and Other Notices.*** Furnish to the Administrative Agent (which shall furnish such notice to each Lender and Issuing Bank) prompt written notice of the following:

(a) any Event of Default or Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

(b) the filing or commencement of, or any threat or notice of intention of any person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority, against Holdings, the Borrower or any Subsidiary that could reasonably be expected to result in a Material Adverse Effect; and

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of Holdings, the Borrower and the Subsidiaries in an aggregate amount exceeding \$5,000,000; and

(d) any other development that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect.

**SECTION 5.06. *Information Regarding Collateral.*** (a) Furnish to the Administrative Agent prompt written notice of any change (i) in any Loan Party's corporate name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties, (ii) in the location of any Loan Party's chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it to the extent that such collateral has an aggregate fair market value in excess of \$1,000,000 or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility), (iii) in any Loan Party's identity or corporate structure or (iv) in any Loan Party's Federal Taxpayer Identification Number. Holdings and the Borrower agree not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral.

(b) In the case of the Borrower, each year, at the time of delivery of the annual financial statements with respect to the preceding fiscal year pursuant to Section 5.04(a), deliver to the Administrative Agent a certificate of a Financial Officer setting forth the information required pursuant to Section 2 of the Perfection Certificate or confirming that there has been no change in such information since the date of the Perfection Certificate delivered on the Closing Date or the date of the most recent certificate delivered pursuant to this Section 5.06.

**SECTION 5.07. *Maintaining Records; Access to Properties and Inspections.*** Keep proper books of record and account in which full, true and correct entries in conformity with GAAP and all material requirements of law are made of all dealings and transactions in relation to its business and activities. Each Loan Party will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender to visit and inspect the financial records and the properties of Holdings, the Borrower or any Subsidiary at reasonable times and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any representatives designated by the Administrative Agent or any Lender to discuss the affairs, finances and condition of Holdings, the Borrower or any Subsidiary with the officers thereof and independent accountants therefor. Without limiting the

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foregoing, Holdings and the Borrower agree to discuss their affairs, finances and condition in conference calls with Lenders at such times and at such intervals (but no more frequently than on a quarterly basis within one week after the date of delivery of financial statements required by Sections 5.04(a) and (b)) as shall be requested in writing by the Administrative Agent or the Required Lenders.

**SECTION 5.08. *Use of Proceeds.*** Use the proceeds of the Loans and request the issuance of Letters of Credit only for the purposes described in Section 3.13.

**SECTION 5.09. *Further Assurances.*** Execute any and all further documents, financing statements, agreements and instruments, and take all further action (including filing Uniform Commercial Code and other financing statements) that may be required under applicable law, or that the Required Lenders, the Administrative Agent or the Collateral Agent may reasonably request, in order to effectuate the transactions contemplated by the Loan Documents and in order to grant, preserve, protect and perfect the validity and priority of the security interests created or intended to be created by the Security Documents. The Borrower will cause any subsequently acquired or organized Domestic Subsidiary (other than an Inactive Subsidiary, a Co-investment Subsidiary which is not a wholly owned Subsidiary, a Special Co-investment Subsidiary or a JV Subsidiary), or any Domestic Subsidiary that ceases to be an Inactive Subsidiary, a Special Co-investment Subsidiary or a JV Subsidiary or that becomes a wholly owned Co-investment Subsidiary (other than a Special Co-investment Subsidiary), to become party to the Collateral Agreement and each other applicable Security Document in favor of the Collateral Agent. In addition, from time to time, the Borrower will, at its cost and expense, promptly secure the Obligations by pledging or creating, or causing to be pledged or created, perfected security interests with respect to such of its material assets and properties as the Administrative Agent or the Required Lenders shall designate (it being understood that it is the intent of the parties that the Obligations shall be secured by, among other things, substantially all the assets of the Borrower and its Domestic Subsidiaries (other than Inactive Subsidiaries, partially owned Co-investment Subsidiaries, Special Co-investment Subsidiaries, JV Subsidiaries and any assets

consisting of Co-investment Vehicles) (including material real property, properties of the types which constitute collateral under the Security Documents on the Closing Date which are acquired subsequent to the Closing Date and such other property that may be so pledged without imposing undue burden or cost on the Borrower and its Subsidiaries)). Such security interests and Liens will be created under the Security Documents and other security agreements and other instruments and documents in form and substance reasonably satisfactory to the Collateral Agent, and the Borrower shall deliver or cause to be delivered to the Lenders all such instruments and documents (including legal opinions, title insurance policies and lien searches) as the Collateral Agent shall reasonably request to evidence compliance with this Section.

## ARTICLE VI

### *Negative Covenants*

Each of Holdings and the Borrower covenants and agrees with each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document have been paid in full and all Letters of Credit have been cancelled or have expired and all amounts drawn thereunder have been reimbursed in full, unless the Required

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Lenders shall otherwise consent in writing, neither Holdings nor the Borrower will, nor will they cause or permit any of the Subsidiaries to:

SECTION 6.01. **Indebtedness.** Incur, create, assume or permit to exist any Indebtedness, except:

(a) Indebtedness existing on the Restatement Date and set forth in Schedule 6.01(a) and any extensions, renewals or replacements of such Indebtedness to the extent the principal amount of such Indebtedness is not increased, neither the final maturity nor the weighted average life to maturity of such Indebtedness is decreased, such Indebtedness, if subordinated to the Obligations, remains so subordinated on terms no less favorable to the Lenders, and the obligors in respect of such Indebtedness at the time of such refinancing remain the only obligors thereon;

(b) Indebtedness created hereunder and under the other Loan Documents;

(c) intercompany Indebtedness of the Borrower and the Subsidiaries to the extent permitted by Section 6.04(c);

(d) Indebtedness of the Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof; *provided* that (i) such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this Section 6.01(d), when combined with the aggregate principal amount of all Capital Lease Obligations incurred pursuant to Section 6.01(e) shall not exceed \$20,000,000 at any time outstanding;

(e) Capital Lease Obligations in an aggregate principal amount, when combined with the aggregate principal amount of all Indebtedness incurred pursuant to Section 6.01(d), not in excess of \$20,000,000 at any time outstanding;

(f) Indebtedness under performance bonds or with respect to workers' compensation claims, in each case incurred in the ordinary course of business;

(g) Melody Permitted Indebtedness and Non-Recourse Indebtedness;

(h) Indebtedness incurred by Foreign Subsidiaries for working capital in an aggregate principal amount not exceeding \$30,000,000 at any time outstanding, up to \$15,000,000 of which may be Guaranteed on an unsecured basis by the Borrower and/or one or more Domestic Subsidiaries;

(i) Indebtedness of any Subsidiary that exists at the time such person becomes a Subsidiary and that was not incurred in contemplation of or in connection with the acquisition by the Borrower or a Subsidiary of such person, in an aggregate principal amount not to exceed \$10,000,000 at any time outstanding;

(j) Guarantees by the Borrower or any Subsidiary of any Indebtedness permitted under this Section 6.01; *provided, however*, that (i) no Indebtedness of Holdings may be Guaranteed under this paragraph (j), (ii) Indebtedness of Foreign Subsidiaries may be

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Guaranteed by the Borrower and the Domestic Subsidiaries only to the extent provided for in paragraph (h) above and (iii) neither the Borrower nor any Subsidiary (other than a Co-investment Subsidiary) may Guarantee Non-Recourse Indebtedness;

(k) Indebtedness in respect of the Additional L/C Facilities in an aggregate amount outstanding at any time not to exceed \$30,000,000; and

(l) other unsecured Indebtedness of the Borrower or the Subsidiaries in an aggregate principal amount not exceeding \$40,000,000 at any time outstanding.

