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 March 31, 2007

OR

☐ **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 000-31293

EQUINIX, INC.
(Exact name of registrant as specified in its charter)

Delaware	**77-0487526**
(State of incorporation)	**(I.R.S. Employer Identification No.)**

301 Velocity Way, Fifth Floor, Foster City, California 94404
(Address of principal executive offices, including ZIP code)

(650) 513-7000
(Registrant's telephone number, including area code)

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) Yes ☒ No ☐ and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer or a non-accelerated filer. See definition of "accelerated filer" and "large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The number of shares outstanding of the registrant's Common Stock as of March 31, 2007 was 31,438,615.

EQUINIX, INC.

INDEX

		Page No.
Part I—Financial Information		
Item 1.	Financial Statements (unaudited):	
	Condensed Consolidated Balance Sheets as of March 31, 2007 and December 31, 2006	3
	Condensed Consolidated Statements of Operations for the Three Months Ended March 31, 2007 and 2006	4
	Condensed Consolidated Statements of Cash Flows for the Three Months Ended March 31, 2007 and 2006	5
	Notes to Condensed Consolidated Financial Statements	6
Item 2.	Management's Discussion and Analysis of Financial Condition and Results of Operations	25
Item 3.	Quantitative and Qualitative Disclosures About Market Risk	36
Item 4.	Controls and Procedures	38
Part II—Other Information		
Item 1.	Legal Proceedings	38
Item 1A.	Risk Factors	39
Item 2.	Unregistered Sales of Equity Securities and Use of Proceeds	52
Item 3.	Defaults Upon Senior Securities	52
Item 4.	Submission of Matters to a Vote of Security Holders	52
Item 5.	Other Information	52
Item 6.	Exhibits	53
Signatures		59
Index to Exhibits		60

Table of Contents

PART I—FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements

EQUINIX, INC.
Condensed Consolidated Balance Sheets
(in thousands)

	March 31, 2007	December 31, 2006
	(unaudited)	
Assets		
Current assets:		
Cash and cash equivalents	$ 327,660	$ 82,563
Short-term investments	53,758	48,831
Accounts receivable, net	27,773	26,864
Prepaids and other current assets	9,567	8,003
Total current assets	418,758	166,261
Long-term investments	10,981	25,087
Property and equipment, net	593,555	546,395
Goodwill	17,109	16,919
Debt issuance costs, net	12,524	3,006
Other assets	20,755	14,164
Total assets	$1,073,682	$ 771,832
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable and accrued expenses	$ 24,612	$ 27,269
Accrued property and equipment	39,791	23,337
Current portion of accrued restructuring charges	13,703	13,469
Current portion of capital lease and other financing obligations	2,086	1,977
Current portion of mortgage and loan payable	2,242	2,150
Other current liabilities	10,841	10,151
Total current liabilities	93,275	78,353
Accrued restructuring charges, less current portion	25,017	28,103
Capital lease and other financing obligations, less current portion	92,148	92,722
Mortgage and loan payable, less current portion	120,764	96,746
Convertible debt	282,250	86,250
Deferred rent and other liabilities	35,105	34,630
Total liabilities	648,559	416,804
Stockholders' equity:		
Common stock	31	29
Additional paid-in capital	978,607	904,573
Accumulated other comprehensive income	4,385	3,870
Accumulated deficit	(557,900)	(553,444)
Total stockholders' equity	425,123	355,028
Total liabilities and stockholders' equity	$1,073,682	$ 771,832

See accompanying notes to condensed consolidated financial statements

Table of Contents

EQUINIX, INC.

Condensed Consolidated Statements of Operations
(in thousands, except per share data)

	Three months ended March 31,	
	2007	2006
	(unaudited)	
Revenues	$85,109	$64,869
Costs and operating expenses:		
Cost of revenues	52,765	43,345
Sales and marketing	8,677	7,198
General and administrative	22,861	17,130
Total costs and operating expenses	84,303	67,673
Income (loss) from operations	806	(2,804)
Interest income	1,949	1,611
Interest expense	(3,462)	(3,868)
Loss on conversion of debt	(3,395)	—
Loss before income taxes and cumulative effect of a change in accounting principle	(4,102)	(5,061)
Income taxes	(354)	(385)
Net loss before cumulative effect of a change in accounting principle	(4,456)	(5,446)
Cumulative effect of a change in accounting principle for stock-based compensation (net of income taxes of $0)	—	376
Net loss	$ (4,456)	$ (5,070)
Net loss per share:		
Basic and diluted net loss per share before cumulative effect of a change in accounting principle	$ (0.15)	$ (0.20)
Cumulative effect of a change in accounting principle	—	0.02
Basic and diluted net loss per share	$ (0.15)	$ (0.18)
Weighted average shares	29,702	27,848

See accompanying notes to condensed consolidated financial statements

EQUINIX, INC.

Condensed Consolidated Statements of Cash Flows
(in thousands)

	Three months ended March 31,	
	2007	2006
	(unaudited)	
Cash flows from operating activities:		
Net loss	$ (4,456)	$ (5,070)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation	20,097	16,701
Stock-based compensation	10,498	7,758
Accretion of asset retirement obligation and accrued restructuring charges	832	969
Amortization of intangible assets and non-cash prepaid rent	145	211
Amortization of debt issuance costs	389	208
Cumulative effect of a change in accounting principle	—	(376)
Other reconciling items	(237)	(351)
Changes in operating assets and liabilities:		
Accounts receivable	(916)	(1,251)
Prepaids and other assets	(1,326)	(1,196)
Accounts payable and accrued expenses	(2,657)	(993)
Accrued restructuring charges	(3,543)	(2,957)
Other liabilities	1,024	(862)
Net cash provided by operating activities	19,850	12,791
Cash flows from investing activities:		
Purchases of investments	(12,760)	(24,747)
Maturities of investments	22,275	13,269
Purchases of property and equipment	(67,056)	(26,613)
Accrued property and equipment	16,454	2,512
Purchase of San Jose IBX property	(6,500)	—
Other investing activities	(470)	6
Net cash used in investing activities	(48,057)	(35,573)
Cash flows from financing activities:		
Proceeds from exercise of stock options and employee stock purchase plans	10,286	14,714
Proceeds from convertible subordinated notes	250,000	—
Proceeds from loan payable	24,607	—
Repayment of borrowings from credit line	—	(30,000)
Repayment of capital lease and other financing obligations	(465)	(364)
Repayment of mortgage payable	(497)	(205)
Debt issuance costs	(10,678)	—
Other financing activities	—	370
Net cash provided by (used in) financing activities	273,253	(15,485)
Effect of foreign currency exchange rates on cash and cash equivalents	51	125
Net increase (decrease) in cash and cash equivalents	245,097	(38,142)
Cash and cash equivalents at beginning of period	82,563	119,267
Cash and cash equivalents at end of period	$327,660	$ 81,125
Supplemental cash flow information:		
Cash paid for taxes	$ 173	$ 545
Cash paid for interest	$ 5,048	$ 3,943

See accompanying notes to condensed consolidated financial statements

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Basis of Presentation and Significant Accounting Policies

The accompanying unaudited condensed consolidated financial statements have been prepared by Equinix, Inc. ("Equinix" or the "Company") and reflect all adjustments, consisting only of normal recurring adjustments, which in the opinion of management are necessary to fairly state the financial position and the results of operations for the interim periods presented. The balance sheet at December 31, 2006 has been derived from audited financial statements at that date. The financial statements have been prepared in accordance with the regulations of the Securities and Exchange Commission ("SEC"), but omit certain information and footnote disclosure necessary to present the statements in accordance with generally accepted accounting principles. For further information, refer to the Consolidated Financial Statements and Notes thereto included in Equinix's Form 10-K as filed with the SEC on February 28, 2007. Results for the interim periods are not necessarily indicative of results for the entire fiscal year.

The preparation of consolidated financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates.

The Company believes it has sufficient cash, coupled with anticipated cash generated from operating activities and anticipated cash from financings, to meet its operating requirements for at least the next 12 months. As of March 31, 2007, the Company had $392,399,000 of cash, cash equivalents and short-term and long-term investments. As of March 31, 2007, the Company had $85,393,000 of additional liquidity available to it under the Chicago IBX Financing for the Chicago Metro Area IBX Expansion Project. In addition, as of March 31, 2007, the Company had $58,581,000 of additional liquidity available to it under the $75,000,000 Silicon Valley Bank Credit Line in the event the Company needs additional cash to fund expansion activities, fund working capital requirements or pursue attractive strategic opportunities that may become available in the future. In addition, from time to time the Company assesses external financing opportunities, both debt and equity, as alternative sources for financing such activities and opportunities. While the Company expects that its cash flow from operations will continue to increase, the Company expects its cash flow used in investing activities, primarily as a result of its expected purchases of property and equipment to complete the Company's announced expansion projects, will also increase and the Company expects them to be greater than its cash flows generated from operating activities. Given the Company's limited operating history, additional potential expansion opportunities that it may decide to pursue and other business risks that may cause its operating results to fluctuate, the Company may not achieve its desired levels of profitability or cash requirements in the future.

Revenue Recognition and Allowance for Doubtful Accounts

Equinix derives more than 90% of its revenues from recurring revenue streams, consisting primarily of (1) colocation services, such as from the licensing of cabinet space and power; (2) interconnection services, such as cross connects and Equinix Exchange ports; (3) managed infrastructure services, such as Equinix Direct, bandwidth, mail service and managed platform solutions and (4) other services consisting of rent from non-IBX space. The remainder of the Company's revenues are from non-recurring revenue streams, such as from the recognized portion of deferred installation revenues, professional services, contract settlements and equipment sales. Revenues from recurring revenue streams are billed monthly and recognized ratably over the term of the contract, generally one to three years for IBX space customers. Non-recurring installation fees, although generally paid in a lump sum upon installation, are deferred and recognized ratably over the longer of the term of the related contract or expected customer relationship. Professional service fees are recognized in the period in which the services were provided and represent the culmination of the earnings process as long as they meet the criteria for separate recognition under EITF Abstract No. 00-21, "Revenue Arrangements with Multiple Deliverables." Revenue from bandwidth and equipment is recognized on a gross basis in accordance with EITF Abstract No. 99-19, "Recording Revenue as a Principal versus Net as an Agent", primarily because the Company acts as the principal in the transaction, takes title to products and services and bears inventory and credit risk. To the extent the Company does not meet the criteria for gross basis accounting for bandwidth and equipment revenue, the

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Company records the revenue on a net basis. Revenue from contract settlements, when a customer wishes to terminate their contract early, is generally recognized on a cash basis when no remaining performance obligations exist to the extent that the revenue has not previously been recognized.

The Company occasionally guarantees certain service levels, such as uptime, as outlined in individual customer contracts. To the extent that these service levels are not achieved, the Company reduces revenue for any credits given to the customer as a result. The Company generally has the ability to determine such service level credits prior to the associated revenue being recognized, and historically, these credits have generally not been significant. There were no significant service level credits recorded during the three months ended March 31, 2007 and 2006.

Revenue is recognized only when the service has been provided and when there is persuasive evidence of an arrangement, the fee is fixed or determinable and collection of the receivable is reasonably assured. It is customary business practice to obtain a signed master sales agreement and sales order prior to recognizing revenue in an arrangement. Taxes collected from customers and remitted to governmental authorities are reported on a net basis and excluded from revenue.

The Company assesses collection based on a number of factors, including past transaction history with the customer and the credit-worthiness of the customer. The Company generally does not request collateral from its customers although in certain cases the Company obtains a security interest in a customer’s equipment placed in its IBX centers or obtains a deposit. If the Company determines that collection of a fee is not reasonably assured, the Company defers the fee and recognizes revenue at the time collection becomes reasonably assured, which is generally upon receipt of cash. In addition, Equinix also maintains an allowance for doubtful accounts for estimated losses resulting from the inability of its customers to make required payments for which the Company had expected to collect the revenues. If the financial condition of Equinix’s customers were to deteriorate or if they become insolvent, resulting in an impairment of their ability to make payments, greater allowances for doubtful accounts may be required. Management specifically analyzes accounts receivable and current economic news and trends, historical bad debts, customer concentrations, customer credit-worthiness and changes in customer payment terms when evaluating revenue recognition and the adequacy of the Company’s reserves. A specific bad debt reserve of up to the full amount of a particular invoice value is provided for certain problematic customer balances. An additional reserve is established for all other accounts based on the age of the invoices and an analysis of historical credits issued. Delinquent account balances are written-off after management has determined that the likelihood of collection is not probable.

Net Loss per Share

The Company computes net loss per share in accordance with SFAS No. 128, “Earnings per Share;” SEC Staff Accounting Bulletin (“SAB”) No. 98; EITF Issue 03-6, “Participating Securities and the Two-Class Method Under FASB 128;” EITF Issue 04-8 “The Effect of Contingently Convertible Instruments on Diluted Earnings per Share” and SFAS No. 123(R), “Share-Based Payment.” Under the provisions of SFAS No. 128, SAB No. 98, EITF Issues 03-6 and 04-8 and SFAS No. 123R, basic and diluted net loss per share are computed using the weighted-average number of common shares outstanding. Options, warrants and contingently convertible instruments were not included in the computation of diluted net loss per share because to do so would be anti-dilutive for all periods presented. Under EITF 04-8, the Company’s Convertible Subordinated Debentures and Convertible Subordinated Notes qualify as contingently convertible instruments; however, they were not included in the Company’s diluted net loss per share calculations because to do so would be anti-dilutive for all periods presented.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

The following table sets forth the computation of basic and diluted net loss per share for the periods presented (in thousands, except per share amounts) (unaudited):

	Three months ended March 31,	
	2007	2006
Numerator:		
Net loss	$ (4,456)	$ (5,070)
Denominator:		
Weighted average shares	30,119	28,073
Weighted average unvested restricted shares issued subject to forfeiture	(417)	(225)
Total weighted average shares	29,702	27,848
Net loss per share:		
Basic and diluted	$ (0.15)	$ (0.18)

The following table sets forth potential shares of common stock that are not included in the diluted net loss per share calculation above because to do so would be anti-dilutive for the periods indicated (unaudited):

	March 31,	
	2007	2006
Shares reserved for conversion of convertible debt	3,048,003	2,183,548
Unvested restricted shares issued subject to forfeiture	420,500	250,000
Common stock warrants	9,490	10,662
Common stock related to stock-based compensation plans	4,052,666	4,290,087

Income Taxes

Income taxes are accounted for under the asset and liability method. Under this method, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the year in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts that are expected more likely than not to be realized in the future.

The Company will continue to provide a valuation allowance for the net deferred tax asset other than the deferred tax asset associated with its Singapore subsidiary until it becomes more likely than not that the net deferred tax asset will be realizable. The Company released the tax valuation allowance on the Company's Singaporean net deferred tax assets during the year ended December 31, 2006. For the three months ended March 31, 2007 and 2006, the Company recorded a tax provision of $354,000 and $385,000, respectively. The tax provision recorded in the period ended March 31, 2007 is attributable to the Company's foreign operations. The tax provision recorded in the period ended March 31, 2006 is primarily related to federal alternative minimum tax, which is attributable to the Company's domestic operations. The Company did not record any excess tax benefit associated with the stock options exercised by employees during the three months ended March 31, 2007, while $370,000 of such benefit was recorded for the three months ended March 31, 2006.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

In January 2007, the Company adopted the provisions of FIN 48, "Accounting for Uncertainty in Income Taxes" ("FIN 48"), which clarifies the accounting for uncertainty in income taxes recognized in the financial statements in accordance with FASB Statement No. 109, "Accounting for Income Taxes." FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. The adoption of FIN 48 resulted in no cumulative effect of a change in accounting principle being recorded on the Company's statement of operations during the three months ended March 31, 2007.

As of the date of adopting FIN 48, the Company had approximately $1,883,000 of unrecognized tax benefits including $138,000 of interest. A majority of the unrecognized tax benefits, if subsequently recognized, will affect the Company's effective tax rate at the time of recognition. The unrecognized tax benefits are primarily related to tax positions claiming refundable research credits in the State of Hawaii. The Company has filed an appeal in the Tax Court in Hawaii and is currently working to settle the claim. The Company will continue to classify the interest and penalties recognized in accordance with paragraphs 15 and 16, respectively, of FIN 48 in the financial statements as income tax. The Company's income tax returns for all tax years remain open to examination by federal and state taxing authorities. In addition, the Company's tax years of 2001 through 2005 also remain open and subject to examination by local tax authorities in the foreign jurisdictions in which the Company has major operations.

Construction in Progress

Construction in progress includes direct and indirect expenditures for the construction and expansion of IBX centers and is stated at original cost. The Company has contracted out substantially all of the construction and expansion efforts of its IBX centers to independent contractors under construction contracts. Construction in progress includes certain costs incurred under a construction contract including project management services, engineering and schematic design services, design development and construction services and other construction-related fees and services. In addition, the Company has capitalized certain interest costs during the construction phase. Once an IBX center or expansion project becomes operational, these capitalized costs are allocated to certain property and equipment categories and are depreciated at the appropriate rates consistent with the estimated useful life of the underlying assets.

Interest incurred is capitalized in accordance with SFAS No. 34, "Capitalization of Interest Costs." Total interest cost incurred and total interest capitalized during the three months ended March 31, 2007 were $4,974,000 and $1,512,000, respectively. Total interest cost incurred and total interest capitalized during the three months ended March 31, 2006 were $4,131,000 and $263,000, respectively.