SECTION 6.02. **Liens.** Create, incur, assume or permit to exist any Lien on any property or assets (including Equity Interests or other securities of any person, including any Subsidiary) now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except:

(a) Liens on property or assets of the Borrower and its Subsidiaries existing on the Restatement Date and set forth in Schedule 6.02; *provided* that such Liens shall secure only those obligations which they secure on the date hereof and extensions, renewals and replacements thereof permitted hereunder;

(b) any Lien created under the Loan Documents;

(c) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary; *provided* that (i) such Lien is not created in contemplation of or in connection with such acquisition, and (ii) such Lien does not apply to any other property or assets of the Borrower or any Subsidiary;

(d) Liens for taxes, fees, assessments or other governmental charges not yet due or which are being contested in compliance with Section 5.03;

(e) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business and securing obligations that are not due and payable or which are being contested in compliance with Section 5.03;

(f) pledges and deposits made in the ordinary course of business in compliance with workmen's compensation, unemployment insurance and other social security laws or regulations;

(g) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;



(h) zoning restrictions, easements, rights-of-way, restrictions on use of real property and other similar encumbrances incurred in the ordinary course of business which, in the aggregate, are not substantial in amount and do not materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the Borrower or any of its Subsidiaries;

(i) purchase money security interests in real property, improvements thereto or equipment hereafter acquired (or, in the case of improvements, constructed) by the

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Borrower or any Subsidiary; *provided* that (i) such security interests secure Indebtedness permitted by Section 6.01(d), (ii) such security interests are incurred, and the Indebtedness secured thereby is created, within 90 days after such acquisition (or construction), (iii) the Indebtedness secured thereby does not exceed 100% of the cost of such real property, improvements or equipment at the time of such acquisition (or construction) and (iv) such security interests do not apply to any other property or assets of the Borrower or any Subsidiary;

(j) Liens arising out of judgments or awards in respect of which Holdings, the Borrower or any of the Subsidiaries shall in good faith be prosecuting an appeal or proceedings for review in respect of which there shall be secured a subsisting stay of execution pending such appeal or proceedings; *provided* that the aggregate amount of all such judgments or awards (and any cash and the fair market value of any property subject to such Liens) does not exceed \$7,500,000 at any time outstanding;

(k) Liens on assets of Foreign Subsidiaries; *provided* that (i) such Liens do not extend to, or encumber, assets which constitute Collateral or the Equity Interests of the Borrower or any of the Subsidiaries, and (ii) such Liens secure only Indebtedness incurred by such Foreign Subsidiary pursuant to Section 6.01(h);

(l) Liens on investments made by Melody in connection with the Melody Loan Arbitrage Facility or the Melody Mortgage Warehousing Facility to secure Indebtedness under the Melody Loan Arbitrage Facility, if such investments were acquired by Melody with the proceeds of such Indebtedness;

(m) Liens on commercial mortgage loans originated and owned by Melody or any Mortgage Banking Subsidiary pursuant to the Melody Mortgage Warehousing Facility;

(n) any Lien existing on any property or asset of any person that exists at the time such person becomes a Subsidiary and that secured Indebtedness permitted by Section 6.01(i); *provided* that (i) such Lien was not created in contemplation of or in connection with such acquisition and (ii) such Lien does not apply to any property or assets of the Borrower or any other Subsidiary;

(o) Liens arising solely by virtue of any statutory or common law provision relating to bankers' liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution; *provided*, that (i) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by the Borrower or any Subsidiary in excess of those set forth by regulations promulgated by the Board and (ii) such deposit account is not intended by the Borrower or any Subsidiary to provide collateral to such depository institution;

(p) Liens on the assets of a Co-investment Subsidiary to secure Non-Recourse Indebtedness; *provided* that such Liens do not extend to, or encumber, the Equity Interests of any Co-investment Subsidiary;

(q) Liens on any Equity Interests of any Designated Real Estate Asset Subsidiary; and

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(r) other Liens not permitted by the foregoing; *provided* that neither the obligations secured thereby nor the aggregate fair market value of the assets subject thereto shall exceed \$5,000,000.

**SECTION 6.03. *Sale and Lease-Back Transactions*** Enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred unless (a) the sale of such property is permitted by Section 6.05 and (b) any Capital Lease Obligations or Liens arising in connection therewith are permitted by Sections 6.01 and 6.02, respectively.

**SECTION 6.04. *Investments, Loans and Advances*** Purchase, hold or acquire any Equity Interests, evidences of indebtedness or other securities of, make or permit to exist any loans or advances to, or make or permit to exist any investment or any other interest in, any other person (other than investments in insurance contracts pursuant to the Deferred Compensation Plan), except:

(a) (i) investments by Holdings, the Borrower and the Subsidiaries existing on the Restatement Date in the Equity Interests of the Borrower and the Subsidiaries and (ii) additional investments by Holdings, the Borrower and the Subsidiaries in the Equity Interests of the Borrower and the Subsidiaries; *provided* that (A) any such Equity Interests held by a Loan Party shall be pledged pursuant to the Collateral Agreement (provided that no Loan Party shall be required to pledge more than 65% of the voting Equity Interests of any Foreign Subsidiary) and (B) the aggregate amount of investments by Loan Parties in, and loans and advances by Loan Parties to, Subsidiaries that are not Loan Parties (other than investments in Co-investment Subsidiaries to implement Co-investments pursuant to clause (i) below) shall not exceed at any time outstanding the sum of (x) the aggregate amount of the investments, loans and advances indicated on Schedule 6.04(a) and (y) \$15,000,000;

(b) Permitted Investments;

(c) loans or advances made by the Borrower to any Subsidiary and made by any Subsidiary to the Borrower or any other Subsidiary; *provided* that (i) any such loans and advances made by a Loan Party shall be evidenced by a promissory note pledged to the Collateral Agent for the ratable benefit of the Secured Parties pursuant to the Collateral Agreement and (ii) the amount of such loans and advances made by Loan Parties to Subsidiaries that are not Loan Parties shall be subject to the limitation set forth in clause (a) above;

(d) investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(e) the Borrower and the Subsidiaries may make loans and advances in the ordinary course of business consistent with past practice to their respective employees so long as the aggregate principal amount (determined without regard to any write-downs or write-offs of such loans and advances, other than write-downs or write-offs for which the total amount of such write-down or write-off is included as a charge in Consolidated EBITDA) does not exceed \$25,000,000 in the aggregate outstanding at any time;

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(f) the Borrower may enter into Hedging Agreements that are not speculative in nature and are related to income derived from operations of the Borrower or any Subsidiary or otherwise related to purchases from suppliers;

(g) the Borrower or any Subsidiary may acquire all or substantially all the assets of a person or line of business of such person, or all or substantially all of the Equity Interests of a person that as a result becomes a wholly owned Subsidiary (referred to herein as the “*Acquired Entity*”); *provided* that (i) such acquisition was not preceded by an unsolicited tender offer for such Equity Interests by, or proxy contest initiated by, Holdings, the Borrower or any Subsidiary; (ii) the Acquired Entity shall be a going concern and shall be in a similar line of business as that of the Borrower and the Subsidiaries as conducted during the current and most recent calendar year; and (iii) at the time of such transaction (A) both before and after giving effect thereto, no Event of Default or Default shall have occurred and be continuing; (B) the Borrower would be in Pro Forma Compliance, as evidenced by a certificate of a Financial Officer of the Borrower which shall have been prepared in good faith and based on reasonably detailed written assumptions; (C) after giving effect to such acquisition, there must be at least \$40,000,000 of unused and available Revolving Credit Commitments; and (D) the aggregate consideration paid in connection with such acquisition and any related acquisitions pursuant to this Section 6.04(g) (including any Indebtedness of the Acquired Entity that is assumed by the Borrower or any Subsidiary following such acquisition and the amount of any forgivable loan to the Acquired Entity) shall not exceed (x) \$20,000,000 for such acquisition and (y) \$60,000,000 for all such acquisitions pursuant to this Section 6.04(g) (any acquisition of an Acquired Entity meeting all the criteria of this Section 6.04(g) being referred to herein as a “*Permitted Acquisition*”);

(h) investments made by Melody in connection with the Melody Loan Arbitrage Facility or the Melody Mortgage Warehousing Facility;

(i) Co-investments (other than with respect to the Calpers Co-investment) not to exceed \$30,000,000 in any fiscal year of the Borrower and Co-investments pursuant to the Calpers Co-investment not to exceed \$26,000,000 in the aggregate outstanding at any time; *provided, however*, that the aggregate amount of Co-investments in each fiscal year made in Co-investment Vehicles that are organized in, or the principal real estate investments of which are located in, countries that are not members of the Organization for Economic Co-operation and Development, shall not exceed \$5,000,000;

(j) investments to the extent consisting of noncash consideration received in connection with a sale of assets permitted by Section 6.05;

(k) investments by Holdings, the Borrower and the Subsidiaries existing on the Restatement Date and listed on Schedule 6.04(k);

(l) extensions of credit in the nature of accounts receivable or notes receivable arising from the sale or lease of goods and services in the ordinary course of business;

(m) investments in, and loans and advances to, the Designated Real Estate Subsidiaries pursuant to Section 9.3 of the Island Purchase Agreement, on behalf of and solely with monies advanced by Island and its Affiliates (other than, for the avoidance of doubt, Holdings, the Borrower or any Subsidiary);

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(n) additional investments in, and loans or advances to, the Designated Real Estate Asset Subsidiaries in an aggregate amount not to exceed \$5,900,000; and

(o) in addition to investments permitted by paragraphs (a) through (n) above, additional investments, loans and advances by the Borrower and the Subsidiaries so long as the aggregate amount invested, loaned or advanced pursuant to this paragraph (o) (determined without regard to any write-downs or write-offs of such investments, loans and advances) does not exceed \$30,000,000 in the aggregate outstanding at any time.

**SECTION 6.05. *Mergers, Consolidations, Sales of Assets and Acquisitions*** (a) Merge into or consolidate with any other person, or permit any other person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all the assets (whether now owned or hereafter acquired) of the Borrower, or purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or any substantial part of the assets of any other person, except that if at the time thereof and immediately after giving effect thereto no Event of Default or Default shall have occurred and be continuing (i) any wholly owned Subsidiary may merge into the Borrower in a transaction in which the Borrower is the surviving corporation, (ii) any wholly owned Subsidiary may merge into or consolidate with any other wholly owned Subsidiary in a transaction in which the surviving entity is a wholly owned Subsidiary and no person other than the Borrower or a wholly owned Subsidiary receives any consideration (*provided* that if any party to any such transaction is a Loan Party, the surviving entity of such transaction shall be a Loan Party) and (iii) the Borrower and the Subsidiaries may make Permitted Acquisitions.

(b) Engage in any other Asset Sale except:

(i) (A) any such Asset Sale the consideration for which is at least 80% cash, (B) such consideration is at least equal to the fair market value of the assets being sold, transferred, leased or disposed of, (C) the fair market value of all assets sold, transferred, leased or disposed of pursuant to this clause (i) (other than sales of Equity Interests by Foreign Subsidiaries to investors) shall not exceed in any fiscal year the sum of (I) \$10,000,000 for each fiscal year (the amount of permitted Asset Sales in any fiscal year being referred to herein as the “*Annual Limit*”) plus (II) in each fiscal year, the excess, if any, of the Annual Limit for the preceding fiscal year over the amount of Asset Sales made by the Borrower and the Subsidiaries during the preceding fiscal year, (D) sales of Equity Interests by Foreign Subsidiaries to investors shall not exceed \$10,000,000 in any fiscal year and (E) the aggregate amount of all Asset Sales made pursuant to this provision (other than pursuant to clause (D)) from the Restatement Date to the termination of this Agreement shall not exceed \$25,000,000; and

(ii) sales by the Borrower or the Subsidiaries of brokerage offices, or transfers of the assets of brokerage offices and related assets, to joint ventures in the ordinary course of business.

**SECTION 6.06. *Restricted Payments; Restrictive Agreements*** (a) Declare or make, or agree to declare or make, directly or indirectly, any Restricted Payment (including pursuant to any Synthetic Purchase Agreement), or incur any obligation (contingent or otherwise) to do so; *provided, however*, that (i) any Subsidiary may declare and pay dividends or make other distributions ratably to its equity holders, (ii) so long as (x) no Event of Default shall have occurred and be continuing and (y) the Borrower shall be in Pro Forma Compliance after giving effect thereto, the Borrower may make Restricted Payments to Holdings in the amounts and at the

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times necessary to enable Holdings (A) to pay interest in cash on the Holdco Notes and (B) if then permitted by Section 6.09(c)(ii) or (iii), to redeem, repurchase or otherwise retire Holdco Notes, (iii) so long as no Event of Default or Default shall have occurred and be continuing or would result therefrom, the Borrower may, or the Borrower may make distributions to Holdings so that Holdings may, repurchase its Equity Interests owned by employees of Holdings, the Borrower or the Subsidiaries or make payments to employees of Holdings, the Borrower or the Subsidiaries upon termination of employment in connection with the exercise of stock options, stock appreciation rights or similar equity incentives or equity based incentives pursuant to management incentive plans or in connection with the death or disability of such employees in an aggregate amount (excluding any amount of any such repurchase paid for with the cancellation of Indebtedness of such employee to the Borrower or Holdings, as the case may be) not to exceed \$4,000,000 in any fiscal year, (iv) the Borrower may, or the Borrower may make distributions to Holdings, so that Holdings may, repurchase or redeem shares of its Equity Interests pursuant to the Borrower’s 401(k) plan as in effect on the Closing Date and to the extent required by law, (v) so long as no Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may, or the Borrower may make distributions to Holdings, so that Holdings may, repurchase or redeem shares