Asset Retirement Obligations

The fair value of a liability for an asset retirement obligation is to be recognized in the period in which it is incurred if a reasonable estimate of fair value can be made. The associated retirement costs are capitalized and included as part of the carrying value of the long-lived asset and amortized over the useful life of the asset. Subsequent to the initial measurement, the Company is accreting the liability in relation to the asset retirement obligations over time and the accretion expense is being recorded as a cost of revenue. The Company's asset retirement obligations are primarily related to its IBX Centers, of which the majority are leased under long-term arrangements, and, in certain cases, are required to be returned to the landlords in original condition. All of the Company's IBX center leases have been subject to significant development by the Company in order to convert them from, in most cases, vacant buildings or warehouses into IBX centers. The majority of the Company IBX centers' initial lease terms expire at various dates ranging from 2010 to 2025 and all of them have renewal options available to the Company.

During the three months ended March 31, 2007 and 2006, the Company recorded accretion expense related to its asset retirement obligations of $141,000 and $125,000, respectively.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Stock-Based Compensation

On January 1, 2006, the Company adopted the provisions of, and accounts for stock-based compensation in accordance with, SFAS No. 123(R), “Share-Based Payment,” and related pronouncements (“SFAS 123(R)”). Under the fair value recognition provisions of this statement, stock-based compensation cost is measured at the grant date for all stock-based awards made to employees and directors based on the fair value of the award using an option-pricing model and is recognized as expense over the requisite service period, which is generally the vesting period. SFAS 123(R) supersedes the Company’s previous accounting under Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to Employees,” (“APB 25”) for periods beginning in fiscal year 2006. In March 2005, the SEC issued Staff Accounting Bulletin No. 107 (“SAB 107”) providing supplemental implementation guidance for SFAS 123(R). The Company has applied the provisions of SAB 107 in its adoption of SFAS 123(R).

The Company currently uses the Black-Scholes option-pricing model to determine the fair value of stock options and shares purchased under the employee stock purchase plan as they only have a service condition. The Company currently uses a Monte Carlo simulation option-pricing model to determine the fair value of certain restricted stock grants that have both a service and market price condition. The determination of the fair value of stock-based payment awards on the date of grant using an option-pricing model is affected by the Company’s stock price as well as assumptions regarding a number of complex and subjective variables. These variables include the Company’s expected stock price volatility over the term of the awards, actual and projected employee stock option exercise behaviors, which is referred to as expected term, risk-free interest rates and expected dividends.

In January 2007, the Stock Option Committee of the Board of Directors approved stock options to be granted to employees, excluding executive officers, to purchase an aggregate of 511,310 shares of common stock as part of the Company’s annual refresh program. In addition, the Compensation Committee of the Board of Directors approved the issuance of 178,400 restricted stock units to certain employees, excluding executive officers, also as part of the Company’s annual refresh program. The Compensation Committee of the Board of Directors also approved the issuance of an aggregate of 218,000 shares of restricted common stock and restricted stock units to executive officers pursuant to the 2000 Equity Incentive Plan. All awards are subject to vesting provisions. All such equity awards have a total fair value, net of estimated forfeitures, of $44,300,000, which is expected to be amortized over a weighted-average period of 3.5 years. During the three months ended March 31, 2007, the Company had amortized $3,305,000, net of estimated forfeitures, of the total fair value of such equity awards.

The following table presents, by operating expense, the Company’s stock-based compensation expense recognized in the Company’s condensed consolidated statement of operations (in thousands):

	Three Months Ended March 31,	
	2007	2006
Cost of revenues	$ 1,137	$ 758
Sales and marketing	2,484	1,892
General and administrative	6,877	5,108
	$10,498	$7,758

Table of Contents

Goodwill and Other Intangible Assets

Goodwill and other intangible assets, net, consisted of the following (in thousands):

	March 31, 2007	December 31, 2006
Goodwill	$17,109	$ 16,919
Other intangibles:		
Intangible asset – customer contracts	4,415	4,370
Intangible asset – leases	1,017	1,017
Intangible asset – tradename	343	339
Intangible asset – workforce	160	160
Intangible asset – lease expenses	111	111
	6,046	5,997
Accumulated amortization	(5,605)	(5,475)
	441	522
	$17,550	$ 17,441

The Company's goodwill is an asset denominated in Singapore dollars. As a result, it is subject to foreign currency fluctuations. The Company's foreign currency translation gains and losses are a component of other comprehensive income and loss (see Note 13).

For the three months ended March 31, 2007 and 2006, the Company recorded amortization expense of $80,000 and $146,000, respectively. The Company expects to record the following amortization expense during the remainder of 2007 and beyond (in thousands) (unaudited):

Year ending:	
2007 (nine months remaining)	$156
2008	180
2009	67
2010	38
Total	$441

2. IBX Acquisitions and Expansions

San Jose Property Acquisition

In January 2007, the Company entered into a conditional purchase agreement to purchase the building and property where its original Silicon Valley IBX center is located for $65,000,000, which is expected to close no later than November 2007 following an initial $6,500,000 cash deposit paid in January 2007.

Singapore IBX Expansion Project

In March 2007, the Company entered into long-term leases for new space in the same building in which the Company's existing Singapore IBX center is located (the "Singapore IBX Expansion Project"). Minimum payments under these leases, which qualify as operating leases, total 3,674,000 Singapore dollars (approximately $2,421,000 as translated using effective exchange rates at March 31, 2007) in cumulative lease payments with monthly payments commencing in the third quarter of 2007. The Company intends to invest approximately $12,000,000 to build out this new space, of which $388,000 was incurred as of March 31, 2007.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Washington, D.C. Metro Area IBX Expansion Project

In March 2007, the Company announced its intention to build out a new IBX center within the Ashburn Campus, which will be the fifth IBX center in the Washington, D.C. metro area, in order to further expand its existing Washington, D.C metro area IBX center (the "Washington, D.C. Metro Area IBX Expansion Project"). The Company plans to spend approximately $70,000,000 for the Washington, D.C. Metro Area IBX Expansion Project, of which $961,000 was incurred as of March 31, 2007.

3. Related Party Transactions

A significant amount of the Company's Asia-Pacific revenues are generated in Singapore and a significant portion of the business in Singapore is transacted with entities affiliated with STT Communications, which is the Company's single largest stockholder (owning approximately 14% of outstanding common stock). For the three months ended March 31, 2007, revenues recognized with related parties, primarily entities affiliated with STT Communications, were $1,409,000 and as of March 31, 2007, accounts receivable with these related parties was $1,079,000. For the three months ended March 31, 2007, costs and services procured with related parties, primarily entities affiliated with STT Communications, were $315,000 and as of March 31, 2007, accounts payable with these related parties was $91,000. For the three months ended March 31, 2006, revenues recognized with related parties, primarily entities affiliated with STT Communications, were $1,434,000 and as of March 31, 2006, accounts receivable with these related parties was $934,000. For the three months ended March 31, 2006, costs and services procured with related parties, primarily entities affiliated with STT Communications, were $952,000 and as of March 31, 2006, accounts payable with these related parties was $454,000.

4. Accounts Receivable

Accounts receivables, net, consisted of the following (in thousands):

	March 31, 2007 (unaudited)	December 31, 2006
Accounts receivable	$ 55,192	$ 52,500
Unearned revenue	(27,162)	(25,363)
Allowance for doubtful accounts	(257)	(273)
	$ 27,773	$ 26,864

Trade accounts receivable are recorded at the invoiced amount and do not bear interest. Unearned revenue consists of pre-billing for services that have not yet been provided, but which have been billed to customers ahead of time in accordance with the terms of their contract. Accordingly, the Company invoices its customers at the end of a calendar month for services to be provided the following month.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

5. Property and Equipment

Property and equipment consisted of the following (in thousands):

	March 31, 2007 (unaudited)	December 31, 2006
Leasehold improvements	$ 419,533	$ 417,856
IBX plant and machinery	207,936	191,243
IBX equipment	115,095	84,499
Buildings	68,980	50,526
Computer equipment and software	39,105	35,913
Land	24,967	24,967
Furniture and fixtures	2,435	2,438
Construction in progress	85,222	88,429
	963,273	895,871
Less accumulated depreciation	(369,718)	(349,476)
	$ 593,555	$ 546,395

Leasehold improvements, IBX plant and machinery, computer equipment and software and buildings recorded under capital leases aggregated $35,361,000 at both March 31, 2007 and December 31, 2006. Amortization on the assets recorded under capital leases is included in depreciation expense and accumulated depreciation on such assets totaled $5,306,000 and $2,942,000 for the three months ended March 31, 2007 and 2006, respectively.

As of March 31, 2007 and December 31, 2006, the Company had accrued property and equipment expenditures of $39,791,000 and $23,337,000, respectively. The Company's planned capital expenditures during the remainder of 2007 and 2008 in connection with recently acquired IBX properties and expansion efforts are substantial. For further information, refer to "Other Purchase Commitments" in Note 12.

6. Accounts Payable and Accrued Expenses

Accounts payable and accrued expenses consisted of the following (in thousands):

	March 31, 2007 (unaudited)	December 31, 2006
Accounts payable	$ 3,233	$ 4,515
Accrued compensation and benefits	10,308	11,836
Accrued utility and security	4,771	3,849
Accrued taxes	1,938	2,081
Accrued professional fees	1,253	1,362
Accrued interest	988	1,318
Accrued other	2,121	2,308
	$ 24,612	$ 27,269

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

7. Other Current Liabilities

Other current liabilities consisted of the following (in thousands):

	March 31, 2007 (unaudited)	December 31, 2006
Deferred installation revenue	$ 8,912	$ 7,838
Customer deposits	671	799
Deferred recurring revenue	679	674
Deferred rent	399	401
Other current liabilities	180	439
	$ 10,841	$ 10,151

8. Deferred Rent and Other Liabilities

Deferred rent and other liabilities consisted of the following (in thousands):

	March 31, 2007 (unaudited)	December 31, 2006
Deferred rent, non-current	$ 20,510	$ 20,522
Deferred recurring revenue, non-current	5,936	6,058
Asset retirement obligations	4,125	3,985
Deferred installation revenue, non-current	4,130	3,856
Other liabilities	404	209
	$ 35,105	$ 34,630

The Company currently leases the majority of its IBX centers and certain equipment under non-cancelable operating lease agreements expiring through 2025. The centers' lease agreements typically provide for base rental rates that increase at defined intervals during the term of the lease. In addition, the Company has negotiated rent expense abatement periods for certain properties to better match the phased build-out of its centers. The Company accounts for such abatements and increasing base rentals using the straight-line method over the life of the lease. The difference between the straight-line expense and the cash payment is recorded as deferred rent.

9. Convertible Debt

The Company's convertible debt consisted of the following (in thousands):

	March 31, 2007 (unaudited)	December 31, 2006
Convertible subordinated debentures	$ 32,250	$ 86,250
Convertible subordinated notes	250,000	—
	$282,250	$ 86,250

Convertible Subordinated Debentures

In March 2007, the Company entered into agreements with certain holders ("Holders") of its 2.50% Convertible Subordinated Debentures due February 15, 2024, pursuant to which the Company agreed to exchange an aggregate of 1,367,090 newly issued shares of its common stock for such Holders' $54,000,000 of $86,250,000 principal amount of the Convertible Subordinated Debentures (the "Convertible Subordinated Debentures' Partial Conversion"). The number of shares of common stock issued equals the amount issuable upon conversion of the Convertible Subordinated Debentures in accordance with their terms. In addition, each Holder received cash consideration equal to accrued and unpaid interest through

the redemption date totaling $111,000, as well as the present value of future interest due through February 15, 2009 and an incremental fee, totaling $3,395,000 (the "Inducement Fee").

The Company recognized a loss on debt conversion totaling $3,395,000 as a result of the Convertible Subordinated Debentures' Partial Conversion in accordance with FASB No. 84, "Induced Conversions of Convertible Debt", due to the Inducement Fee. As a result of the Convertible Subordinated Debentures' Partial Conversion, a total of $53,229,000 was credited to stockholders' equity during the first quarter of 2007, which was comprised of $54,000,000 of Convertible Subordinated Debentures, offset by $771,000 of unamortized debt issuance costs since, at the time of issuance, the Convertible Subordinated Debentures did not contain a beneficial conversion feature.

As of March 31, 2007, a total of $32,250,000 Convertible Subordinated Debentures remained outstanding and were convertible into 816,458 shares of the Company's common stock.

Convertible Subordinated Notes

In March 2007, the Company issued $250,000,000 aggregate principal amount of 2.50% Convertible Subordinated Notes due April 15, 2012 (the "Convertible Subordinated Notes"). Interest is payable semi-annually on April 15 and October 15 of each year, commencing October 15, 2007.

The Convertible Subordinated Notes are governed by an Indenture dated as of March 30, 2007, between the Company, as issuer, and U.S. Bank National Association, as trustee (the "Indenture"). The Indenture does not contain any financial covenants or any restrictions on the payment of dividends, the incurrence of senior debt or other indebtedness, or the issuance or repurchase of securities by the Company. The Convertible Subordinated Notes are unsecured and rank junior in right of payment to the Company's existing or future senior debt and equal in right of payment to the Company's existing and future subordinated debt.

Upon conversion, holders will receive, at the Company's election, cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock. However, the Company may at any time irrevocably elect for the remaining term of the Convertible Subordinated Notes to satisfy its obligation in cash up to 100% of the principal amount of the Convertible Subordinated Notes converted, with any remaining amount to be satisfied, at the Company's election, in shares of its common stock or a combination of cash and shares of its common stock.

The initial conversion rate is 8.9259 shares of common stock per $1,000 principal amount of Convertible Subordinated Notes, subject to adjustment. This represents an initial conversion price of approximately $112.03 per share of common stock. Holders of the Convertible Subordinated Notes may convert their notes at any time prior to the close of business on the business day immediately preceding the maturity date under the following circumstances:

- during any fiscal quarter (and only during that fiscal quarter) ending after June 30, 2007, if the sale price of the Company's common stock, for at least 20 trading days during the period of 30 consecutive trading days ending on the last trading day of the previous fiscal quarter, is greater than 130% of the conversion price per share of common stock on such last trading day, presently $145.64 per share (the "Stock Price Condition Conversion Clause");
- subject to certain exceptions, during the five business day period following any ten consecutive trading day period in which the trading price of the Convertible Subordinated Notes for each day of such period was less than 98% of the product of the sale price of the Company's common stock and the conversion rate (the "Parity Provision Clause");
- if such Convertible Subordinated Notes have been called for redemption;
- upon the occurrence of specified corporate transactions described in the Indenture, such as a

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

consolidation, merger or binding share exchange in which the Company's common stock would be converted into cash or property other than securities (the "Corporate Action Provision Clause"); or

- at any time on or after March 15, 2012.

Upon conversion, due to the conversion formulas associated with the Convertible Subordinated Notes, if the Company's stock is trading at levels exceeding 130% of the conversion price per share of common stock, and if the Company elects to pay any portion of the consideration in cash, additional consideration beyond the $250,000,000 of gross proceeds received would be required. However, in no event would the total number of shares issuable upon conversion of the Convertible Subordinated Notes exceed 11.6036 per $1,000 principal amount of Convertible Subordinated Notes, subject to anti-dilution adjustments, or the equivalent of $86.18 per share of common stock or a total of 2,900,900 shares of the Company's common stock. As of March 31, 2007, the Convertible Subordinated Notes were convertible into 2,231,545 shares of the Company's common stock.

The conversion rates may be adjusted upon the occurrence of certain events including for any cash dividend, but they will not be adjusted for accrued and unpaid interest. Holders of the Convertible Subordinated Notes will not receive any cash payment representing accrued and unpaid interest upon conversion of a note. Accrued but unpaid interest will be deemed to be paid in full upon conversion rather than cancelled, extinguished or forfeited. Convertible Subordinated Notes called for redemption may be surrendered for conversion prior to the close of business on the business day immediately preceding the redemption date.

The Company may redeem all or a portion of the Convertible Subordinated Notes at any time after April 16, 2010 for cash but only if the closing sale price of the Company's common stock for at least 20 of the 30 consecutive trading days immediately prior to the day the Company gives notice of redemption is greater than 130% of the applicable conversion price per share of common stock on the date of the notice, presently $145.64 per share. The redemption price will equal 100% of the principal amount of the Convertible Subordinated Notes, plus accrued and unpaid interest, if any, to, but excluding, the date of redemption.

Holders of the Convertible Subordinated Notes have the right to require the Company to purchase with cash all or a portion of the Convertible Subordinated Notes upon the occurrence of a fundamental change at a purchase price equal to 100% of the principal amount of the Convertible Subordinated Notes plus accrued and unpaid interest, if any, to, but excluding, the date of repurchase. Following certain corporate transactions that constitute a change of control, the Company will increase the conversion rate for a holder who elects to convert the Convertible Subordinated Notes in connection with such change of control in certain circumstances.