(including any repurchase or redemption paid for with the cancellation of Indebtedness of the applicable employee to the Borrower or Holdings, as the case may be) of its Equity Interests issued or granted by Holdings to employees (including substantially full-time independent contractors) and held by such employees in an aggregate amount not to exceed \$4,000,000 during any fiscal year of the Borrower, *provided* that any such purchases or redemptions paid for with the cancellation of Indebtedness of employees to the Borrower or Holdings, as the case may be, shall not be limited in amount, (vi) the Borrower may make Restricted Payments to Holdings (x) in an amount not to exceed \$1,000,000 in any fiscal year, to the extent necessary to pay actual out-of-pocket general corporate and overhead expenses incurred by Holdings in the ordinary course of business and (y) in an amount necessary to pay Tax liabilities directly attributable to (or arising as a result of) the Borrower and the Subsidiaries, and (vii) Holdings may issue common stock of Holdings in exchange for stock fund units in the Deferred Compensation Plan pursuant to the Deferred Compensation Plan. Notwithstanding the foregoing, all Restricted Payments made to Holdings pursuant to clause (ii), (v) or (vi) above will be used by Holdings for the purposes specified herein within 10 Business Days of the receipt thereof or returned to the Borrower.

(b) Enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (i) the ability of Holdings, the Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (ii) the ability of any Subsidiary to pay dividends or other distributions with respect to any of its Equity Interests or to make or repay loans or advances to the Borrower or any other Subsidiary or to Guarantee Indebtedness of the Borrower or any other Subsidiary; *provided* that (A) the foregoing shall not apply to restrictions and conditions imposed by law or by any Loan Document, Senior Subordinated Note Document or Senior Unsecured Note Document, (B) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, *provided* such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (C) the foregoing shall not apply to restrictions and conditions imposed on any Foreign Subsidiary by the terms of any Indebtedness of such Foreign Subsidiary permitted to be incurred hereunder, (D) clause (i) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (E) the foregoing shall not apply to restrictions and conditions existing on the Restatement Date and identified on Schedule 6.06(b), (F) the

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foregoing shall not apply to customary restrictions on or customary conditions to the payment of dividends or other distributions on, or the creation of Liens on, Equity Interests owned by the Borrower or any Subsidiary in any joint venture or similar enterprise contained in the constitutive documents, including shareholders' or similar agreements, of such joint venture or enterprise, and (G) clause (i) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof.

**SECTION 6.07. *Transactions with Affiliates.*** Except for transactions by or among Loan Parties, sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except that the Borrower or any Subsidiary may engage in any of the foregoing transactions at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties.

**SECTION 6.08. *Business of Holdings, Borrower and Subsidiaries.*** (a) With respect to Holdings, engage in any business activities or have any assets or liabilities other than (i) its ownership of the Equity Interests of the Borrower, its activities as a holding company, the provision of certain administrative services for its subsidiaries in the ordinary course of business, and liabilities reasonably related thereto, including its liabilities pursuant to the Collateral Agreement, and (ii) its liabilities pursuant to the Holdco Note Documents, the Senior Subordinated Note Documents and the Senior Unsecured Note Documents.

(b) With respect to the Borrower and its Subsidiaries, engage at any time in any business or business activity other than the business currently conducted by the Borrower or any of the Subsidiaries and business activities reasonably incidental thereto.

**SECTION 6.09. *Other Indebtedness and Agreements.*** (a) (i) Permit any waiver, supplement, modification, amendment, termination or release of any indenture, instrument or agreement pursuant to which any Material Indebtedness of Holdings, the Borrower or any of the Subsidiaries is outstanding if the effect of such waiver, supplement, modification, amendment, termination or release would materially increase the obligations of the obligor or confer additional material rights on the holder of such Indebtedness in a manner adverse to Holdings, the Borrower, any of the Subsidiaries or the Lenders or (ii) modify its charter or by-laws to the extent that any such modification would be adverse to the Lenders in any material respect.

(b) (i) Make any distribution, whether in cash, property, securities or a combination thereof, other than regular scheduled payments of principal and interest as and when due (to the extent not prohibited by applicable subordination provisions), in respect of, or pay, or offer or commit to pay, or directly or indirectly (including pursuant to any Synthetic Purchase Agreement) redeem, repurchase, retire or otherwise acquire for consideration, or set apart any sum for the aforesaid purposes, the Holdco Notes or any subordinated Indebtedness, or (ii) pay in cash any amount in respect of any Indebtedness (other than the Holdco Notes, to the extent permitted by Section 6.06(a)) or preferred Equity Interests) that may at the obligor's option be paid in kind or in other securities.

(c) Notwithstanding the foregoing, so long as no Default or Event of Default shall have occurred and be continuing or result therefrom, (i) Holdings may expend up to \$20,000,000 of the proceeds of the Cash Equity Contribution that were not used to consummate the Merger Transactions to redeem, repurchase or otherwise retire Holdco Notes, (ii) Holdings may expend up to \$10,000,000 of the proceeds of the Term Loans to redeem, repurchase or otherwise retire Holdco Notes and (iii) Holdings may otherwise redeem, repurchase or otherwise retire the Holdco

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Notes, in whole or in part, so long as after giving effect to each such redemption, repurchase or retirement, (x) the Borrower would be in Pro Forma Compliance, (y) there would be no outstanding Revolving Loans or Swingline Loans and (z) if the aggregate amount so expended pursuant to this clause (iii) would exceed \$25,000,000, the Senior Secured Leverage Ratio would be less than 1.25 to 1.00.

**SECTION 6.10. *Capital Expenditures.*** Permit the aggregate amount of Capital Expenditures made by the Borrower and the Subsidiaries to exceed (i) \$30,000,000 in the fiscal year ending 2002, (ii) \$50,000,000 in the fiscal year ending 2003 or (iii) \$40,000,000 in any fiscal year thereafter. The amount of permitted Capital Expenditures set forth above in respect of any fiscal year, shall be increased (but not decreased) by (a) the amount of unused permitted Capital Expenditures for the immediately preceding fiscal year less (b) an amount equal to unused Capital Expenditures carried forward to such preceding fiscal year.

**SECTION 6.11. *Interest Coverage Ratio.*** Permit the Interest Coverage Ratio for any period of four consecutive fiscal quarters, in each case taken as one accounting period, ending on the last day of any fiscal quarter during any period set forth below to be less than the ratio set forth opposite such period below:

<u>Date or Period</u>	<u>Ratio</u>
September 30, 2003 through June 30, 2005	2.00:1.00
September 30, 2005 and thereafter	2.25:1.00

**SECTION 6.12. *Fixed Charge Coverage Ratio.*** Permit the Fixed Charge Coverage Ratio for any period of four consecutive fiscal quarters, in each case taken as one accounting period, ending on the last day of any fiscal quarter during any period set forth below to be less than the ratio set forth opposite such date or period below:

Date or Period	Ratio
September 30, 2003 through June 30, 2005	1.25:1.00
September 30, 2005 and thereafter	1.50:1.00

SECTION 6.13. **Maximum Leverage Ratio.** Permit the Leverage Ratio on the last day of any fiscal quarter during any period set forth below to be greater than the ratio set forth opposite such date or period below:

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Date or Period	Ratio
September 30, 2003	4.00:1.00
December 31, 2003	3.75:1.00
March 31, 2004 through June 30, 2004	4.00:1.00
September 30, 2004	3.75:1.00
December 31, 2004	3.25:1.00
March 31, 2005 through June 30, 2005	3.50:1.00
September 30, 2005	3.25:1.00
December 31, 2005	2.75:1.00
March 31, 2006 through June 30, 2006	3.25:1.00
September 30, 2006	3.00:1.00
December 31, 2006	2.25:1.00
March 31, 2007 through June 30, 2007	2.75:1.00
September 30, 2007	2.50:1.00
December 31, 2007 and thereafter	2.25:1.00

SECTION 6.14. **Maximum Senior Secured Leverage Ratio.** Permit the Senior Secured Leverage Ratio on the last day of any fiscal quarter during any period set forth below to be greater than the ratio set forth opposite such date or period below:

Date or Period	Ratio
September 30, 2003	1.75:1.00
December 31, 2003	1.25:1.00
March 31, 2004 through June 30, 2004	1.75:1.00
September 30, 2004	1.50:1.00
December 31, 2004	1.00:1.00
March 31, 2005 through June 30, 2005	1.50:1.00
September 30, 2005 and thereafter	1.25:1.00

SECTION 6.15. **Fiscal Year.** With respect to Holdings and the Borrower, change their fiscal year-end to a date other than December 31.

SECTION 6.16. **Management Fees.** With respect to Holdings and the Borrower, pay or agree to pay to any Sponsor any management fees, transaction fees or similar charges.

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SECTION 6.17. **Indebtedness of Co-investment Subsidiaries.** (a) Permit any Co-investment Subsidiary other than a JV Subsidiary to incur, create, assume or permit to exist any Indebtedness other than Non-Recourse Indebtedness; or

(b) Permit any JV Subsidiary to incur, create, assume or permit to exist any Indebtedness in an aggregate amount outstanding at any time which exceeds \$10,000,000; *provided that*, the debt permitted pursuant to this paragraph (b) must also be permitted under Section 6.01 to be incurred, created, assumed or permitted to exist.

## ARTICLE VII

### *Events of Default*

In case of the happening of any of the following events ("*Events of Default*"):

- (a) any representation or warranty made or deemed made in or in connection with any Loan Document or the borrowings or issuances of Letters of Credit

hereunder, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(b) default shall be made in the payment of any principal of any Loan or the reimbursement with respect to any L/C Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(c) default shall be made in the payment of any interest on any Loan or L/C Disbursement or any Fee or any other amount (other than an amount referred to in (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of three Business Days;

(d) default shall be made in the due observance or performance by Holdings, the Borrower or any Subsidiary of any covenant, condition or agreement contained in Section 2.13(i), 5.01(a), 5.05(a) or 5.08 or in Article VI;

(e) default shall be made in the due observance or performance by Holdings, the Borrower or any Subsidiary of any covenant, condition or agreement contained in any Loan Document (other than those specified in (b), (c) or (d) above) and such default shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent or any Lender to the Borrower;

(f) (i) Holdings, the Borrower or any Subsidiary shall fail to pay any principal or interest, regardless of amount, due in respect of any Material Indebtedness, when and as the same shall become due and payable, or (ii) any other event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; *provided*

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that this clause (ii) shall not apply to (x) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness and (y) Indebtedness existing on the Closing Date which by its terms provides for an option by the payee thereof to require repayment prior to the scheduled maturity thereof;

(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of Holdings, the Borrower or any Subsidiary (other than an Inactive Subsidiary), or of a substantial part of the property or assets of Holdings, the Borrower or a Subsidiary (other than an Inactive Subsidiary), under Title 11 of the United States Code, as now constituted or hereafter amended, or any other Federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Holdings, the Borrower or any Subsidiary (other than an Inactive Subsidiary) or for a substantial part of the property or assets of Holdings, the Borrower or a Subsidiary (other than an Inactive Subsidiary) or (iii) the winding-up or liquidation of Holdings, the Borrower or any Subsidiary (other than an Inactive Subsidiary); and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(h) Holdings, the Borrower or any Subsidiary (other than an Inactive Subsidiary) shall (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other Federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in (g) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Holdings, the Borrower or any Subsidiary (other than an Inactive Subsidiary) or for a substantial part of the property or assets of Holdings, the Borrower or any Subsidiary (other than an Inactive Subsidiary), (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due or (vii) take any action for the purpose of effecting any of the foregoing;

(i) one or more judgments for the payment of money in an aggregate amount in excess of \$7,500,000 shall be rendered against Holdings, the Borrower, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of Holdings, the Borrower or any Subsidiary to enforce any such judgment;

(j) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other such ERISA Events, could reasonably be expected to result in a Material Adverse Effect;

(k) any Guarantee under the Collateral Agreement for any reason shall cease to be in full force and effect (other than in accordance with its terms), or any Guarantor shall deny in writing that it has any further liability under the Collateral Agreement (other

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than as a result of the discharge of such Guarantor in accordance with the terms of the Loan Documents);

(l) any security interest purported to be created by any Security Document shall cease to be, or shall be asserted by the Borrower or any other Loan Party not to be, a valid, perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document) security interest in the securities, assets or properties covered thereby, except to the extent that any such loss of perfection or priority results from (i) the sale or other disposition of the applicable Collateral in a transaction permitted by any Loan Document, (ii) any action taken by the Collateral Agent to release any such Lien in compliance with the provisions of this Agreement or any other Loan Document, (iii) the Collateral Agent's failure to properly file (A) Uniform Commercial Code financing statements or comparable filings delivered to it for filing under the Security Documents or (B) Uniform Commercial Code continuation statements or comparable filings necessary to maintain perfection or (iv) the failure of the Collateral Agent to maintain possession of certificates representing securities pledged and delivered to it under the Collateral Agreement;

(m) any of the Obligations shall cease to constitute "Designated Senior Indebtedness" under and as defined in the Senior Subordinated Note Indenture; or

(n) there shall have occurred a Change in Control;

then, and in every such event (other than an event with respect to Holdings or the Borrower described in paragraph (g) or (h) above), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate forthwith the Commitments and (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding; and in any event with respect to Holdings or the Borrower described in paragraph (g) or (h) above, the Commitments shall automatically terminate and the principal of the Loans then

outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding.

## ARTICLE VIII

### *The Administrative Agent and the Collateral Agent*

Each of the Lenders and the Issuing Bank hereby irrevocably appoints the Administrative Agent and the Collateral Agent (for purposes of this Article VIII, the Administrative Agent and the Collateral Agent are referred to collectively as the "Agents") its agent and authorizes the Agents to take such actions on its behalf and to exercise such powers as are delegated to such

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Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, the Agents are hereby expressly authorized to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Security Documents.