The Company has considered the guidance in FASB No. 133, "Accounting for Derivative Instruments and Hedging Activities", EITF Abstract No. 00-19, "Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock" and EITF Abstract No. 00-27, "Application of EITF Issue No. 98-5, 'Accounting for Convertible Securities with Beneficial Conversion Features or Contingently Adjustable Conversion Ratios,' to Certain Convertible Instruments" and other related accounting pronouncements and has determined that the Convertible Subordinated Notes do not contain a beneficial conversion feature as the fair value of the Company's common stock on the date of issuance was less than the initial conversion price outlined in the agreement. In addition, the Convertible Subordinated Notes contain one embedded derivative requiring bifurcation and separate accounting treatment, the Parity Provision Clause, which had a zero fair value as of March 31, 2007. The Company will be remeasuring this embedded derivative each reporting period, as applicable. Changes in fair value will be reported in the statement of operations.

The costs related to the Convertible Subordinated Notes were capitalized and are being amortized to interest expense using the effective interest method, through March 15, 2012, the first date that the holders of the Convertible Subordinated Notes can convert without satisfaction of the Stock Price Condition

Conversion Clause, Parity Provision Clause or the Corporate Action Provision Clause. Debt issuance costs related to the Convertible Subordinated Notes, net of amortization, were $7,985,000 as of March 31, 2007.

10. Non-Convertible Debt

Loan Payable

In February 2007, a wholly-owned subsidiary of the Company obtained a loan of up to $110,000,000 to finance up to 60% of the development and construction costs of the Chicago Metro Area IBX Expansion Project (the "Chicago IBX Financing"). The Company periodically receives advances of funds in conjunction with costs incurred for construction of its Chicago Metro Area IBX Expansion Project (the "Loan Payable"). As of March 31, 2007, the Company had received advances totaling $24,607,000. Up to $85,393,000 remains available for borrowing from the Chicago IBX Financing and is expected to be borrowed periodically during the remaining construction period of the Chicago Metro Area IBX Expansion Project until completion by the end of 2007.

The Loan Payable has a maturity date of January 31, 2010, with options to extend for up to an additional two years, in one-year increments, upon satisfaction of certain extension conditions. The Loan Payable bears interest at a floating rate (one, three or six month LIBOR plus 2.75%) with interest payable monthly, which commenced March 1, 2007. As of March 31, 2007, the Loan Payable had an effective interest rate of 8.125% per annum. The Chicago IBX Financing has no specific financial covenants and contains a limited parent company guaranty.

The debt issuance costs related to the Chicago IBX Financing were capitalized and are being amortized to interest expense using the effective interest method through January 31, 2010. Debt issuance costs related to the Chicago IBX Financing, net of amortization, were $2,511,000 as of March 31, 2007.

Silicon Valley Bank Credit Line

In March 2007, the Company amended certain provisions of the Silicon Valley Bank Credit Line which related to the modification of certain financial covenants, the addition of a liquidity covenant and the revision of the definition of "Approved Subordinated Debt" in order to allow the Company to proceed with the Convertible Subordinated Notes offering (see Footnote 9). The liquidity covenant requires the Company to maintain total liquidity of at least $75,000,000. The liquidity covenant is defined as the sum of cash, cash equivalents, short term investments, 80% of long term investments and 10% of net accounts receivable. In the event of a default, Silicon Valley Bank has the right to exercise a notice of control to give Silicon Valley Bank the sole right to control, direct or dispose of the assets as it deems necessary to satisfy the Company's obligations under the Silicon Valley Bank Credit Line, if any. As of March 31, 2007, the Company was in compliance with all financial covenants in connection with the amended Silicon Valley Bank Credit Line including the liquidity covenant.

Borrowings under the Silicon Valley Bank Credit Line continue to bear interest at variable interest rates, plus the applicable margins, in effect prior to the amendment, based on either prime rates or LIBOR rates. The Silicon Valley Bank Credit Line continues to mature on September 15, 2008 and remains secured by substantially all of the Company's domestic personal property assets and certain of the Company's real property leases.

As of March 31, 2007, letters of credit totaling $16,419,000 had been issued and were outstanding under the Silicon Valley Bank Credit Line. As a result, the amount of borrowings available to the Company was $58,581,000. These letters of credit automatically renew in successive one-year periods until the final termination. If the beneficiaries for any of these letters of credit decide to draw down on these letters of credit, the Company will be required to fund these letters of credit either through cash collateral or borrowings under the Silicon Valley Bank Credit Line. As of March 31, 2007, had the Company borrowed against the Silicon Valley Bank Credit Line, it would have had an effective interest rate of 7.82% per annum.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

11. Debt Maturities

Combined aggregate maturities for the Company's various debt facilities and other financing obligations as of March 31, 2007 was as follows (in thousands) (unaudited):

	Convertible debt	Mortgage and loan payable	Capital lease and other financing obligations	Total
2007 (nine months remaining)	$ —	$ 7,623	$ 7,204	$ 14,827
2008	—	10,164	9,860	20,024
2009	32,250	10,164	10,134	52,548
2010	—	34,771	10,409	45,180
2011	—	10,164	10,703	20,867
2012 and thereafter	250,000	143,668	117,652	511,320
	282,250	216,554	165,962	664,766
Less amount representing interest	—	(93,548)	(78,283)	(171,831)
Plus amount representing residual property value	—	—	6,555	6,555
	282,250	123,006	94,234	499,490
Less current portion of principal	—	(2,242)	(2,086)	(4,328)
	$282,250	$ 120,764	$ 92,148	$ 495,162

12. Commitments and Contingencies

Legal Matters Relating to Stock Option Granting Practices

On June 29, 2006 and September 18, 2006, shareholder derivative actions were filed in the Superior Court of the State of California, County of San Mateo, naming Equinix as a nominal defendant and several of Equinix's current and former officers and directors as individual defendants. These actions were consolidated, and the consolidated complaint was filed in January 2007. The consolidated complaint alleges that the individual defendants breached their fiduciary duties and violated California securities law as a result of purported backdating of stock option grants, insider trading and the preparation and approval of inaccurate financial results. Plaintiffs seek to recover, on behalf of Equinix, unspecified monetary damages, corporate governance changes, equitable and injunctive relief, restitution, and fees and costs. In March 2007, the state court stayed this action in deference to a federal shareholder derivative action filed in the United States District Court for the Northern District of California in October 2006. The federal action named Equinix as a nominal defendant and several current and former officers and directors as individual defendants. This complaint alleged that the individual defendants breached their fiduciary duties and violated California and federal securities laws as a result of purported backdating of stock options, insider trading and the dissemination of false statements. On April 12, 2007, the federal action was voluntarily dismissed without prejudice pursuant to a joint stipulation entered as an order by the court. The parties to the state court action have informed the state court that the federal action was dismissed. In addition to the pending state court derivative action, the Company may be subject to additional derivative or other lawsuits that may be presented on an individual or class basis alleging claims based on the Company's stock option granting practices. Similar lawsuits and investigations have been commenced against numerous other companies based on similar allegations.

Responding to, investigating and/or defending against civil litigations and government inquiries regarding the Company's stock option grants and practices will present a substantial cost to the Company in both cash and the attention of certain management and may have a negative impact on the Company's operations. In addition, in the event of any negative finding or assertion by a court of law or any third-party claim related to the Company's stock option granting practices, the Company may be liable for damages, fines or other civil or criminal remedies, or be required to restate its prior period financial statements or adjust its current period financial statements. Any such adverse action could have a material adverse effect on the Company's business and current market value.

The Company believes that while an unfavorable outcome to any or all of the above-mentioned

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

inquiries, cases or complaints is reasonably possible, it is not probable. As a result, the Company has not accrued for any settlements in connection with these legal matters as of March 31, 2007.

Other Legal Actions

On July 30, 2001 and August 8, 2001, putative shareholder class action lawsuits were filed against the Company, certain of its officers and directors (the "Individual Defendants"), and several investment banks that were underwriters of the Company's IPO. The cases were filed in the United States District Court for the Southern District of New York, purportedly on behalf of investors who purchased the Company's stock between August 10, 2000 and December 6, 2000. In addition, similar lawsuits were filed against approximately 300 other issuers and related parties. The purported class action alleges violations of Sections 11 and 15 of the Securities Act of 1933 and Sections 10(b), Rule 10b-5 and 20(a) of the Securities Exchange Act of 1934 against the Company and Individual Defendants. On October 13, 2004, the Court certified a class in six of the approximately 300 other nearly identical actions (the "focus cases") and noted that the decision is intended to provide strong guidance to all parties regarding class certification in the remaining cases. The Underwriter Defendants appealed the decision and the Second Circuit vacated the District Court's decision granting class certification in those six cases on December 5, 2006. Plaintiffs filed a petition for rehearing. On April 6, 2007, the Second Circuit denied the petition, but noted that Plaintiffs could ask the District Court to certify a more narrow class than the one that was rejected. Plaintiffs have not yet moved to certify a class in the Equinix case.

In July 2003, a Special Litigation Committee of the Equinix Board of Directors approved a settlement agreement and related agreements which set forth the terms of a settlement between the Company, the Individual Defendants, the plaintiff class and the vast majority of the other approximately 300 issuer defendants and the individual defendants currently or formerly associated with those companies. Pursuant to the settlement and related agreements, if the settlement receives final approval by the District Court, it provides for a release of the Company and the individual defendants and the Company's agreeing to assign away, not assert, or release certain potential claims the Company may have against its underwriters. There is no assurance that the court will grant final approval to the issuers' settlement. As approval by the Court cannot be assured, the Company is unable at this time to determine whether the outcome of the litigation would have a material impact on its results of operations, financial condition or cash flows. Until the settlement is finalized and approved by the Court, or in the event such settlement is not approved, the Company and its officers and directors intend to continue to defend the actions vigorously. While an unfavorable outcome to this case is reasonably possible, and the Company can estimate its potential exposure to be less than approximately $3.4 million, it is not probable. In addition, as noted above, any payments are expected to be covered by existing insurance and, as a result, the Company does not expect that the settlement will involve any payment by the Company. As a result, the Company has not accrued for any settlements in connection with this litigation as of March 31, 2007.

Estimated and Contingent Liabilities

The Company estimates exposure on certain liabilities, such as income and property taxes, based on the best information available at the time of determination. With respect to real and personal property taxes, the Company records what it can reasonably estimate based on prior payment history, current landlord estimates or estimates based on current or changing fixed asset values in each specific municipality, as applicable. However, there are circumstances beyond the Company's control whereby the underlying value of the property or basis for which the tax is calculated on the property may change, such as a landlord selling the underlying property of one of the Company's IBX center leases or a municipality changing the assessment value in a jurisdiction and, as a result, the Company's property tax obligations may vary from period to period. Based upon the most current facts and circumstances, the Company makes the necessary property tax accruals for each of its reporting periods. However, revisions in the Company's estimates of the potential or actual liability could materially impact the financial position, results of operations or cash flows of the Company.

From time to time, the Company may have certain contingent liabilities that arise in the ordinary course of its business activities. The Company accrues contingent liabilities when it is probable that future

Table of Contents

expenditures will be made and such expenditures can be reasonably estimated. In the opinion of management, there are no pending claims for which the outcome is expected to result in a material adverse effect in the financial position, results of operations or cash flows of the Company.

Other Purchase Commitments

Primarily as a result of the Company's various IBX expansion projects, as of March 31, 2007, the Company was contractually committed for $131,534,000 of unaccrued capital expenditures, primarily for IBX equipment not yet delivered and labor not yet provided, in connection with the work necessary to open these IBX centers and make them available to customers for installation, as well as for the San Jose Property Acquisition. In addition, the Company has numerous other, non-capital purchase commitments in place as of March 31, 2007, such as commitments to purchase power in select locations, primarily in the U.S. and Singapore, through 2007 and thereafter, and other open purchase orders for goods or services to be delivered or provided during 2007. Such other miscellaneous purchase commitments totaled $39,038,000 as of March 31, 2007.

13. Other Comprehensive Income and Loss

The components of other comprehensive income and loss are as follows (in thousands) (unaudited):

	Three months ended March 31,	
	2007	2006
Net loss	$(4,456)	$(5,070)
Unrealized gain (loss) on available for sale securities	93	(32)
Foreign currency translation gain	422	854
Comprehensive loss	$(3,941)	$(4,248)

There were no significant tax effects on comprehensive loss for the three months ended March 31, 2007 and 2006.

14. Segment Information

The Company and its subsidiaries are principally engaged in a single segment: the design, build-out and operation of network neutral IBX centers. All revenues result from the operation of these IBX centers. The Company's chief operating decision-maker evaluates performance, makes operating decisions and allocates resources based on financial data consistent with the presentation in the accompanying condensed consolidated financial statements.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

While the Company operates in a single segment, the Company provides the following geographic statement of operations disclosures as follows (in thousands) (unaudited):

	Three months ended March 31,	
	2007	2006
Total revenues:		
United States	$72,526	$55,840
Asia-Pacific	12,583	9,029
	$85,109	$64,869
Cost of revenues:		
United States	$45,557	$37,948
Asia-Pacific	7,208	5,397
	$52,765	$43,345
Income (loss) from operations:		
United States	$ 368	$ (2,247)
Asia-Pacific	438	(557)
	$ 806	$ (2,804)

The Company's long-lived assets are located in the following geographic areas (in thousands):

	March 31, 2007 (unaudited)	December 31, 2006
United States	$ 600,887	$ 553,619
Asia-Pacific	54,037	51,952
	$ 654,924	$ 605,571

The Company's goodwill totaling $17,109,000 and $16,919,000 as of March 31, 2007 and December 31, 2006, respectively, is part of the Company's Singapore reporting unit, which is reported within the Asia-Pacific geographic area.

Revenue information on a services basis is as follows (in thousands) (unaudited):

	Three months ended March 31,	
	2007	2006
Colocation	$59,759	$45,569
Interconnection	16,720	11,804
Managed infrastructure	4,099	3,933
Rental	308	446
Recurring revenues	80,886	61,752
Non-recurring revenues	4,223	3,117
	$85,109	$64,869

No single customer accounted for 10% of the Company's revenues for the three months ended March 31, 2007. Revenue from one customer accounted for 10% of the Company's revenues for the three months ended March 31, 2006. No other single customer accounted for more than 10% of the Company's revenues for the three months ended March 31, 2006. No accounts receivables accounted for 10% of the Company's gross accounts receivable as of March 31, 2007. Accounts receivable from the customer mentioned above accounted for 11% of the Company's gross accounts receivable as of March 31, 2006. No other single customer accounted for more than 10% of the Company's gross accounts receivable as of March 31, 2006.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

15. Restructuring Charges

2004 Restructuring Charges

In December 2004, in light of the availability of fully built-out data centers in select markets at costs significantly below those costs the Company would incur in building out new space, the Company made the decision to exit leases for excess space adjacent to one of the Company's New York metro area IBXs, as well as space on the floor above its original Los Angeles IBX. As a result of the Company's decision to exit these spaces, the Company recorded restructuring charges totaling $17,685,000, which represents the present value of the Company's estimated future cash payments, net of any estimated subrental income and expense, through the remainder of these lease terms, as well as the write-off of all remaining property and equipment attributed to the partial build-out of the excess space on the floor above its Los Angeles IBX as outlined below. Both lease terms run through 2015.

The Company estimated the future cash payments required to exit these two leased spaces, net of any estimated subrental income and expense, through the remainder of these lease terms and then calculated the present value of such future cash flows in order to determine the appropriate restructuring charge to record. The Company records accretion expense to accrete its accrued restructuring liability up to an amount equal to the total estimated future cash payments necessary to complete the exit of these leases. Should the actual lease exit costs differ from the Company's estimates, the Company may need to adjust its restructuring charges associated with the excess lease spaces, which would impact net income in the period such determination was made.

A summary of the movement in the 2004 accrued restructuring charge from December 31, 2006 to March 31, 2007 is outlined as follows (in thousands) (unaudited):

	Accrued restructuring charge as of December 31, 2006	Accretion expense	Cash payments	Accrued restructuring charge as of March 31, 2007
Estimated lease exit costs	$ 13,857	$ 210	$ (699)	$ 13,368
	13,857	$ 210	$ (699)	13,368
Less current portion	(3,096)			(3,310)
	$ 10,761			$ 10,058

As the Company currently has no plans to enter into lump sum lease terminations with either of the landlords associated with these two excess space leases, the Company has reflected its accrued restructuring liability as both current and non-current on the accompanying condensed consolidated balance sheets as of March 31, 2007 and December 31, 2006. The Company is contractually committed to these two excess space leases through 2015.

2005 Restructuring Charges

In October 2005, in light of the availability of fully or partially built-out data centers in the Silicon Valley, including the possibility of expansion among some of the four IBX centers the Company currently has in the Silicon Valley, the Company made the decision that retaining the approximately 40 acre San Jose Ground Lease for future expansion was no longer economical. In conjunction with this decision, the Company entered into an agreement with the landlord of this property for the early termination of the San Jose Ground Lease property whereby the Company would pay $40,000,000 over the next four years plus property taxes, which commenced on January 1, 2006, to terminate this lease, which would otherwise require significantly higher cumulative lease payments through 2020 (the "San Jose Ground Lease Termination"). As a result of the San Jose Ground Lease Termination, the Company recorded a

$33,814,000 restructuring charge in the fourth quarter of 2005, which represents the present value of the Company's estimated future cash payments to exit this property, as well as the write-off of all remaining property and equipment attributed to the development of this property.