The bank serving as the Administrative Agent and/or the Collateral Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with Holdings, the Borrower or any Subsidiary or other Affiliate thereof as if it were not an Agent hereunder.

Neither Agent shall have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) neither Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) neither Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that such Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.08), and (c) except as expressly set forth in the Loan Documents, neither Agent shall have any duty to disclose, nor shall it be liable for the failure to disclose, any information relating to Holdings, the Borrower or any of the Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent and/or Collateral Agent or any of its Affiliates in any capacity. Neither Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.08) or in the absence of its own gross negligence or willful misconduct. Neither Agent shall be deemed to have knowledge of any Default unless and until written notice thereof is given to such Agent by Holdings, the Borrower or a Lender, and neither Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to such Agent.

Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper person. Each Agent may also rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper person, and shall not incur any liability for relying thereon. Each Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Each Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by it. Each Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers by or through their respective

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Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

Subject to the appointment and acceptance of a successor Agent as provided below, either Agent may resign at any time by notifying the Lenders, the Issuing Bank and the Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower and, unless an Event of Default shall have occurred and be continuing, with the consent of the Borrower (which shall not be unreasonably withheld), to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After an Agent's resignation hereunder, the provisions of this Article and Section 9.05 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while acting as Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement or any other Loan Document, any related agreement or any document furnished hereunder or thereunder.

## ARTICLE IX

### *Miscellaneous*

SECTION 9.01. **Notices.** Notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax, as follows:

(a) if to the Borrower or Holdings, to it at CB Richard Ellis Services, Inc., 865 South Figueroa Street, 34th Floor, Los Angeles, CA 90017, Attention of Chief Financial Officer (Fax No. (213) 438-4820); at CB Richard Ellis Services, Inc., 355 South Grand Avenue, Suite 3100, Los Angeles, CA 90071, Attention of Assistant General Counsel, Corporate (Fax No. (213) 613-3008); and at CB Richard Ellis Services, Inc., at 970 West 190th Street, Suite 280, Torrance, CA 90502, Attention of Treasurer (Fax No. (310) 354-5070);

(b) if to the Administrative Agent, to Credit Suisse First Boston, Eleven Madison Avenue, New York, NY 10010, Attention of Syndicated Finance/Agency

Department Manager (Fax No. (212) 325-8304), with a copy to Credit Suisse First Boston, at Eleven Madison Avenue, New York, NY 10010, Attention of Mark E. Gleason (Fax No. (212) 325-8615); and

(c) if to a Lender, to it at its address (or fax number or e-mail address) set forth on Schedule 2.01 or in the Assignment and Acceptance pursuant to which such Lender shall have become a party hereto.

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by fax or on the date five Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 9.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.01. As agreed to among Holdings, the Borrower, the Administrative Agent and the applicable Lenders from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable person provided from time to time by such person. Holdings, the Borrower, the Administrative Agent and any Lender may each change the address or e-mail address for service of notice and other communications by a notice in writing to the other parties hereto.

**SECTION 9.02. *Survival of Agreement.*** All covenants, agreements, representations and warranties made by the Borrower or Holdings herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and the Issuing Bank and shall survive the making by the Lenders of the Loans and the issuance of Letters of Credit by the Issuing Bank, regardless of any investigation made by the Lenders or the Issuing Bank or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not been terminated. The provisions of Sections 2.14, 2.16, 2.20 and 9.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the expiration of any Letter of Credit, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, the Collateral Agent, any Lender or the Issuing Bank.

**SECTION 9.03. *Binding Effect.*** This Agreement shall become effective as provided in the Amendment Agreement.

**SECTION 9.04. *Successors and Assigns.*** (a) Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower, Holdings, the Administrative Agent, the Collateral Agent, the Issuing Bank or the Lenders that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

(b) Each Lender may assign to one or more assignees all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); *provided, however*, that (i) except in the case of an assignment by a Lender of its outstanding Term Loans to a Lender or an Affiliate or Related Fund of a Lender

which does not result in any increased costs or other additional amounts being paid by the Borrower, (x) the Borrower and the Administrative Agent (and, in the case of any assignment of a Revolving Credit Commitment, the Issuing Bank and the Swingline Lender) must give their prior written consent to such assignment (which consent shall not be unreasonably withheld); *provided, however*, that the consent of the Borrower shall not be required to any such assignment during the continuance of any Event of Default; *provided further, however*, that any such assignment made in connection with the syndication of the Term Loans within 60 Business Days after the Restatement Date shall not require the consent of the Borrower but shall be made in consultation with the Borrower, and (y) the amount of the Commitment of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 (or, if less, the entire remaining amount of such Lender's Commitment), (ii) the parties to each such assignment shall (A) electronically execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent (which initially shall be ClearPar, LLC) or (B) if no such system shall be acceptable to the Administrative Agent, manually execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of \$3,500 at the discretion of the Administrative Agent, and (iii) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any applicable tax forms. Upon acceptance and recording pursuant to paragraph (c) of this Section 9.04, from and after the effective date specified in each Assignment and Acceptance, (A) the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement and (B) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.14, 2.16, 2.20 and 9.05, as well as to any Fees accrued for its account and not yet paid).

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that its Term Loan Commitment and Revolving Credit Commitment, and the outstanding balances of its Term Loans and Revolving Loans, in each case without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Acceptance, (ii) except as set forth in (i) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Holdings, the Borrower or any Subsidiary or the performance or observance by Holdings, the Borrower or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance; (iv) such assignee confirms that it has received a copy of this Agreement, together with copies of the most recent financial statements referred to in Section 3.05 or delivered pursuant to Section 5.04 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance;

(v) such assignee will independently and without reliance upon the Administrative Agent, the Collateral Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (vi) such assignee appoints and authorizes the Administrative Agent and the Collateral Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent and the Collateral Agent, respectively, by the terms hereof, together with such powers as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices in The City of New York a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive and the Borrower, the

Administrative Agent, the Issuing Bank, the Collateral Agent and the Lenders may treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Bank, the Collateral Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, an Administrative Questionnaire (including any tax documentation required therein) completed in respect of the assignee (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) above, if any, and, if required, the written consent of the Borrower, the Swingline Lender, the Issuing Bank and the Administrative Agent to such assignment, the Administrative Agent shall (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Borrower, the Issuing Bank and the Swingline Lender. No assignment shall be effective unless it has been recorded in the Register as provided in this paragraph (e), and it shall be the sole responsibility of each assignee to confirm such recordation.