The Company estimated the future cash payments required to exit the San Jose Ground Lease, net of any estimated subrental income and expense, through the remainder of these lease terms and then calculated the present value of such future cash flows in order to determine the appropriate restructuring charge to record. The Company's right to occupy of this property terminates on December 31, 2007 and can be terminated at any time prior to December 31, 2007 upon the landlord providing the Company at least ten days prior written notice; however, even if the landlord early terminates, the Company is still required to pay the full $40,000,000 of payments due. The Company records accretion expense to accrete its accrued restructuring liability up to an amount equal to the total estimated future cash payments necessary to complete the exit of the San Jose Ground Lease.

A summary of the movement in the 2005 accrued restructuring charge from December 31, 2006 to March 31, 2007 is outlined as follows (in thousands) (unaudited):

	Accrued restructuring charge as of December 31, 2006	Accretion expense	Cash payments	Accrued restructuring charge as of March 31, 2007
Estimated lease exit costs	$ 27,715	$ 481	$(2,844)	$ 25,352
	27,715	$ 481	$(2,844)	25,352
Less current portion	(10,373)			(10,393)
	$ 17,342			$ 14,959

16. Recent Accounting Pronouncements

In June 2006, the FASB approved EITF Issue No. 06-3, "How Taxes Collected from Customers and Remitted to Governmental Authorities Should Be Presented in the Income Statement (That is, Gross versus Net Presentation)" ("EITF 06-3"). EITF 06-3 includes any tax assessed by a governmental authority that is directly imposed on a revenue-producing transaction between a seller and a customer and may include, but is not limited to, sales, use, value added and some excise taxes. EITF 06-3 concludes that the presentation of taxes on either a gross (included in revenue and costs) or a net (excluded from revenue) basis is an accounting policy decision that should be disclosed. In addition, for any such taxes that are reported on a gross basis, an entity should disclose the amounts of those taxes in interim and annual financial statements for each period for which an income statement is presented if those amounts are significant. The provisions of EITF 06-3 should be applied to financial reports for interim and annual reporting periods beginning after December 15, 2006, with earlier adoption permitted. The Company has always reported taxes collected from customers on a net presentation basis; therefore, the adoption of EITF No. 06-03 has not had any effect on the Company's financial position, results of operations and cash flows.

In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements" ("SFAS No. 157"). SFAS No. 157 defines fair value, establishes a framework for measuring fair value under GAAP, and expands disclosures about fair value measurements. SFAS No. 155 is effective for fiscal years beginning after December 15, 2007. The Company is currently in the process of evaluating the impact that the adoption of SFAS No. 157 will have on its financial position, results of operations and cash flows.

In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities" ("SFAS No. 159"). SFAS No. 159 permits companies to choose to measure, on an instrument-by-instrument basis, many financial instruments and certain other assets and liabilities at fair value that are not currently required to be measured at fair value. SFAS No. 159 is effective as of the

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

beginning of a fiscal year that begins after November 15, 2007. The Company is currently in the process of evaluating the impact that the adoption of SFAS No. 159 will have on its financial position, results of operations and cash flows.

17. Subsequent Events

In April 2007, the Company received additional advances totaling $19,753,000, bringing the cumulative Loan Payable to date to $44,360,000 with a blended interest rate of 8.125% per annum (see Note 10). As a result, the remaining amount available to borrow from the Chicago IBX Financing totals $65,640,000.

Item 2.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The information in this discussion contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Such statements are based upon current expectations that involve risks and uncertainties. Any statements contained herein that are not statements of historical fact may be deemed to be forward-looking statements. For example, the words "believes," "anticipates," "plans," "expects," "intends" and similar expressions are intended to identify forward-looking statements. Our actual results and the timing of certain events may differ significantly from the results discussed in the forward-looking statements. Factors that might cause such a discrepancy include, but are not limited to, those discussed in "Liquidity and Capital Resources" below and "Risk Factors" in Item 1A of Part II of this Quarterly Report on Form 10-Q. All forward-looking statements in this document are based on information available to us as of the date of this Report and we assume no obligation to update any such forward-looking statements.

Overview

Equinix provides network neutral colocation, interconnection and managed services to enterprises, content companies, systems integrators and the world's largest network providers. Through our IBX centers in 10 markets in the U.S. and Asia-Pacific, customers can directly interconnect with each other for critical traffic exchange requirements. As of March 31, 2007, we operate IBX centers in the Chicago, Dallas, Los Angeles, New York, Silicon Valley and Washington, D.C. metro areas in the United States and Hong Kong, Singapore, Sydney and Tokyo in the Asia-Pacific region.

Direct interconnection to our aggregation of networks, which serve more than 90% of the world's Internet routes, allows our customers to increase performance while significantly reducing costs. Based on our network neutral model and the quality of our IBX centers, we believe we have established a critical mass of customers. As more customers locate in our IBX centers, it benefits their suppliers and business partners to do so as well to gain the full economic and performance benefits of direct interconnection. These partners, in turn, pull in their business partners, creating a "network effect" of customer adoption. Our interconnection services enable scalable, reliable and cost-effective interconnection and traffic exchange thus lowering overall cost and increasing flexibility. Our focused business model is based on our critical mass of customers and the resulting network effect. This critical mass and the resulting network effect, combined with our strong financial position, continue to drive new customer growth and bookings.

Historically, our market has been served by large telecommunications carriers who have bundled their telecommunications products and services with their colocation offerings. A number of these telecommunications carriers have eliminated or reduced their colocation footprint to focus on their core businesses. In 2003, as an example, one major telecommunications company, Sprint, announced its plans to exit the colocation and hosting market in order to focus on its core service offerings, while another telecommunications company, Cable & Wireless Plc, sold its U.S. assets to another telecommunications company, Savvis Communications Corp, in a bankruptcy auction. In 2005 and 2006, other providers, such as Abovenet and Verio, have selectively sold off certain of their colocation centers. Each of these colocation providers own and operate a network. We do not own or operate a network, yet have greater than 200 networks operating out of our IBX centers. As a result, we are able to offer our customers a substantial choice of networks given our network neutrality thereby allowing our customers to choose from numerous network service providers. We believe this is a distinct and sustainable competitive advantage, especially when the telecommunications industry is experiencing many business challenges and changes as evidenced by the numerous bankruptcies and consolidations within this industry during the past several years. Furthermore, this industry consolidation has constrained the supply of suitable data center space and has had a positive effect on industry pricing.

Our customer count increased to 1,335 as of March 31, 2007 versus 1,164 as of March 31, 2006, an increase of 15%. Our utilization rate represents the percentage of our cabinet space billing versus total cabinet space available. Our utilization rate was 57% for both March 31, 2007 and 2006; however, excluding the impact of our recent IBX center openings in the Chicago, Los Angeles, Silicon Valley and

Washington, D.C. metro areas, our utilization rate would have been 62% as of March 31, 2007. Although we have substantial capacity for growth, our utilization rates vary from market to market among our IBX centers in the 10 markets across the U.S. and Asia-Pacific. We continue to monitor the available capacity in each of our selected markets. To the extent we have limited capacity available in a given market, it may limit our ability for growth in that market. Once capacity becomes limited, we will perform demand studies to determine if future expansion is warranted. In addition, power and cooling requirements for some customers are growing on a per unit basis. As a result, customers are consuming an increasing amount of power per cabinet. Although we generally do not control the amount of draw our customers take from installed circuits, we have negotiated power consumption limitations with certain of our high power demand customers. This increased power consumption has driven the requirement to build out our new IBX centers to support power and cooling needs twice that of previous IBX centers. We could face power limitations in our centers even though we may have additional physical capacity available within a specific IBX center. This could have a negative impact on the available utilization capacity of a given center, which could have a negative impact on our ability to grow revenues, affecting our financial performance, operating results and cash flows. As a result of these power limitations in our existing IBX centers, the maximum utilization rate that we expect to achieve for most IBX centers until we consider an IBX center full or sold-out is approximately 75-80% depending on the building configurations. Due to these power limitations, commencing with the first quarter of 2007, we began to track the utilization of our centers on a net sellable cabinet capacity basis. Therefore, our utilization rate as of March 31, 2007 on a net sellable cabinet capacity basis was 73% versus the 57% noted above under our previous utilization rate methodology, which does not factor in these power limitations.

Strategically, we will continue to look at attractive opportunities to grow our market share and selectively improve our footprint and service offerings, such as our 2005 expansions in the Silicon Valley, Chicago and Los Angeles metro area markets, our 2006 expansions in the Washington, D.C., Chicago, New York and Tokyo, Japan metro area markets, which are expected to open in 2007 (see "Recent Developments" below), and our 2007 San Jose property acquisition and expansions in the Singapore and Washington, D.C. metro area markets. However, we will continue to be very selective with any similar opportunity. As was the case with these recent expansions in the Washington, D.C., Silicon Valley, Chicago, Los Angeles, Tokyo and Singapore area markets, our expansion criteria will be dependent on demand from new and existing customers, quality of the design, power capacity, access to networks, capacity availability in current market location, amount of incremental investment required by us in the targeted property, lead-time to break-even and in-place customers. Like our recent expansions, the right combination of these factors may be attractive to us. Dependent on the particular deal, these acquisitions may require upfront cash payments and additional capital expenditures or may be funded through long-term financing arrangements in order to bring these centers up to Equinix standards. Property expansion may be in the form of a purchase of real property or long-term leasing arrangements. Future purchases or construction may be completed by us or with partners or potential customers to minimize the outlay of cash, which can be significant.

Our business is based on a recurring revenue model comprised of colocation, interconnection and managed infrastructure services. We consider these services recurring as our customers are billed on a fixed and recurring basis each month for the duration of their contract, which is generally one to three years in length. Our recurring revenues are a significant component of our total revenues comprising greater than 90% of our total revenues. Historically, approximately half of our then existing customers order new services in any given quarter representing greater than half of the new orders received in each quarter.

Our non-recurring revenues are primarily comprised of installation services related to a customer's initial deployment and professional services that we perform. These services are considered to be non-recurring as they are billed typically once and only upon completion of the installation or professional services work performed. The majority of these non-recurring revenues are typically billed on the first invoice distributed to the customer in connection with their initial installation. As a percent of total revenues, we expect non-recurring revenues to represent less than 10% of total revenues for the foreseeable future. Other non-recurring revenues are comprised primarily of customer settlements, which represent fees paid to us by customers who wish to terminate their contracts with us prior to their expiration.

The largest cost components of our cost of revenues are depreciation, rental payments related to our leased IBX centers, utility costs including electricity and bandwidth, IBX employees' salaries and benefits,

including stock-based compensation, supplies and equipment and security services. A substantial majority of our cost of revenues is fixed in nature and should not vary significantly from period to period. However, there are certain costs, which are considered more variable in nature, including utilities and supplies that are directly related to growth of services in our existing and new customer base. We expect the cost of our utilities, specifically electricity, will increase in the future on per unit or fixed basis in addition to on a customer growth or variable basis. In addition, the cost of electricity is generally higher in the summer months as compared to other times of the year.

Sales and marketing expenses consist primarily of compensation and related costs for sales and marketing personnel, including stock-based compensation, sales commissions, marketing programs, public relations, promotional materials and travel.

General and administrative expenses consist primarily of salaries and related expenses, including stock-based compensation, accounting, legal and other professional service fees, other general corporate expenses such as our corporate headquarter office lease and some depreciation expense.

Recent Developments

In January 2007, we entered into a conditional purchase agreement to purchase the building and property where our original Silicon Valley IBX center is located for $65.0 million, which is expected to close no later than November 2007 following an initial $6.5 million cash deposit paid in January 2007.

In February 2007, one of our wholly-owned subsidiaries obtained a loan of up to $110.0 million to finance up to 60% of the development and construction costs of our Chicago metro area IBX expansion project. We refer to this transaction as the Chicago IBX financing. We periodically receive advances of funds in conjunction with costs incurred for the construction of our Chicago metro area IBX expansion project, which we refer to as our loan payable. As of March 31, 2007, we had received advances totaling $24.6 million. Up to $85.4 million remains available for borrowing from the Chicago IBX financing and is expected to be borrowed periodically during the remaining construction period of the Chicago metro area IBX expansion project until completion by the end of 2007. The loan payable has a maturity date of January 31, 2010, with options to extend for up to an additional two years, in one-year increments, upon satisfaction of certain extension conditions. The loan payable bears interest at a floating rate (one, three or six month LIBOR plus 2.75%) with interest payable monthly, which commenced March 1, 2007. In April 2007, we received additional advances totaling $19.8 million, bringing the cumulative loan payable to date to $44.4 million with a blended interest rate of 8.125% per annum.

In March 2007, we entered into long-term leases for new space in the same building in which our existing Singapore IBX center is located. Minimum payments under these leases, which qualify as operating leases, total 3.7 million Singapore dollars (approximately $2.4 million as translated using effective exchange rates at March 31, 2007) in cumulative lease payments with monthly payments commencing in the third quarter of 2007. We intend to invest approximately $12.0 million to build out this new space. We refer to this transaction as the Singapore IBX expansion project.

In March 2007, we extended an offer of employment to Stephen M. Smith to serve as our Chief Executive Officer and President. Mr. Smith commenced his employment with us on April 2, 2007. Prior to joining us, Mr. Smith, age 50, served as senior vice president at HP Services, an operating segment of Hewlett-Packard Co., from January 2005 to October 2006. Prior to joining Hewlett-Packard Co., Mr. Smith served as vice president of global professional and managed services at Lucent Technologies Inc. from September 2003 to January 2005. From October 1987 to September 2003, he spent 17 years with Electronic Data Systems Corporation in a variety of positions, including chief sales officer, president of EDS Asia-Pacific, and president of EDS Western Region. Mr. Smith earned a Bachelor of Science degree in engineering from the U.S. Military Academy at West Point.

In March 2007, we entered into agreements with certain holders of our 2.50% convertible subordinated debentures due February 15, 2024, pursuant to which we agreed to exchange an aggregate of 1.4 million newly issued shares of our common stock for such holders' $54.0 million of $86.3 million principal amount of the convertible subordinated debentures. The number of shares of common stock issued equaled the amount issuable upon conversion of the convertible subordinated debentures in accordance with their

original terms. In addition, each holder received cash consideration equal to accrued and unpaid interest through the redemption date totaling $110,000, as well as the present value of future interest due through February 15, 2009 and an incremental fee, totaling $3.4 million, which was recorded as loss on conversion of debt during the three months ended March 31, 2007.

In March 2007, we announced our intention to build out a new IBX center within the Ashburn campus, which will be the fifth IBX center in the Washington, D.C. metro area, in order to further expand our existing Washington, D.C metro area IBX center. We refer to this project as the Washington, D.C. metro area IBX expansion project. We plan to spend approximately $70.0 million for the Washington, D.C. metro area IBX expansion project.

In March 2007, we issued $250.0 million in aggregate principal amount of 2.50% convertible subordinated notes due 2012. The initial conversion rate is 8.9259 shares of common stock per $1,000 principal amount of convertible subordinated notes, subject to adjustment. This represents an initial conversion price of approximately $112.03 per share of common stock or 2.2 million shares of our common stock. Upon conversion, holders will receive, at our election, cash, shares of our common stock or a combination of cash and shares of our common stock. We have used or intend to use the net proceeds from this offering for general corporate purposes, including the funding of our expansion activities and working capital requirements. We refer to this transaction as the convertible subordinated notes offering.

Critical Accounting Policies and Estimates

Equinix's financial statements and accompanying notes are prepared in accordance with generally accepted accounting principles in the United States of America. Preparing financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, sales and expenses. These estimates and assumptions are affected by management's application of accounting policies. Critical accounting policies for Equinix include revenue recognition and allowance for doubtful accounts, accounting for income taxes, estimated and contingent liabilities, accounting for property and equipment, impairment of long-lived assets, accounting for asset retirement obligations, accounting for leases and IBX acquisitions, accounting for restructuring charges and accounting for stock-based compensation, which are discussed in more detail under the caption "Critical Accounting Policies and Estimates" in our 2006 Annual Report on Form 10-K.

Results of Operations

Three Months Ended March 31, 2007 and 2006

Revenues. Our revenues for the three months ended March 31, 2007 and 2006 were split between the following revenue classifications (dollars in thousands):

	Three months ended March 31,			
	2007	%	2006	%
Recurring revenues	$80,886	95%	$61,752	95%
Non-recurring revenues:				
Installation and professional services	4,223	5%	3,100	5%
Other	—	0%	17	0%
	4,223	5%	3,117	5%
Total revenues	$85,109	100%	$64,869	100%

Our revenues for the three months ended March 31, 2007 and 2006 were geographically comprised of the following (dollars in thousands):

	Three months ended March 31,			
	2007	%	2006	%
U.S. revenues	$72,526	85%	$55,840	86%
Asia-Pacific revenues	12,583	15%	9,029	14%
Total revenues	$85,109	100%	$64,869	100%

We recognized revenues of $85.1 million for the three months ended March 31, 2007 as compared to revenues of $64.9 million for the three months ended March 31, 2006, a 31% increase. We analyze our business geographically between the U.S. and Asia-Pacific as further discussed below.

U.S. Revenues. We recognized U.S. revenues of $72.5 million for the three months ended March 31, 2007 as compared to $55.9 million for the three months ended March 31, 2006. U.S. revenues consisted of recurring revenues of $69.2 million and $53.3 million, respectively, for the three months ended March 31, 2007 and 2006, a 30% increase. U.S. recurring revenues consist primarily of colocation and interconnection services plus a nominal amount of managed infrastructure services and rental income. The period over period growth in recurring revenues was primarily the result of an increase in orders from both our existing customers and new customers acquired during the period as reflected in the growth in our customer count and utilization rate as discussed above both in our new and existing IBX centers. Most notably, we recorded $7.3 million of revenues during the three months ended March 31, 2007 from our newly opened IBX centers in the Chicago, Los Angeles, Silicon Valley and Washington, D.C. metro areas. In addition, we rolled out selective price increases in each of our IBX markets. Total increase in revenues as a result of selective price increases for three months ended March 31, 2007 over the same period last year was approximately $761,000. We expect our U.S. recurring revenues, particularly colocation and interconnection services, to continue to remain our most significant source of revenue for the foreseeable future.

In addition, U.S. revenues consisted of non-recurring revenues of $3.3 million and $2.6 million, respectively, for the three months ended March 31, 2007 and 2006. U.S. non-recurring revenues, consisting of the recognized portion of deferred installation and professional services, increased 27% period over period, primarily due to strong existing and new customer growth during the year.

Asia-Pacific Revenues. We recognized Asia-Pacific revenues of $12.6 million for the three months ended March 31, 2007 as compared to $9.0 million for the three months ended March 31, 2006, a 39% increase. Asia-Pacific revenues consisted of recurring revenues of $11.6 million and $8.5 million, respectively, for the three months ended March 31, 2007 and 2006, consisting primarily of colocation and managed infrastructure services. Our Asia-Pacific colocation revenues are similar to the revenues that we generate from our U.S. IBX centers; however, our Singapore IBX center has additional managed infrastructure service revenue, such as mail service and managed platform solutions, which we do not currently offer in any other IBX center location. In addition, Asia-Pacific revenues consisted of non-recurring revenues of $940,000 and $534,000, respectively, for the three months ended March 31, 2007 and 2006. Asia-Pacific revenues are generated from Hong Kong, Singapore, Sydney and Tokyo, with Singapore representing approximately 35% and 40%, respectively, of the regional revenues for the three months ended March 31, 2007 and 2006. The overall growth in our Asia-Pacific revenues is primarily the result of an increase in the customer base in this region during the past year, particularly in Hong Kong, Sydney and Tokyo. In addition, during the three months ended March 31, 2007, we recorded $312,000 of revenues from our new IBX center in Tokyo, which we acquired in December 2006. We expect our Asia-Pacific revenues to continue to grow.

Cost of Revenues. Cost of revenues were $52.8 million for the three months ended March 31, 2007 as compared to $43.3 million for the three months ended March 31, 2006, a 22% increase.

U.S. Cost of Revenues. U.S. cost of revenues were $45.6 million for the three months ended March 31, 2007 as compared to $37.9 million for the three months ended March 31, 2006. U.S. cost of revenues for the three months ended March 31, 2007 included (i) $17.3 million of depreciation and amortization expense, (ii) $832,000 of accretion expense for our asset retirement obligations and restructuring charges

for certain leasehold interests recorded in 2004 and 2005 as we accrete the related liabilities to the total estimated future cash payments needed and (iii) $945,000 of stock-based compensation expense. U.S. cost of revenues for the three months ended March 31, 2006 included (i) $15.4 million of depreciation and amortization expense, (ii) $969,000 of accretion expense and (iii) $631,000 of stock-based compensation expense. Our U.S. cost of revenues for the three months ended March 31, 2007 also included $3.9 million of incremental cash operating costs not incurred in the prior year associated with the recently opened IBX centers in Silicon Valley, Chicago, Los Angeles and Washington, D.C. metro areas, and the IBX centers under construction in the Chicago, New York and Washington, D.C. metro areas. Excluding depreciation and amortization expense, accretion expense, stock-based compensation expense and the incremental cash costs associated with operating our new IBX centers, U.S. cost of revenues increased period over period to $21.0 million for the three months ended March 31, 2007 from $19.4 million for the three months ended March 31, 2006, a 9% increase. This increase is primarily the result of increasing utility costs in line with increasing customer installations and revenues attributed to customer growth. We continue to anticipate that our cost of revenues will increase in the foreseeable future to the extent that the occupancy levels in our U.S. IBX centers increase and as newly-opened IBX centers in the Silicon Valley, Chicago, Los Angeles and Washington, D.C. metro areas commence operations more fully in 2007.

Asia-Pacific Cost of Revenues. Asia-Pacific cost of revenues were $7.2 million for the three months ended March 31, 2007 as compared to $5.4 million for the three months ended March 31, 2006. Asia-Pacific cost of revenues for the three months ended March 31, 2007 included (i) $1.6 million of depreciation and amortization expense and (ii) $192,000 of stock-based compensation expense. Asia-Pacific cost of revenues for the three months ended March 31, 2006 included (i) $949,000 of depreciation and amortization expense and (ii) $127,000 of stock-based compensation expense. Our Asia-Pacific cost of revenues for the three months ended March 31, 2007 also included $618,000 of incremental cash operating costs not incurred in the prior year associated with our new IBX center in Tokyo. Excluding depreciation and amortization expense, stock-based compensation expense and the incremental cash costs associated with operating our new Tokyo IBX center, Asia-Pacific cost of revenues increased period over period to $4.8 million for the three months ended March 31, 2007 from $4.3 million for the three months ended March 31, 2006, an 11% increase. This increase is primarily the result of increase in repair and maintenance, and increasing utility and bandwidth costs in line with increasing customer installations and revenues attributed to customer growth. Our Asia-Pacific cost of revenues is generated in Hong Kong, Singapore, Sydney and Tokyo. There are several managed infrastructure service revenue streams unique to our Singapore IBX center, such as mail service and managed platform solutions, that are more labor intensive than our service offerings in the United States. We anticipate that our Asia-Pacific cost of revenues will increase in the foreseeable future in connection with overall revenue growth and our expansions in the Tokyo and Singapore metro areas.

Sales and Marketing. Sales and marketing expenses increased to $8.7 million for the three months ended March 31, 2007 from $7.2 million for the three months ended March 31, 2006.

U.S. Sales and Marketing Expenses. U.S. sales and marketing expenses increased to $7.1 million for the three months ended March 31, 2007 from $6.3 million for the three months ended March 31, 2006. Included in U.S. sales and marketing expenses for the three months ended March 31, 2007 was $2.2 million of stock-based compensation expense. Included in U.S. sales and marketing expenses for the three months ended March 31, 2006 was $1.7 million of stock-based compensation expense. Excluding stock-based compensation expense, U.S. sales and marketing expenses increased to $4.9 million for the three months ended March 31, 2007 as compared to $4.5 million for the three months ended March 31, 2006, an 8% increase. This increase is primarily attributable to increased sales compensation as a result of revenue growth. Going forward, we expect to see U.S. sales and marketing spending to increase nominally in absolute dollars as we continue to grow our business.

Asia-Pacific Sales and Marketing Expenses. Asia-Pacific sales and marketing expenses increased to $1.6 million for the three months ended March 31, 2007 as compared to $947,000 for the three months ended March 31, 2006. Included in Asia-Pacific sales and marketing expenses for the three months ended March 31, 2007 was $257,000 of stock-based compensation expense. Included in Asia-Pacific sales and marketing expenses for the three months ended March 31, 2006 was $150,000 of stock-based compensation expense. Excluding stock-based compensation expense, Asia-Pacific sales and marketing expenses were $1.3 million for the three months ended March 31, 2007 versus $797,000 for the three

months ended March 31, 2006, a 66% increase. This increase was primarily due to general salary increases and sales compensation of approximately $354,000 over the prior period. Our Asia-Pacific sales and marketing expenses are generated in Hong Kong, Singapore, Sydney and Tokyo. We expect that our Asia-Pacific sales and marketing expenses will experience some growth in the foreseeable future as we continue to grow our business.

General and Administrative. General and administrative expenses increased to $22.9 million for the three months ended March 31, 2007 from $17.1 million for the three months ended March 31, 2006.

U.S. General and Administrative Expenses. U.S. general and administrative expenses increased to $19.5 million for the three months ended March 31, 2007 as compared to $13.9 million for the three months ended March 31, 2006. Included in U.S. general and administrative expenses for the three months ended March 31, 2007 were $6.0 million of stock-based compensation expense and $1.3 million of depreciation expense. Included in U.S. general and administrative expenses for the three months ended March 31, 2006 were $4.6 million of stock-based compensation expense and $485,000 of depreciation expense. Excluding stock-based compensation expense and depreciation expense, U.S. general and administrative expenses increased to $12.2 million for the three months ended March 31, 2007, as compared to $8.8 million for the three months ended March 31, 2006, a 38% increase. This increase is primarily due to approximately $1.3 million of higher compensation costs, including general salary increases, benefits and headcount growth (187 U.S. general and administrative employees as of March 31, 2007 versus 173 as of March 31, 2006) and an increase in professional fees of approximately $1.4 million due primarily to an increase in various consulting projects in connection with our growth strategies. Going forward, we expect U.S. general and administrative spending to increase as we continue to scale our operations to support our growth.

Asia-Pacific General and Administrative Expenses. Asia-Pacific general and administrative expenses increased to $3.4 million for the three months ended March 31, 2007 as compared to $3.2 million for the three months ended March 31, 2006. Included in Asia-Pacific general and administrative expenses for the three months ended March 31, 2007 was $899,000 of stock-based compensation expense. Included in Asia-Pacific general and administrative expenses for the three months ended March 31, 2006 was $538,000 of stock-based compensation expense. Excluding stock-based compensation expense, Asia-Pacific general and administrative expenses decreased to $2.4 million for the three months ended March 31, 2007, as compared to $2.6 million for the three months ended March 31, 2006, a 9% decrease. This decrease was primarily due to some severance-related costs that we incurred in the first quarter of 2006. Our Asia-Pacific general and administrative expenses are generated in Hong Kong, Singapore, Sydney and Tokyo. Our Asia-Pacific headquarter office is located in Singapore. We expect that our Asia-Pacific general and administrative expenses will experience some moderate growth in the foreseeable future.

Interest Income. Interest income increased to $1.9 million from $1.6 million for the three months ended March 31, 2007 and 2006, respectively. Interest income increased due to higher yields on cash and cash equivalents held in interest-bearing accounts. The average yield for the three months ended March 31, 2007 was 5.25% versus 4.15% for the three months ended March 31, 2006. We expect our interest income to increase for the foreseeable future due to our higher cash balances primarily as a result of the convertible subordinated notes offering.

Interest Expense. Interest expense decreased to $3.5 million from $3.9 million for the three months ended March 31, 2007 and 2006, respectively. Although we now have higher debt balances, we are also capitalizing more interest in connection with various construction projects related to our IBX expansion efforts. During the three months ended March 31, 2007 and 2006, we capitalized $1.5 million and $263,000, respectively, of interest expense to construction in progress. Going forward, we expect to incur higher interest expense as we obtain additional financing to fund out expansion efforts, such as the convertible subordinated notes offering and the Chicago IBX financing.

Loss on Conversion of Debt. During the three months ended March 31, 2007, we retired $54.0 million of our convertible subordinated debentures in exchange for approximately 1.4 million newly issued shares of our common stock and a $3.4 million cash inducement fee. As a result, we recognized a loss on debt conversion totaling $3.4 million in accordance with FASB No. 84, “Induced Conversions of Convertible Debt,” due to the inducement fee.

Income Taxes. For the three months ended March 31, 2007 and 2006, we recorded $354,000 and $385,000, respectively, of income tax expense. The tax provision recorded in the three months ended March 31, 2007 is primarily attributable to our foreign operations. The tax provision recorded in the three months ended March 31, 2006 is primarily attributable to federal alternative minimum tax. A full valuation allowance is recorded against our net deferred tax assets in all jurisdictions other than Singapore as management cannot conclude, based on available objective evidence including recurring historical losses, that it is more likely than not that the net value of our deferred tax assets will be realized. We have not incurred any significant income tax expense since inception and we do not expect to incur any significant income tax expense during 2007 other than foreign income and alternative minimum tax.

Cumulative Effect of a Change in Accounting Principle. As a result of our adoption of SFAS No. 123(R), "Share-Based Payment," during the three months ended March 31, 2006, we recorded a reduction of expense totaling $376,000, which is reflected as a cumulative effect of a change in accounting principle on our statement of operations for this period. This amount reflects the application of an estimated forfeiture rate to partially vested employee equity awards as of January 1, 2006 that we accounted for under APB 25, which was primarily for restricted stock awards to our executive officers that were granted during the first quarter of 2005. During the three months ended March 31, 2007, no cumulative effect of a change in accounting principle was recorded in our statement of operations.

Liquidity and Capital Resources

As of March 31, 2007, our total indebtedness was comprised of (i) convertible debt totaling $282.3 million from our convertible subordinated debentures and our convertible subordinated notes as outlined below and (ii) non-convertible debt and financing obligations totaling $217.2 million from our Washington D.C. metro area IBX capital lease, San Jose IBX equipment and fiber financing, Chicago IBX equipment financing, Los Angeles IBX financing, Ashburn campus mortgage payable and Chicago IBX financing.

We believe we have sufficient cash, coupled with anticipated cash generated from operating activities and anticipated cash from financings, to meet our operating requirements for at least the next 12 months. As of March 31, 2007, we had $392.4 million of cash, cash equivalents and short-term and long-term investments. As of March 31, 2007, we had $85.4 million of additional liquidity available to us under the Chicago IBX financing for the Chicago metro area IBX expansion project. In addition, as of March 31, 2007, we had $58.6 million of additional liquidity available to us under the $75.0 million Silicon Valley Bank revolving credit line in the event we need additional cash to fund expansion activities, fund working capital requirements or pursue attractive strategic opportunities that may become available in the future. In addition, from time to time we assess external financing opportunities, both debt and equity, as alternative sources for financing such activities and opportunities. While we expect that our cash flow from operations will continue to increase, we expect our cash flow used in investing activities, primarily as a result of our expected purchases of property and equipment to complete our announced expansion projects, will also increase and we expect them to be greater than our cash flows generated from operating activities. Given our limited operating history, additional potential expansion opportunities that we may decide to pursue and other business risks that may cause our operating results to fluctuate, we may not achieve our desired levels of profitability or cash requirements in the future. For further information, refer to "Risk Factors" in Item 1A of Part II of this Quarterly Report on Form 10-Q below.

Sources and Uses of Cash

Net cash provided by our operating activities was $19.9 million and $12.8 million for the three months ended March 31, 2007 and 2006, respectively. This increase was primarily due to improved operating results; however, these improved operating results were mostly offset by additional working capital. While our restructuring charge payments have had an impact on our ability to grow our cash from operating activities, we expect that we will continue to generate cash from our operating activities throughout the remainder of 2007 and beyond.

Net cash used in our investing activities was $48.1 million and $35.6 million for the three months ended March 31, 2007 and 2006, respectively. Net cash used in investing activities for the three months ended March 31, 2007 was primarily the result of the capital expenditures required to bring our recently announced and current IBX expansion projects to Equinix standards, and to support our growing customer

base, as well as the deposit for the conditional purchase of our San Jose IBX property in January 2007 of $6.5 million, partially offset by net maturities of our short-term and long-term investments. Net cash used in investing activities during the three months ended March 31, 2006 was primarily the result of the capital expenditures required to bring our recently acquired IBX centers in the Silicon Valley, Chicago and Los Angeles metro areas to Equinix standards, the Washington, D.C. metro area IBX expansion project and to support our growing customer base, as well as the net of purchases of our short-term and long-term investments. For the remainder of 2007 and beyond, we anticipate that our cash used in investing activities, excluding the purchases, sales and maturities of short-term and long-term investments, will primarily be for our capital expenditures, which we expect to be substantial, as well as additional purchases of real estate that we may undertake in the future, including the remaining $58.5 million owed upon closing the conditional purchase of our San Jose IBX property later this year.

Net cash provided by financing activities was $273.3 million for the three months ended March 31, 2007. Net cash used in our financing activities was $15.5 million for the three months ended March 31, 2006. Net cash provided by financing activities for the three months ended March 31, 2007, was primarily the result of $250.0 million in gross proceeds form our convertible subordinated notes offering, $24.6 million in gross proceeds from our loan payable in connection with the Chicago IBX financing and proceeds from our various employee stock plans, partially offset by debt issuance costs and principal payments for our capital leases and other financing obligations and Ashburn campus mortgage payable. Net cash used in our financing activities for the three months ended March 31, 2006, was primarily due to the repayment of the $30.0 million outstanding borrowing from the $50.0 million Silicon Valley bank revolving credit line and principal payments for our capital lease and other financing obligations and Ashburn campus mortgage payable.

Debt Obligations – Convertible Debt

Convertible Subordinated Debentures. During February 2004, we sold $86.3 million in aggregate principal amount of 2.5% convertible subordinated debentures due 2024, convertible into 2.2 million shares of our common stock, to qualified institutional buyers. The interest on the convertible subordinated debentures is payable semi-annually every February and August, which commenced August 2004, and is payable in cash.