(f) Each Lender may without the consent of the Borrower, the Swingline Lender, the Issuing Bank or the Administrative Agent sell participations to one or more banks or other entities in all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); *provided, however*, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the participating banks or other entities shall be entitled to the benefit of the cost protection provisions contained in Sections 2.14, 2.16 and 2.20 to the same extent as if they were Lenders (but, with respect to any particular participant, to no greater extent than the Lender that sold the participation to such participant and solely to the extent that such participant agrees to comply with the requirements of Section 2.20(f) as though it were a Lender) and (iv) the Borrower, the Administrative Agent, the Issuing Bank and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and such Lender shall retain the sole right to enforce the obligations of the Borrower relating to the Loans or L/C Disbursements and to approve any amendment, modification or waiver of any

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provision of this Agreement (other than amendments, modifications or waivers decreasing any fees payable hereunder or the amount of principal of or the rate at which interest is payable on the Loans, extending any scheduled principal payment date or date fixed for the payment of interest on the Loans, increasing or extending the Commitments or releasing any Guarantor or all or any substantial part of the Collateral).

(g) Any Lender or participant may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 9.04, disclose to the assignee or participant or proposed assignee or participant any information relating to the Borrower furnished to such Lender by or on behalf of the Borrower; *provided* that, prior to any such disclosure of information designated by the Borrower as confidential, each such assignee or participant or proposed assignee or participant shall execute an agreement whereby such assignee or participant shall agree (subject to customary exceptions) to preserve the confidentiality of such confidential information on terms no less restrictive than those applicable to the Lenders pursuant to Section 9.16.

(h) Any Lender may at any time assign all or any portion of its rights under this Agreement to secure extensions of credit to such Lender or in support of obligations owed by such Lender; *provided* that no such assignment shall release a Lender from any of its obligations hereunder or substitute any such assignee for such Lender as a party hereto.

(i) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (an "SPC"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to make any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 9.04, any SPC may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and Administrative Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC, subject to an agreement to preserve the confidentiality of such non-public information.

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(j) Neither Holdings nor the Borrower shall assign or delegate any of its rights or duties hereunder without the prior written consent of the Administrative Agent, the Issuing Bank and each Lender, and any attempted assignment without such consent shall be null and void.

(k) In the event that Standard & Poor's Ratings Service, Moody's Investors Service, Inc., and Thompson's Bank Watch (or Insurance Watch Ratings Service, in the case of Lenders that are insurance companies (or Best's Insurance Reports, if such insurance company is not rated by Insurance Watch Ratings Service)) shall, after the date that any Lender becomes a Revolving Credit Lender, downgrade the long-term certificate of deposit ratings of such Lender, and the resulting ratings shall be below BBB-, Baa3 and C (or BB, in the case of a Lender that is an insurance company (or B, in the case of an insurance company not rated by Insurance Watch Ratings Service)), then the Issuing Bank shall have the right, but not the obligation, at its own expense, upon notice to such Lender and the Administrative Agent, to replace (or to request the Borrower to use its reasonable efforts to replace) such Lender with an assignee (in accordance with and subject to the restrictions contained in paragraph (b) above), and such Lender hereby agrees to transfer and assign without recourse (in accordance with and subject to the restrictions contained in paragraph (b) above) all its interests, rights and obligations in respect of its Revolving Credit Commitment to such assignee; *provided, however*, that (i) no such assignment shall conflict with any law, rule and regulation or order of any Governmental Authority and (ii) the Issuing Bank or such assignee, as the case may be, shall pay to such Lender in immediately available funds on the date of such assignment the principal of and interest accrued to the date of payment on the Loans made by such Lender hereunder and all other amounts accrued for such Lender's account or owed to it hereunder.

**SECTION 9.05. Expenses; Indemnity.** (a) The Borrower and Holdings agree, jointly and severally, to pay all reasonable out-of-pocket expenses incurred by the Administrative Agent, the Collateral Agent, the Issuing Bank and the Swingline Lender in connection with the syndication of the credit facilities provided for herein and the preparation and administration of this Agreement and the other Loan Documents or in connection with any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions hereby or thereby contemplated shall be consummated) or incurred by the Administrative Agent, the Collateral Agent or any Lender in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents or in connection with the Loans made or Letters of Credit issued hereunder, including the reasonable fees, charges and disbursements of Cravath, Swaine & Moore LLP, counsel for the Administrative Agent and the Collateral Agent, and, in connection with any such enforcement or protection, the reasonable fees, charges and disbursements of any other counsel for the Administrative Agent, the Collateral Agent or any Lender.

(b) The Borrower and Holdings agree, jointly and severally, to indemnify the Administrative Agent, the Collateral Agent, each Lender, the Issuing Bank and each Related Party of any of the foregoing persons (each such person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims,



damages, liabilities and related expenses (other than Excluded Taxes), including reasonable counsel fees, charges and disbursements, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Agreement or any other Loan Document or any agreement or instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder or the consummation of the Transactions and the other transactions contemplated thereby, (ii) the use of the proceeds of the Loans or issuance of Letters of Credit, (iii) any claim, litigation, investigation or proceeding relating to any of the

foregoing, whether or not any Indemnitee is a party thereto, or (iv) any actual or alleged presence or Release of Hazardous Materials on any property owned or operated by the Borrower or any of the Subsidiaries, or any Environmental Liability related in any way to the Borrower or the Subsidiaries; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or wilful misconduct of such Indemnitee.

(c) To the extent that Holdings and the Borrower fail to pay any amount required to be paid by them to the Administrative Agent, the Collateral Agent, the Issuing Bank or the Swingline Lender under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent, the Collateral Agent, the Issuing Bank or the Swingline Lender, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the Collateral Agent, the Issuing Bank or the Swingline Lender in its capacity as such. For purposes hereof, a Lender's "pro rata share" shall be determined based upon its share of the sum of the Aggregate Revolving Credit Exposure, outstanding Term Loans and unused Commitments at the time.

(d) To the extent permitted by applicable law, neither Holdings nor the Borrower shall assert, and each hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) The provisions of this Section 9.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the expiration of any Letter of Credit, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, the Collateral Agent, any Lender or the Issuing Bank. All amounts due under this Section 9.05 shall be payable on written demand therefor.

**SECTION 9.06. *Right of Setoff.*** If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, except to the extent prohibited by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender to or for the credit or the account of the Borrower or Holdings against any of and all the obligations of the Borrower or Holdings now or hereafter existing under this Agreement and other Loan Documents (to the extent such obligations of Holdings or the Borrower are then due and payable (by acceleration or otherwise)) held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or such other Loan Document and although such obligations may be unmaturing. The rights of each Lender under this Section 9.06 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

**SECTION 9.07. *Applicable Law.*** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN LETTERS OF CREDIT AND AS EXPRESSLY SET FORTH

IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. EACH LETTER OF CREDIT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OR RULES DESIGNATED IN SUCH LETTER OF CREDIT, OR IF NO SUCH LAWS OR RULES ARE DESIGNATED, THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS MOST RECENTLY PUBLISHED AND IN EFFECT, ON THE DATE SUCH LETTER OF CREDIT WAS ISSUED, BY THE INTERNATIONAL CHAMBER OF COMMERCE (THE "UNIFORM CUSTOMS") AND, AS TO MATTERS NOT GOVERNED BY THE UNIFORM CUSTOMS, THE LAWS OF THE STATE OF NEW YORK.