Holders of the convertible subordinated debentures may require us to purchase all or a portion of their debentures on February 15, 2009, February 15, 2014 and February 15, 2019, in each case at a price equal to 100% of the principal amount of the debentures plus any accrued and unpaid interest. In addition, holders of the convertible subordinated debentures may convert their debentures into shares of our common stock upon certain defined circumstances, including during any calendar quarter if the closing price of our common stock is greater than or equal to 120% of $39.50 per share of our common stock, or approximately $47.40 per share, for twenty consecutive trading days during the period of thirty consecutive trading days ending on the last day of the previous calendar quarter. We may redeem all or a portion of the debentures at any time after February 15, 2009 at a redemption price equal to 100% of the principal amount of the debentures plus any accrued and unpaid interest.

In March 2007, we entered into agreements with certain holders of our 2.50% convertible subordinated debentures due February 15, 2024, pursuant to which we agreed to exchange an aggregate of 1.4 million newly issued shares of our common stock for such holders' $54.0 million of $86.3 million principal amount of the convertible subordinated debentures. The number of shares of common stock issued equals the amount issuable upon conversion of the convertible subordinated debentures in accordance with their original terms. In addition, each holder received cash consideration equal to accrued and unpaid interest through the redemption date totaling $110,000, as well as the present value of future interest due through February 15, 2009 and an incremental fee, totaling $3.4 million as an inducement fee.

As of March 31, 2007, a total of $32.3 million convertible subordinated debentures remained outstanding and were convertible into 816,458 shares of our common stock.

Convertible Subordinated Notes. In March 2007, we issued $250.0 million in aggregate principal amount of 2.50% convertible subordinated notes due 2012. The initial conversion rate is 8.9259 shares of common stock per $1,000 principal amount of convertible subordinated notes, subject to adjustment. This

represents an initial conversion price of approximately $112.03 per share of common stock or 2.2 million shares of our common stock. Upon conversion, holders will receive, at our election, cash, shares of our common stock or a combination of cash and shares of our common stock. We have used or intend to use the net proceeds from this offering for general corporate purposes, including the funding of our expansion activities and working capital requirements.

Holders of the convertible subordinated notes may convert their notes upon certain defined circumstances, including during any fiscal quarter (and only during that fiscal quarter) ending after June 30, 2007, if the sale price of our common stock, for at least 20 trading days during the period of 30 consecutive trading days ending on the last trading day of the previous fiscal quarter, is greater than 130% of the conversion price per share of common stock on such last trading day, presently $145.64 per share. In addition, holders of the convertible subordinated notes may convert their individual notes at any time on or after March 15, 2012 regardless of the satisfaction of any conditions.

We may redeem all or a portion of the convertible subordinated notes at any time after April 16, 2010 for cash but only if the closing sale price of our common stock for at least 20 of the 30 consecutive trading days immediately prior to the day we give notice of redemption is greater than 130% of the applicable conversion price per share of common stock on the date of the notice, presently $145.64 per share. The redemption price will equal 100% of the principal amount of the convertible subordinated notes, plus accrued and unpaid interest, if any, to, but excluding, the date of redemption.

Upon conversion, due to the conversion formulas associated with the convertible subordinated notes, if our stock is trading at levels exceeding 130% of the conversion price per share of common stock, and if we elect to pay any portion of the consideration in cash, additional consideration beyond the $250.0 million of gross proceeds received would be required. However, in no event would the total number of shares issuable upon conversion of the convertible subordinated notes exceed 11.6036 per $1,000 principal amount of convertible subordinated notes, subject to anti-dilution adjustments, or the equivalent of $86.18 per share of common stock or a total of 2.9 million shares of our common stock.

Debt Obligations – Non-Convertible Debt

Chicago IBX financing. In February 2007, our wholly-owned subsidiary obtained a loan of up to $110.0 million to finance up to 60% of the development and construction costs of the Chicago metro area IBX expansion project, which we refer to as the Chicago IBX financing. Funds are advanced at up to 60% of project costs incurred. As of March 31, 2007, we had received advances representing a loan payable totaling $24.6 million. Up to $85.4 million remains available for borrowing from the Chicago IBX financing and is expected to be borrowed periodically during the remaining construction period of the Chicago Metro Area IBX Expansion Project until completion by the end of 2007. The loan payable has a maturity date of January 31, 2010, with options to extend for up to an additional two years, in one-year increments, upon satisfaction of certain extension conditions. The loan payable bears interest at a floating rate (one, three or six month LIBOR plus 2.75%) with interest payable monthly, which commenced March 1, 2007. As of March 31, 2007, the loan payable had an effective interest rate of 8.125% per annum. The Chicago IBX financing has no specific financial covenants and contains a limited parent company guaranty. In April 2007, we received additional advances totaling $19.8 million, bringing the cumulative loan payable to date to $44.4 million with a blended interest rate of 8.125% per annum.

$75.0 Million Silicon Valley Bank Revolving Credit Line. In March 2007, we amended certain provisions of the Silicon Valley Bank revolving credit line which related to the modification of certain financial covenants, the addition of a liquidity covenant and the revision of the definition of “Approved Subordinated Debt” in order to allow us to proceed with the convertible subordinated notes offering. The liquidity covenant requires us to maintain total liquidity of at least $75.0 million. The liquidity covenant is defined as the sum of cash, cash equivalents, short term investments, 80% of long term investments and 10% of net accounts receivable. In the event of a default, Silicon Valley Bank has the right to exercise a notice of control to give Silicon Valley Bank the sole right to control, direct or dispose of the assets as it deems necessary to satisfy our obligations under the Silicon Valley Bank Credit Line, if any. As of March 31, 2007, we were in compliance with all financial covenants in connection with the $75.0 million Silicon Valley Bank revolving credit line including the liquidity covenant. Borrowings under the $75.0 million Silicon Valley Bank revolving credit line will continue to bear interest at variable interest rates, plus the applicable margins, which were in

effect prior to the amendment, based on either prime rates or LIBOR rates. The $75.0 million Silicon Valley Bank revolving credit line continues to mature on September 15, 2008 and remains secured by substantially all of our domestic personal property assets and certain of our real property leases. As of March 31, 2007, we had a total of $16.4 million of outstanding letters of credit under the letters of credit sublimit of the $75.0 million Silicon Valley Bank revolving credit line reducing the amount of borrowings available to us to $58.6 million. These letters of credit automatically renew in successive one-year periods until the final termination. If the beneficiaries of these letters of credit decide to draw down on these letters of credit, we will be required to fund these letters of credit either through cash collateral or borrowings under the $75.0 million Silicon Valley Bank revolving credit line. As of March 31, 2007, if we had borrowed against the Silicon Valley Bank revolving credit line, our borrowings would have had an effective interest rate of 7.82% per annum.

Debt Maturities, Financings, Leases and Other Contractual Commitments

We lease our IBX centers and certain equipment under non-cancelable lease agreements expiring through 2025. The following represents our debt maturities, financings, leases and other contractual commitments as of March 31, 2007 (in thousands):

	Convertible debt	Mortgage and loan payable	Capital lease and other financing obligations	Operating leases covered under accrued restructuring charges	Operating leases (1)	Other contractual commitments (1)	Total
2007	—	7,623	7,204	10,912	25,022	158,676	209,437
2008	—	10,164	9,860	13,957	33,338	9,246	76,565
2009	32,250	10,164	10,134	14,025	33,112	522	100,207
2010	—	34,771	10,409	4,094	31,810	481	81,565
2011	—	10,164	10,703	4,224	26,888	274	52,253
2012 and thereafter	250,000	143,668	117,652	15,997	139,737	1,373	668,427
	282,250	216,554	165,962	63,209	289,907	170,572	1,188,454
Less amount representing interest	—	(93,548)	(78,283)	—	—	—	(171,831)
Plus amount representing residual property value	—	—	6,555	—	—	—	6,555
Less amount representing estimated subrental income and expense	—	—	—	(18,835)	—	—	(18,835)
Less amount representing accretion	—	—	—	(5,654)	—	—	(5,654)
	$ 282,250	$ 123,006	$ 94,234	$ 38,720	$ 289,907	$ 170,572	$ 998,689

(1) Represents off-balance sheet arrangements. Other contractual commitments are described below.

Primarily as a result of our various IBX expansion projects, as of March 31, 2007, we were contractually committed for $131.5 million of unaccrued capital expenditures, primarily for IBX equipment not yet delivered and labor not yet provided, in connection with the work necessary to open these IBX centers prior to making them available to customers for installation, as well as for the San Jose property acquisition. This amount, which is expected to be paid during the remainder of 2007, is reflected in the table above as “other contractual commitments.”

We have other, non-capital purchase commitments in place as of March 31, 2007, such as commitments to purchase power in select locations, primarily in the U.S. and Singapore, through 2007 and thereafter and other open purchase orders, which contractually bind us for goods or services to be delivered or provided during the remainder of 2007. Such other purchase commitments as of March 31, 2007, which total $39.0 million, are also reflected in the table above as “other contractual commitments.”

In addition, although we are not contractually obligated to do so, we expect to incur additional capital expenditures beyond the $131.5 million contractually committed as of March 31, 2007 in our various IBX expansion projects during the remainder of 2007 and 2008 of approximately $220.0 million to $230.0 million in order to complete the work needed to open these IBX centers. These non-contractual capital expenditures are not reflected in the table above.

As previously discussed above, in connection with six of our IBX operating leases and one utilities contract, we have entered into seven irrevocable letters of credit totaling $16.4 million with Silicon Valley Bank, provided in lieu of cash deposits under the letters of credit sublimit provision of the $75.0 million Silicon Valley Bank revolving credit line. If the beneficiaries of these letters of credit decide to draw down on these letters of credit, we will be required to fund these letters of credit either through cash collateral or borrowings under the Silicon Valley Bank revolving credit line. This contingent commitment is not reflected in the table above.

Recent Accounting Pronouncements

In June 2006, the FASB approved EITF Issue No. 06-3, “How Taxes Collected from Customers and Remitted to Governmental Authorities Should Be Presented in the Income Statement (That is, Gross versus Net Presentation)” (“EITF 06-3”). EITF 06-3 includes any tax assessed by a governmental authority that is directly imposed on a revenue-producing transaction between a seller and a customer and may include, but is not limited to, sales, use, value added and some excise taxes. EITF 06-3 concludes that the presentation of taxes on either a gross (included in revenue and costs) or a net (excluded from revenue) basis is an accounting policy decision that should be disclosed. In addition, for any such taxes that are reported on a gross basis, an entity should disclose the amounts of those taxes in interim and annual financial statements for each period for which an income statement is presented if those amounts are significant. The provisions of EITF 06-3 should be applied to financial reports for interim and annual reporting periods beginning after December 15, 2006, with earlier adoption permitted. We have always reported taxes collected from customers on a net presentation basis; therefore, the adoption of EITF No. 06-03 has not had any effect on our financial position, results of operations and cash flows.

In September 2006, the FASB issued SFAS No. 157, “Fair Value Measurements” (“SFAS No. 157”). SFAS No. 157 defines fair value, establishes a framework for measuring fair value under GAAP, and expands disclosures about fair value measurements. SFAS No. 157 is effective for fiscal years beginning after December 15, 2007. We are currently in the process of evaluating the impact that the adoption of SFAS No. 157 will have on our financial position, results of operations and cash flows.

In February 2007, the FASB issued SFAS No. 159, “The Fair Value Option for Financial Assets and Financial Liabilities” (“SFAS No. 159”). SFAS No. 159 permits companies to choose to measure, on an instrument-by-instrument basis, many financial instruments and certain other assets and liabilities at fair value that are not currently required to be measured at fair value. SFAS No. 159 is effective as of the beginning of a fiscal year that begins after November 15, 2007. We are currently in the process of evaluating the impact that the adoption of SFAS No. 159 will have on our financial position, results of operations and cash flows.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

Market Risk

The following discussion about market risk disclosures involves forward-looking statements. Actual results could differ materially from those projected in the forward-looking statements. We may be exposed to market risks related to changes in interest rates and foreign currency exchange rates and fluctuations in the prices of certain commodities, primarily electricity.

In the past, we have employed foreign currency forward exchange contracts for the purpose of hedging certain specifically identified net currency exposures. The use of these financial instruments was intended to mitigate some of the risks associated with fluctuations in currency exchange rates, but does not eliminate such risks. We may decide to employ such contracts again in the future. We do not use financial instruments for trading or speculative purposes.

Interest Rate Risk

Our exposure to market risk resulting from changes in interest rates relates primarily to our investment portfolio. All of our cash equivalents and marketable securities are designated as available-for-sale and are therefore recorded at fair market value on our condensed consolidated balance sheets with the unrealized gains or losses reported as a separate component of other comprehensive income or loss. The fair market value of our marketable securities could be adversely impacted due to a rise in interest rates, but we do not believe such impact would be material. Securities with longer maturities are subject to a greater interest rate risk than those with shorter maturities and as of March 31, 2007 our portfolio maturity was relatively short. If current interest rates were to increase or decrease by 10% from their position as of March 31, 2007, the fair market value of our investment portfolio could increase or decrease by approximately $205,000.

An immediate 10% increase or decrease in current interest rates from their position as of March 31, 2007 would furthermore not have a material impact on our debt obligations due to the fixed nature of the majority of our debt obligations. However, the interest expense associated with our $75.0 million revolving credit line, which bears interest at floating rates, plus applicable margins, based on either the prime rate or LIBOR, could be affected. Accordingly, any borrowings from our $75.0 million Silicon Valley Bank revolving credit line are subject to interest rate risk. Assuming $75.0 million was outstanding under the $75.0 million Silicon Valley Bank revolving credit line, for every 100 basis point change in interest rates, our interest expense could increase or decrease by $750,000. The interest expense associated with our Chicago IBX financing, which bears interest at floating rates, plus applicable margins, based on either the prime rate or LIBOR, could also be affected.

The fair market value of our long-term fixed interest rate debt is subject to interest rate risk. Generally, the fair market value of fixed interest rate debt will increase as interest rates fall and decrease as interest rates rise. These interest rate changes may affect the fair market value of the fixed interest rate debt but do not impact our earnings or cash flows. The fair market value of our convertible subordinated debentures and convertible subordinated notes is based on quoted market prices. The estimated fair value of our convertible subordinated debentures at March 31, 2007 was approximately $71.0 million. The estimated fair value of our convertible subordinated notes at March 31, 2007 was approximately $253.6 million.

Foreign Currency Risk

The majority of our recognized revenue is denominated in U.S. dollars, generated mostly from customers in the U.S. However, approximately 15% of our revenues and 14% of our costs are in the Asia-Pacific region, and a large portion of those revenues and costs are denominated in a currency other than the U.S. dollar, primarily the Singapore dollar, Japanese yen and Hong Kong and Australian dollars. As a result, our operating results and cash flows are impacted by currency fluctuations relative to the U.S. dollar. Going forward, we expect that approximately 13-15% of our revenues and costs will continue to be generated and incurred in the Asia-Pacific region in currencies other than the U.S. dollar. In addition, we are currently undergoing expansions of our IBX centers in the Tokyo, Japan and Singapore metro area markets. As a result, we are exposed to risks resulting from fluctuations in foreign currency exchange rates in connection with our international expansions. To the extent we are paying contractors in foreign currencies, our expansions could cost more than anticipated from declines in the U.S dollar relative to foreign currencies.

Furthermore, to the extent that our international sales are denominated in U.S. dollars, an increase in the value of the U.S. dollar relative to foreign currencies could make our services less competitive in the international markets. Although we will continue to monitor our exposure to currency fluctuations, and when appropriate, may use financial hedging techniques in the future to minimize the effect of these fluctuations, there can be no assurance that exchange rate fluctuations will not adversely affect our financial results in the future.

Commodity Price Risk

Certain operating costs incurred by us are subject to price fluctuations caused by the volatility of underlying commodity prices. The commodities most likely to have an impact on our results of operations in the event of price changes are electricity and supplies and equipment used in our IBX centers. We are closely monitoring the cost of electricity at all of our locations.

In addition, as we are now building new, "greenfield" IBX centers, we are subject to commodity price risk for building materials related to the construction of these IBX centers, such as steel and copper. In addition, the lead-time to procure certain pieces of equipment is substantial, such as generators. Any delays in procuring the necessary pieces of equipment for the construction of our IBX centers could delay the anticipated openings of these new IBX centers and, as a result, increase the cost of these projects.

We do not employ forward contracts or other financial instruments to hedge commodity price risk.

Item 4. Controls and Procedures

(a) ***Evaluation of Disclosure Controls and Procedures.*** Our Chief Executive Officer and our Chief Financial Officer, after evaluating the effectiveness of our "disclosure controls and procedures" (as defined in the Securities Exchange Act of 1934 (the "Exchange Act") Rules 13a-15(e) or 15d-15(e)) as of the end of the period covered by this quarterly report, have concluded that our disclosure controls and procedures are effective based on their evaluation of these controls and procedures required by paragraph (b) of Exchange Act Rules 13a-15 or 15d-15.

(b) ***Changes in Internal Control over Financial Reporting.*** There were no changes in our internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of Exchange Act Rules 13a-15 or 15d-15 that occurred during our last fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings

On July 30, 2001 and August 8, 2001, putative shareholder class action lawsuits were filed against us, certain of our officers and directors (the "Individual Defendants"), and several investment banks that were underwriters of our initial public offering (the "Underwriter Defendants"). The cases were filed in the United States District Court for the Southern District of New York, purportedly on behalf of investors who purchased our stock between August 10, 2000 and December 6, 2000. In addition, similar lawsuits were filed against approximately 300 other issuers and related parties. The purported class action alleges violations of Sections 11 and 15 of the Securities Act of 1933 and Sections 10(b), Rule 10b-5 and 20(a) of the Securities Exchange Act of 1934 against us and the Individual Defendants. The plaintiffs have since dismissed the Individual Defendants without prejudice. The suits allege that the Underwriter Defendants agreed to allocate stock in our initial public offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases in the aftermarket at pre-determined prices. The plaintiffs allege that the prospectus for our initial public offering was false and misleading and in violation of the securities laws because it did not disclose these arrangements. The action seeks damages in an unspecified amount. On February 19, 2003, the Court dismissed the Section 10(b) claim against us, but denied the motion to dismiss the Section 11 claim. On October 13, 2004, the Court certified a class in six of the approximately 300 other nearly identical actions (the "focus cases") and noted that the decision is intended to provide strong guidance to all parties regarding class certification in the remaining cases. The Underwriter Defendants appealed the decision and the Second Circuit vacated the District Court's decision granting class certification in those six cases on December 5, 2006. Plaintiffs filed a petition for rehearing. On April 6, 2007, the Second Circuit denied the petition, but noted that Plaintiffs could ask the District Court to certify a more narrow class than the one that was rejected. Plaintiffs have not yet moved to certify a class in the Equinix case.

In July 2003, a Special Litigation Committee of the Equinix Board of Directors approved a settlement agreement and related agreements which set forth the terms of a settlement between us, the Individual

Defendants, the plaintiff class and the vast majority of the other approximately 300 issuer defendants and the individual defendants currently or formerly associated with those companies. It is unclear what impact the Second Circuit's decision vacating class certification in the six focus cases will have on the settlement, which has not yet been finally approved by the District Court, because Equinix's settlement with the plaintiffs involves the certification of the case as a class action as part of the approval process. The District Court has stayed all proceedings, including a decision on final approval of the settlement and any amendments of the complaints.

Pursuant to the settlement and related agreements, if the settlement receives final approval by the District Court, it provides for a release of us and the individual defendants and our agreeing to assign away, not assert, or release certain potential claims we may have against our underwriters.

There is no assurance that the court will grant final approval to the issuers' settlement. As approval by the Court cannot be assured, we are unable at this time to determine whether the outcome of the litigation would have a material impact on our results of operations, financial condition or cash flows. Until the settlement is finalized and approved by the Court, or in the event such settlement is not approved, we and our officers and directors intend to continue to defend the actions vigorously. While an unfavorable outcome to this case is reasonably possible, and we can estimate our potential exposure to be less than approximately $3.4 million, it is not probable. In addition, as noted above, any payments are expected to be covered by existing insurance and, as a result, we do not expect that the settlement will involve any payment by us. As a result, we have not accrued for any settlements in connection with this litigation as of March 31, 2007.

On June 29, 2006 and September 18, 2006, shareholder derivative actions were filed in the Superior Court of the State of California, County of San Mateo, naming Equinix as a nominal defendant and several of Equinix's current and former officers and directors as individual defendants. These actions were consolidated, and the consolidated complaint was filed in January 2007. The consolidated complaint alleges that the individual defendants breached their fiduciary duties and violated California securities law as a result of purported backdating of stock option grants, insider trading and the preparation and approval of inaccurate financial results. Plaintiffs seek to recover, on behalf of Equinix, unspecified monetary damages, corporate governance changes, equitable and injunctive relief, restitution, and fees and costs. In March 2007, the state court stayed this action in deference to a federal shareholder derivative action filed in the United States District Court for the Northern District of California in October 2006. The federal action named Equinix as a nominal defendant and several current and former officers and directors as individual defendants. This complaint alleged that the individual defendants breached their fiduciary duties and violated California and federal securities laws as a result of purported backdating of stock options, insider trading and the dissemination of false statements. On April 12, 2007, the federal action was voluntarily dismissed without prejudice pursuant to a joint stipulation entered as an order by the court. The parties to the state court action have informed the state court that the federal action was dismissed. In addition to the pending state court derivative action, we may be subject to additional derivative or other lawsuits that may be presented on an individual or class basis alleging claims based on our stock option granting practices. Similar lawsuits and investigations have been commenced against numerous other companies based on similar allegations.

Responding to, investigating and/or defending against civil litigations and government inquiries regarding our stock option grants and practices will present a substantial cost to us in both cash and the attention of certain management and may have a negative impact on our operations. In addition, in the event of any negative finding or assertion by a court of law or any third-party claim related to our stock option granting practices, we may be liable for damages, fines or other civil or criminal remedies, or be required to restate our prior period financial statements or adjust our current period financial statements. Any such adverse action could have a material adverse effect on our business and current market value.

Item 1A. Risk Factors

In addition to the other information contained in this report, the following risk factors should be considered carefully in evaluating our business and us:

Risks Related to Our Business

We have incurred substantial losses in the past and may continue to incur additional losses in the future.

Although we have generated cash from operations since the quarter ended September 30, 2003, for the years ended December 31, 2006, 2005 and 2004, we incurred net losses of $6.4 million, $42.6 million and $68.6 million, respectively. Furthermore, for the quarter ended March 31, 2007, we incurred an additional net loss of $4.5 million. Although we believe we are approaching a position of having our net losses decrease to a breakeven level or even possibly producing some nominal level of net income in the foreseeable future, we are also currently investing heavily in our future growth through the build-out of several additional IBX centers and IBX center expansions. As a result, we will incur higher depreciation and other operating expenses that will negatively impact our ability to achieve and sustain profitability unless and until these new IBX centers generate enough revenue to exceed their operating costs and cover our additional overhead needed to scale our business for this anticipated growth. Although our goal is to achieve profitability, there can be no guarantee that we will become profitable, and we may continue to incur additional losses. Even if we achieve profitability, given the competitive and evolving nature of the industry in which we operate, we may not be able to sustain or increase profitability on a quarterly or annual basis.

We are continuing to invest in our expansion efforts but may not have sufficient customer demand in the future to realize expected returns on these investments.

We are considering the acquisition or lease of additional properties, including construction of new IBX centers beyond those expansion projects already announced. We will be required to commit substantial operational and financial resources to these IBX centers, generally 12-18 months in advance of securing customer contracts, and we may not have sufficient customer demand in those markets to support these centers once they are built. In addition, unanticipated technological changes could affect customer requirements for data centers and we may not have built such requirements into our new IBX centers. Any of these contingencies, if they were to occur, could make it difficult for us to realize expected or reasonable returns on these investments.

We have begun construction of new IBX centers, and may begin construction of additional new IBX centers, which could involve significant risks to our business.

We believe that most of the pre-existing built-out data centers have already been acquired, and that there are few if any viable distressed assets available for us to acquire in our key markets today. In order to sustain our growth in these markets, we must acquire suitable land with or without structures to build our new IBX centers from the ground up (a “greenfield” build). Greenfield builds are currently underway in the Chicago, Washington D.C. and New York metro areas. A greenfield build involves substantial planning and lead-time, much longer time to completion than we have currently experienced in our recent IBX retrofits of existing data centers, and significantly higher costs of construction, equipment, and materials which could have a negative impact on our returns. A greenfield build also requires us to carefully select and rely on the experience of one or several general contractors and associated subcontractors during the construction process. Should a general contractor or significant subcontractor experience financial or other problems during the construction process, we could experience significant delays, increased costs to complete the project and other negative impacts to our expected returns. Site selection is also a critical factor in our expansion plans, and there may not be suitable properties available in our markets with the necessary combination of high power capacity and fiber connectivity.

While we may prefer to locate new IBX centers adjacent to our existing locations, we may be limited by the inventory and location of suitable properties as well as the need for adequate power and fiber to the site. In the event we decide to build new IBX centers separate from our existing IBX centers, we may provide services to interconnect these two centers. Should these services not provide the necessary reliability to sustain service, this could result in lower interconnection revenue, lower margins and could have a negative impact on customer retention over time.

If we are not able to generate sufficient operating cash flows or obtain external financing, our ability to fund capital expenditures or fulfill our obligations or execute expansion plans may be limited.

Our capital expenditures, together with ongoing operating expenses and obligations to service our debts, will be a substantial drain on our cash flow and may decrease our cash balances. We regularly assess markets for external financing opportunities, including debt and equity. Additional debt or equity financing may not be available when needed or, if available, may not be available on satisfactory terms. Our inability to obtain needed debt and/or equity financing or to generate sufficient cash from operations may require us to abandon projects or curtail capital expenditures. If we curtail capital expenditures or abandon projects, we could be materially adversely affected.

Any failure of our physical infrastructure or services could lead to significant costs and disruptions that could reduce our revenue and harm our business reputation and financial results.

Our business depends on providing customers with highly reliable service. We must protect our customers' IBX infrastructure and their equipment located in our IBX centers. We continue to acquire IBX centers not built by us. If these IBX centers and their infrastructure assets are not in the condition we believe them to be in, we may be required to incur substantial additional costs to repair or upgrade the centers. The services we provide in each of our IBX centers are subject to failure resulting from numerous factors, including:

- human error;
- physical or electronic security breaches;
- fire, earthquake, flood, tornados and other natural disasters;
- extreme temperatures;
- water damage;
- fiber cuts;
- power loss;
- terrorist acts;
- sabotage and vandalism; and
- failure of business partners who provide our resale products.

Problems at one or more of our IBX centers, whether or not within our control, could result in service interruptions or significant equipment damage. For example, in the event of an unusually long period of extreme heat, we may not be able to keep certain of our centers in compliance with our stated cooling objectives or the center's cooling units could fail under the strain. The extreme temperatures could also lead to our suppliers experiencing electrical power outages or shortages. We have service level commitment obligations to certain of our customers, including our significant customers. As a result, service interruptions or significant equipment damage in our IBX centers could result in difficulty maintaining service level commitments to these customers and potential claims related to such failures. For example, for the year ended December 31, 2005, we recorded $457,000 in service level credits to various customers, primarily associated with two separate power outages that affected our Chicago and Washington, D.C. metro area IBX centers.

If we incur significant financial commitments to our customers in connection with a loss of power, or our failure to meet other service level commitment obligations, our liability insurance may not be adequate. In addition, any loss of services, equipment damage or inability to meet our service level commitment

obligations could reduce the confidence of our customers and could consequently impair our ability to obtain and retain customers, which would adversely affect both our ability to generate revenues and our operating results.

Furthermore, we are dependent upon Internet service providers, telecommunications carriers and other website operators in the U.S., Asia and elsewhere, some of which have experienced significant system failures and electrical outages in the past. Users of our services may in the future experience difficulties due to system failures unrelated to our systems and services. If for any reason, these providers fail to provide the required services, our business, financial condition and results of operations could be materially adversely impacted.

A portion of our managed services business in Singapore involves the processing and storage of confidential customer information. Inappropriate use of those services could jeopardize the security of customers' confidential information causing losses of data or financially impacting our customers or us and subjecting us to the risk of lawsuits. Efforts to alleviate problems caused by computer viruses or other inappropriate uses or security breaches may lead to interruptions, delays or cessation of our managed services.

There is no known prevention or defense against denial of service attacks. During a prolonged denial of service attack, Internet service may not be available for several hours, thus negatively impacting hosted customers' on-line business transactions. Affected customers might file claims against us under such circumstances. Our property and liability insurance may not be adequate to cover these customer claims.

We expect our operating results to fluctuate.

We have experienced fluctuations in our results of operations on a quarterly and annual basis. The fluctuations in our operating results may cause the market price of our common stock to decline. We expect to experience significant fluctuations in our operating results in the foreseeable future due to a variety of factors, including:

- financing or other expenses related to the acquisition, purchase or construction of additional IBX centers;
- mandatory expensing of employee stock-based compensation, including restricted shares and units;
- demand for space, power and services at our IBX centers;
- changes in general economic conditions and specific market conditions in the telecommunications and Internet industries;
- costs associated with the write-off or exit of unimproved or underutilized property;
- the provision of customer discounts and credits;
- the mix of current and proposed products and services and the gross margins associated with our products and services;
- the timing required for new and future centers to open or become fully utilized;
- competition in the markets in which we operate;
- conditions related to international operations;
- increasing repair and maintenance expenses in connection with aging IBX centers;
- lack of available capacity in our existing IBX centers to book new revenue or delays in opening up new or acquired IBX centers may delay our ability to book new revenue in markets which have otherwise reached capacity;

- the timing and magnitude of other operating expenses, including taxes, capital expenditures and expenses related to the expansion of sales, marketing, operations and acquisitions, if any, of complementary businesses and assets; and
- the cost and availability of adequate public utilities, including power.

Any of the foregoing factors, or other factors discussed elsewhere in this report, could have a material adverse effect on our business, results of operations and financial condition. Although we have experienced growth in revenues in recent quarters, this growth rate is not necessarily indicative of future operating results. It is possible that we may never generate net income on a quarterly or annual basis in the future. In addition, a relatively large portion of our expenses are fixed in the short-term, particularly with respect to lease and personnel expenses, depreciation and amortization and interest expenses. Therefore, our results of operations are particularly sensitive to fluctuations in revenues. As such, comparisons to prior reporting periods should not be relied upon as indications of our future performance. In addition, our operating results in one or more future quarters may fail to meet the expectations of securities analysts or investors. If this occurs, we could experience an immediate and significant decline in the trading price of our stock.

Our inability to use our tax net operating losses will cause us to pay taxes at an earlier date and in greater amounts, which may harm our operating results.

We believe that our ability to use our pre-2003 tax net operating losses, or NOLs, in any taxable year is subject to limitation under Section 382 of the United States Internal Revenue Code of 1986, as amended (the "Code"), as a result of the significant change in the ownership of our stock that resulted from our combination with i-STT Pte Ltd and Pihana Pacific, Inc. in 2002, which we call the combination. We expect that a significant portion of our NOLs accrued prior to December 31, 2002 will expire unused as a result of this limitation. In addition to the limitations on NOL carry-forward utilization described above, we believe that Section 382 of the Code will also significantly limit our ability to use the depreciation and amortization on our assets, as well as certain losses on the sale of our assets, to the extent that such depreciation, amortization and losses reflect unrealized depreciation that was inherent in such assets as of the date of the combination. These limitations will cause us to pay taxes at an earlier date and in greater amounts than would occur absent such limitations.

We are exposed to potential risks from legislation requiring companies to evaluate controls under Section 404 of the Sarbanes-Oxley Act of 2002.

Although we received an unqualified opinion regarding the effectiveness of our internal controls over financial reporting as of December 31, 2006, in the course of our ongoing evaluation of our internal controls over financial reporting, we have identified certain areas which we would like to improve and are in the process of evaluating and designing enhanced processes and controls to address these areas identified during our evaluation, none of which we believe constitutes or will constitute a material change. However, we cannot be certain that our efforts will be effective or sufficient for us, or our independent registered public accounting firm, to issue unqualified reports in the future, especially as our business continues to grow and evolve.

It may be difficult to design and implement effective financial controls for combined operations, and differences in existing controls of any acquired businesses may result in weaknesses that require remediation when the financial controls and reporting are combined.

Our ability to manage our operations and growth will require us to improve our operational, financial and management controls, as well as our internal reporting systems and controls. We may not be able to implement improvements to our internal reporting systems and controls in an efficient and timely manner and may discover deficiencies in existing systems and controls.

If we cannot effectively manage international operations, including our international expansion plans, our revenues may not increase and our business and results of operations would be harmed.

For the years ended December 31, 2006, 2005 and 2004, we recognized 14%, 13% and 13%, respectively, of our revenues outside North America. For the three months ended March 31, 2007, we recognized 15% of our revenues outside North America. We anticipate that, for the foreseeable future, a significant part of our revenues will be derived from sources outside North America.

To date, the neutrality of our IBX centers and the variety of networks available to our customers has often been a competitive advantage for us. In certain of our acquired IBX centers, in Singapore in particular, the limited number of carriers available reduces that advantage. As a result, we may need to adapt our key revenue-generating services and pricing to be competitive in that market.

We may experience gains and losses resulting from fluctuations in foreign currency exchange rates. To date, the majority of our revenues and costs have been denominated in U.S. dollars; however, the majority of revenues and costs in our international operations have been denominated in Singapore dollars, Japanese yen and Australia and Hong Kong dollars. Although we have in the past and may decide to undertake foreign exchange hedging transactions in the future to reduce foreign currency transaction exposure, we do not currently intend to eliminate all foreign currency transaction exposure. Where our prices are denominated in U.S. dollars, our sales could be adversely affected by declines in foreign currencies relative to the U.S. dollar, thereby making our products and services more expensive in local currencies.

We are currently undergoing expansions of our IBX center operations in the Tokyo, Japan and Singapore metro areas. Undertaking and managing these expansions in foreign jurisdictions may present unanticipated challenges to us. In addition, any expansion requires substantial operational and financial resources, and we may not have sufficient customer demand to support the expansion once complete. Unanticipated technological changes could also affect customer requirements for data centers and we may not have built such requirements into our expanded IBX centers. We are also exposed to risks resulting from fluctuations in foreign currency exchange rates in connection with our international expansions. To the extent we are paying contractors in foreign currencies, our expansions could cost more than anticipated from declines in the U.S dollar relative to foreign currencies.