**SECTION 9.08. *Waivers; Amendment.*** (a) No failure or delay of the Administrative Agent, the Collateral Agent, any Lender or the Issuing Bank in exercising any power or right hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower or Holdings in any case shall entitle the Borrower or Holdings to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower, Holdings and the Required Lenders; *provided, however*, that no such agreement shall (i) decrease the principal amount of, or extend the maturity of or any scheduled principal payment date or date for the payment of any interest on any Loan or any date for reimbursement of an L/C Disbursement, or waive or excuse any such payment or any part thereof, or decrease the rate of interest on any Loan or L/C Disbursement, without the prior written consent of each Lender affected thereby, (ii) increase or extend the Commitment or decrease or extend the date for payment of any Fees of any Lender without the prior written consent of such Lender, (iii) amend or modify the pro rata requirements of Section 2.17, the provisions of Section 9.04(j) or the provisions of this Section, or release any Guarantor or all or substantially all of the Collateral, without the prior written consent of each Lender, (iv) change the provisions of any Loan Document in a manner that by its terms adversely affects the rights in respect of payments due to Lenders holding Loans of one Class differently from the rights of Lenders holding Loans of any other Class without the prior written consent of Lenders holding a majority in interest of the outstanding Loans and unused Commitments of each adversely affected Class, (v) modify the protections afforded to an SPC pursuant to the provisions of Section 9.04(i) without the written consent of such SPC or (vi) reduce the percentage contained in the definition of the term "Required Lenders" without the consent of each Lender affected thereby (it being understood that with the consent of the Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Term Loan Commitments and Revolving Credit Commitments are included on the date hereof); *provided further* that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Collateral Agent, the Issuing Bank or the

Swingline Lender hereunder or under any other Loan Document without the prior written consent of the Administrative Agent, the Collateral Agent, the Issuing Bank or the Swingline Lender, as the case may be.

**SECTION 9.09. *Interest Rate Limitation.*** Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan or participation in

any L/C Disbursement, together with all fees, charges and other amounts which are treated as interest on such Loan or participation in such L/C Disbursement under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan or participation in accordance with applicable law, the rate of interest payable in respect of such Loan or participation hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan or participation but were not payable as a result of the operation of this Section 9.09 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or participations or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.10. **Entire Agreement.** This Agreement, the Fee Letter dated February 17, 2003, as amended, between the Borrower and the Administrative Agent, and the other Loan Documents constitute the entire contract between the parties relative to the subject matter hereof. Any other previous agreement among the parties with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any person (other than the parties hereto and thereto, their respective successors and assigns permitted hereunder (including any Affiliate of the Issuing Bank that issues any Letter of Credit) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders) any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

SECTION 9.11. **WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.11.

SECTION 9.12. **Severability.** In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith

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negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 9.13. **Counterparts.** This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 9.03. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

SECTION 9.14. **Headings.** Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 9.15. **Jurisdiction; Consent to Service of Process.** (a) Each of Holdings and the Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent, the Collateral Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents against the Borrower, Holdings or their respective properties in the courts of any jurisdiction.

(b) Each of Holdings and the Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or Federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.16. **Confidentiality.** (a) Each of the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates' officers, directors, employees and agents, including accountants, legal counsel and other advisors (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested or required by any regulatory authority or quasi-regulatory authority (such as the National Association of Insurance Commissioners), (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iv) in connection with the exercise of any remedies hereunder or under the other Loan Documents or any suit, action or proceeding

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relating to the enforcement of its rights hereunder or thereunder, (v) subject to an agreement containing provisions substantially the same as those of this Section 9.16, to (y) any actual or prospective assignee of or participant in any of its rights or obligations under this Agreement and the other Loan Documents or (z) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any Subsidiary or any of their respective obligations, (vi) with the consent of the Borrower, (vii) to any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender or (viii) to the extent such Information becomes publicly available other than as a result of a breach of this Section 9.16. For the purposes of this Section, "Information" shall mean all information received from the Borrower or Holdings and related to the Borrower or Holdings or their business, other than any such information that was available to the Administrative Agent, the Collateral Agent, the Issuing Bank or any Lender on a nonconfidential basis prior to its disclosure by the Borrower or Holdings. Any person required to maintain the confidentiality of Information as provided in this Section 9.16 shall be considered to have complied with its obligation to do so if such person has exercised the same degree of care to maintain the confidentiality of such Information as such person would accord its own confidential information.

(b) Notwithstanding anything herein to the contrary, any party subject to confidentiality obligations hereunder or otherwise (and any Affiliate thereof and any employee, representative or other agent of such party or such Affiliate) may disclose to any and all persons, without limitation of any kind, the U.S. federal income tax treatment and the U.S. federal income tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure. For this purpose, the tax treatment of the transactions contemplated hereby is the purported or claimed U.S.

federal income tax treatment of such transactions and the tax structure of such transactions is any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of such transactions.

SECTION 9.17. *Effect of Restatement.* This Agreement shall, except as otherwise expressly set forth herein, supersede the Existing Credit Agreement from and after the Restatement Date with respect to the transactions hereunder and with respect to the Loans and Letters of Credit outstanding under the Existing Credit Agreement as of the Restatement Date. The parties hereto acknowledge and agree, however, that (i) this Agreement and all other Loan Documents executed and delivered herewith do not constitute a novation, payment and reborrowing or termination of the Obligations (except as expressly provided for herein with respect to the repayment of the Existing Term Loans) under the Existing Credit Agreement and the other Loan Documents as in effect prior to the Restatement Date, (ii) such Obligations are in all respects continuing with only the terms being modified as provided in this Agreement and the other Loan Documents, (iii) the liens and security interests in favor of the Collateral Agent for the benefit of the Secured Parties securing payment of such Obligations are in all respects continuing and in full force and effect with respect to all Obligations and (iv) all references in the other Loan Documents to the Credit Agreement shall be deemed to refer without further amendment to this Agreement.

## CERTIFICATIONS

I, Raymond E. Wirta, certify that:

- 1) I have reviewed this quarterly report on Form 10-Q of CBRE Holding, Inc.;
- 2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3) Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2003

/s/ RAYMOND E. WIRTA

**Raymond E. Wirta**  
Chief Executive Officer

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## CERTIFICATIONS

I, Kenneth J. Kay, certify that:

- 1) I have reviewed this quarterly report on Form 10-Q of CBRE Holding, Inc.;
- 2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3) Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2003

/s/ KENNETH J. KAY

**Kenneth J. Kay**  
Chief Financial Officer

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WRITTEN STATEMENT  
PURSUANT TO  
18 U.S.C. SECTION 1350

The undersigned, Raymond E. Wirta, Chief Executive Officer, and Kenneth J. Kay, Chief Financial Officer of CBRE Holding, Inc. (the "Company"), pursuant to 18 U.S.C. §1350, hereby certify that:

- (i) the Quarterly Report on Form 10-Q for the period ending September 30, 2003, of the Company (the "Report") fully complies with the requirements of Section 13(a) and 15(d) of the Securities Exchange Act of 1934; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 14, 2003

/s/ RAYMONDE E. WIRTA

Raymond E. Wirta  
Chief Executive Officer

/s/ KENNETH J. KAY

Kenneth J. Kay  
Chief Financial Officer

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