Our international operations are generally subject to a number of additional risks, including:

- the costs of customizing IBX centers for foreign countries;
- protectionist laws and business practices favoring local competition;
- greater difficulty or delay in accounts receivable collection;
- difficulties in staffing and managing foreign operations;
- political and economic instability;
- our ability to obtain, transfer, or maintain licenses required by governmental entities with respect to our business; and
- compliance with evolving governmental regulation with which we have little experience.

The increased use of high power density equipment may limit our ability to fully utilize our IBX centers.

Customers are increasing their use of high-density electrical power equipment, such as blade servers, in our IBX centers which has significantly increased the demand for power on a per cabinet basis. Because most of our centers were built several years ago, the current demand for electrical power may exceed the

designed electrical capacity in these centers. As electrical power, not space, is typically the limiting factor in our IBX data centers, our ability to fully utilize those IBX centers may be limited. The availability of sufficient power may also pose a risk to the successful operation of our new IBX centers. The ability to increase the power capacity of an IBX, should we decide to, is dependent on several factors including, but not limited to, the local utility's ability to provide additional power; the length of time required to provide such power; and/or whether it is feasible to upgrade the electrical infrastructure of an IBX to deliver additional power to customers. Although we are currently designing and building to a much higher power specification, there is a risk that demand will continue to increase and our IBX centers could become obsolete sooner than expected.

We may make acquisitions, which pose integration and other risks that could harm our business.

We have recently acquired several new IBX centers, and we may seek to acquire additional IBX centers, real estate for development of new IBX centers, or complementary businesses, products, services or technologies. As a result of these acquisitions, we may be required to incur additional debt and expenditures and issue additional shares of our common stock to pay for the acquired businesses, products, services or technologies, which may dilute our stockholders' ownership interest and may delay, or prevent, our profitability. These acquisitions may also expose us to risks such as:

- the possibility that we may not be able to successfully integrate acquired businesses or achieve the level of quality in such businesses to which our customers are accustomed;
- the possibility that additional capital expenditures may be required;
- the possibility that senior management may be required to spend considerable time negotiating agreements and integrating acquired businesses;
- the possible loss or reduction in value of acquired businesses;
- the possibility that our customers may not accept either the existing equipment infrastructure or the "look-and-feel" of a new or different IBX center;
- the possibility that carriers may find it cost-prohibitive or impractical to bring fiber and networks into a new IBX center;
- the possibility of pre-existing undisclosed liabilities regarding the property or IBX center, including but not limited to environmental or asbestos liability, of which our insurance may be insufficient or for which we may be unable to secure insurance coverage; and
- the possibility that the concentration of our IBX centers in the Silicon Valley, Los Angeles and Tokyo, Japan metro areas may increase our exposure to seismic activity, especially if these centers are located on or near fault zones.

We cannot assure you that the price for any future acquisitions will be similar to prior IBX acquisitions. In fact, we expect acquisition costs, including capital expenditures required to build or render new IBX centers operational, to increase in the future. If our revenue does not keep pace with these potential acquisition and expansion costs, we may not be able to maintain our current or expected margins as we absorb these additional expenses. There is no assurance we would successfully overcome these risks or any other problems encountered with these acquisitions.

Our business could be harmed by prolonged electrical power outages or shortages, increased costs of energy or general lack of availability of electrical resources.

Our IBX centers are susceptible to regional costs of power, electrical power shortages, planned or unplanned power outages, and limitations, especially internationally, on the availability of adequate power resources.

Power outages, such as those that occurred in California during 2001, the Northeast in 2003, and from the tornados on the U.S. East Coast in 2004, could harm our customers and our business. We attempt to limit exposure to system downtime by using backup generators and power supplies; however, we may not be able to limit our exposure entirely even with these protections in place, as was the case with the power outages we experienced in our Chicago and Washington, D.C. metro area IBX centers in 2005.

In addition, global fluctuations in the price of power can increase the cost of energy, and although contractual price increase clauses may exist in some of our customer agreements, we may not be able to pass these increased costs on to our customers.

In each of our markets, we rely on third parties to provide a sufficient amount of power for current and future customers. At the same time, power and cooling requirements are growing on a per unit basis. As a result, some customers are consuming an increasing amount of power per cabinet. We generally do not control the amount of electric power our customers draw from their installed circuits. This means that we could face power limitations in our centers. This could have a negative impact on the effective available capacity of a given center and limit our ability to grow our business, which could have a negative impact on our financial performance, operating results and cash flows.

We may also have difficulty obtaining sufficient power capacity for potential expansion sites in new or existing markets. We may experience significant delays and substantial increased costs demanded by the utilities to provide the level of electrical service required by our current IBX center designs.

We may be forced to take steps, and may be prevented from pursuing certain business opportunities, to ensure compliance with certain tax-related covenants agreed to by us in connection with the combination.

We agreed to a covenant in connection with the combination (which we refer to as the FIRPTA covenant) that we would use all commercially reasonable efforts to ensure that at all times from and after the closing of the combination none of our capital stock issued to STT Communications would constitute “United States real property interests” within the meaning of Section 897(c) of the Code. Under Section 897(c) of the Code, our capital stock issued to STT Communications would generally constitute “United States real property interests” at such point in time that the fair market value of the “United States real property interests” owned by us equals or exceeds 50% of the sum of the aggregate fair market values of (a) our “United States real property interests,” (b) our interests in real property located outside the United States, and (c) any other assets held by us which are used or held for use in our trade or business. Currently, the fair market value of our “United States real property interests” is significantly below the 50% threshold. However, in order to assure compliance with the FIRPTA covenant, we may be limited with respect to the business opportunities we may pursue, particularly if the business opportunities would increase the amounts of “United States real property interests” owned by us or decrease the amount of other assets owned by us. In addition, we may take proactive steps to avoid our capital stock being deemed “United States real property interest,” including, but not limited to, (a) a sale-leaseback transaction with respect to some or all of our real property interests, or (b) the formation of a holding company organized under the laws of the Republic of Singapore which would issue shares of its capital stock in exchange for all of our outstanding stock (this reorganization would require the submission of that transaction to our stockholders for their approval and the consummation of that exchange). We will take these actions only if such actions are commercially reasonable for our stockholders and us. We have entered into an agreement with STT Communications and its affiliate pursuant to which we will no longer be bound by the FIRPTA covenant as of September 30, 2009. If we were to breach this covenant, we may be liable for damages to STT Communications.

Increases in property taxes could adversely affect our business, financial condition and results of operations.

Our IBX centers are subject to state and local real property taxes. The state and local real property taxes on our IBX centers may increase as property tax rates change and as the value of the properties are assessed or reassessed by taxing authorities. Many state and local governments are facing budget deficits, which may cause them to increase assessments or taxes. If property taxes increase, our business, financial condition and operating results could be adversely affected.

STT Communications has voting control over a substantial portion of our stock and has influence over matters requiring stockholder consent.

As of March 31, 2007, STT Communications, through its subsidiary, i-STT Investments (Bermuda) Ltd., had voting control over approximately 14% of our outstanding common stock. In addition, STT Communications is not prohibited from buying shares of our stock in public or private transactions. As a result, STT Communications is able to exercise significant control over all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions, which could prevent or delay a third party from acquiring or merging with us.

Our non-U.S. customers include numerous related parties of STT Communications.

We continue to have contractual and other business relationships and may engage in material transactions with affiliates of STT Communications. Circumstances may arise in which the interests of STT Communications' affiliates may conflict with the interests of our other stockholders. In addition, entities affiliated with STT Communications make investments in various companies. They have invested in the past, and may invest in the future, in entities that compete with us. In the context of negotiating commercial arrangements with affiliates, conflicts of interest have arisen in the past and may arise, in this or other contexts, in the future. We cannot assure you that any conflicts of interest will be resolved in our favor.

If regulated materials are discovered at centers leased or owned by us, we may be required to remove or clean-up such materials, the cost of which could be substantial.

We are subject to various environmental and health and safety laws and regulations, including those relating to the generation, storage, handling and disposal of hazardous substances and wastes. Certain of these laws and regulations also impose joint and several liability, without regard to fault, for investigation and cleanup costs on current and former owners and operators of real property and persons who have disposed of or released hazardous substances into the environment. Our operations involve the use of hazardous substances and materials such as petroleum fuel for emergency generators, as well as batteries, cleaning solutions and other materials. In addition, we lease, own or operate real property at which hazardous substances and regulated materials have been used in the past. At some of our locations, hazardous substances or regulated materials are known to be present in soil or groundwater and there may be additional unknown hazardous substances or regulated materials present at sites we own, operate or lease. At one of our locations, there are land use restrictions in place relating to an earlier environmental cleanup that do not materially limit our use of the site. To the extent any hazardous substances or any other substance or material must be cleaned up or removed from our property, we may be responsible under applicable laws, regulations or leases for the removal or cleanup of such substances or materials, the cost of which could be substantial. In addition, noncompliance with existing, or adoption of more stringent, environmental or health and safety laws and regulations or the discovery of previously unknown contamination could require us to incur costs or become the basis of new or increased liabilities that could be material.

We depend on a number of third parties to provide Internet connectivity to our IBX centers; if connectivity is interrupted or terminated, our operating results and cash flow could be materially adversely affected.

The presence of diverse telecommunications carriers' fiber networks in our IBX centers is critical to our ability to retain and attract new customers. We are not a telecommunications carrier, and as such we rely on third parties to provide our customers with carrier services. We believe that the availability of carrier capacity will directly affect our ability to achieve our projected results. We rely primarily on revenue opportunities from the telecommunications carriers' customers to encourage them to invest the capital and operating resources required to connect from their centers to our IBX centers. Carriers will likely evaluate the revenue opportunity of an IBX center based on the assumption that the environment will be highly competitive. We cannot assure you that any carrier will elect to offer its services within our IBX centers or that once a carrier has decided to provide Internet connectivity to our IBX centers that it will continue to do so for any period of time. Further, many carriers are experiencing business difficulties or announcing consolidations. As a result, some carriers may be forced to downsize or terminate connectivity within our IBX centers, which could have an adverse effect on our operating results.

Our new IBX centers require construction and operation of a sophisticated redundant fiber network. The construction required to connect multiple carrier facilities to our IBX centers is complex and involves

factors outside of our control, including regulatory processes and the availability of construction resources. If the establishment of highly diverse Internet connectivity to our IBX centers does not occur, is materially delayed or is discontinued, or is subject to failure, our operating results and cash flow will be adversely affected. Any hardware or fiber failures on this network may result in significant loss of connectivity to our new IBX expansion centers. This could affect our ability to attract new customers to these IBX centers or retain existing customers.

Our networks may be vulnerable to unauthorized persons accessing our systems, which could disrupt our operations and result in the theft of our proprietary information.

A party who is able to breach the security measures on our networks could misappropriate either our proprietary information or the personal information of our customers, or cause interruptions or malfunctions in our operations. We may be required to expend significant capital and resources to protect against such threats or to alleviate problems caused by breaches in security, which could have a material adverse affect on our financial performance and operating results.

A small number of customers, including IBM, account for a significant portion of our revenues, and the loss of any of these customers could significantly harm our business, financial condition and results of operations.

As of March 31, 2007, we had 1,335 customers. While no single customer accounted for 10% of our revenues for the three months ended March 31, 2007 and the year ended December 31, 2006, our top 10 customers accounted for 23% and 25%, respectively, of our revenues during these periods. We expect that a small percentage of our customers will continue to account for a significant portion of our revenues for the foreseeable future. We cannot guarantee that we will retain these customers or that they will maintain their commitments in our IBX centers at current levels. For example, although the term of our contract with IBM, our single largest customer, runs through 2011, IBM currently has the right to reduce its commitment to us pursuant to the terms and requirements of its customer agreement. If we lose any of these key customers, or if any of them decide to reduce the level of their commitment to us, our business, financial condition and results of operations could be adversely affected.

We resell products and services of third parties that may require us to pay for such products and services even if our customers fail to pay us for the products and services, which may have a negative impact on our operating results.

In order to provide resale services such as bandwidth, managed services and other network management services, we contract with third party service providers. These services require us to enter into fixed term contracts for services with third party suppliers of products and services. If we experience the loss of a customer who has purchased a resale product, we will remain obligated to continue to pay our suppliers for the term of the underlying contracts. The payment of these obligations without a corresponding payment from customers will reduce our financial resources and may have a material adverse affect on our financial performance and operating results.

We may not be able to compete successfully against current and future competitors.

Our IBX centers and other products and services must be able to differentiate themselves from those of other providers of space and services for telecommunications companies, webhosting companies and other colocation providers. In addition to competing with neutral colocation providers, we must compete with traditional colocation providers, including local phone companies, long distance phone companies, Internet service providers and webhosting facilities. Similarly, with respect to our other products and services, including managed services, bandwidth services and security services, we must compete with more established providers of similar services. Most of these companies have longer operating histories and significantly greater financial, technical, marketing and other resources than us.

Because of their greater financial resources, some of our competitors have the ability to adopt aggressive pricing policies, especially if they have been able to restructure their debt or other obligations. As a result, in the future, we may suffer from pricing pressure that would adversely affect our ability to generate revenues and adversely affect our operating results. In addition, these competitors could offer colocation on neutral terms, and may start doing so in the same metropolitan areas in which we have IBX centers. Some of these competitors may also provide our target customers with additional benefits, including bundled communication services, and may do so in a manner that is more attractive to our

potential customers than obtaining space in our IBX centers. If these competitors were able to adopt aggressive pricing policies together with offering colocation space, our ability to generate revenues would be materially adversely affected.

We may also face competition from persons seeking to replicate our IBX concept by building new centers or converting existing centers that some of our competitors are in the process of divesting. We may continue to see increased competition for data center space and customers from large REITS who also operate in our market. We may experience competition from our landlords, some of which are REITS, in this regard. Rather than leasing available space in our buildings to large single tenants, they may decide to convert the space instead to smaller square foot units designed for multi-tenant colocation use. Landlords/REITS may enjoy a cost effective advantage in providing services similar to those provided by our IBXs, and in addition to the risk of losing customers to these parties this could also reduce the amount of space available to us for expansion in the future. Competitors may operate more successfully or form alliances to acquire significant market share. Furthermore, enterprises that have already invested substantial resources in outsourcing arrangements may be reluctant or slow to replace, limit or compete with their existing systems by becoming a customer. Customers may also decide it is cost effective for them to build out their own data centers which could have a negative impact on our results of operations. In addition, other companies may be able to attract the same potential customers that we are targeting. Once customers are located in competitors' facilities, it may be extremely difficult to convince them to relocate to our IBX centers.

Because we depend on the retention of key employees, failure to maintain competitive compensation packages, including equity incentives, may be disruptive to our business.

Our success in retaining key employees and discouraging them from moving to a competitor is an important factor in our ability to remain competitive. As is common in our industry, our employees are typically compensated through grants of equity awards in addition to their regular salaries. In addition to granting equity awards to selected new hires, we periodically grant new equity awards to certain employees as an incentive to remain with us. To the extent we are unable to offer competitive compensation packages to our employees and adequately maintain equity incentives due to equity expensing or otherwise, and should employees decide to leave us, this may be disruptive to our business and may adversely affect our business, financial condition and results of operations.

Because we depend on the development and growth of a balanced customer base, failure to attract and retain this base of customers could harm our business and operating results.

Our ability to maximize revenues depends on our ability to develop and grow a balanced customer base, consisting of a variety of companies, including network service providers, site and performance management companies, and enterprise and content companies. The more balanced the customer base within each IBX center, the better we will be able to generate significant interconnection revenues, which in turn increases our overall revenues. Our ability to attract customers to our IBX centers will depend on a variety of factors, including the presence of multiple carriers, the mix of products and services offered by us, the overall mix of customers, the IBX center's operating reliability and security and our ability to effectively market our services. In addition, some of our customers are, and are likely to continue to be, Internet companies that face many competitive pressures and that may not ultimately be successful. If these customers do not succeed, they will not continue to use the IBX centers. This may be disruptive to our business and may adversely affect our business, financial condition and results of operations.

Our products and services have a long sales cycle that may materially adversely affect our business, financial condition and results of operations.

A customer's decision to license cabinet space in one of our IBX centers and to purchase additional services typically involves a significant commitment of resources. In addition, some customers will be reluctant to commit to locating in our IBX centers until they are confident that the IBX center has adequate carrier connections. As a result, we have a long sales cycle. Furthermore, we may expend significant time and resources in pursuing a particular sale or customer that does not result in revenue. Delays due to the length of our sales cycle may materially adversely affect our business, financial condition and results of operations.

Failure to comply with listing standards for audit committee membership could result in our delisting from The NASDAQ Stock Market and severely limit the liquidity of our common stock.

Our common stock is currently traded on the NASDAQ Global Select Market. Under NASDAQ's listing maintenance standards, the audit committee of each NASDAQ issuer must have at least three independent members on its audit committee, at least one of whom is a financial expert. On February 8, 2007, we notified NASDAQ that we were not in compliance with these requirements due to the vacancy created by Mr. Louis J. Lavigne, Jr.'s resignation from Equinix's Board of Directors and its Audit Committee. Mr. Lavigne was the Audit Committee's chairman and considered its financial expert. With Mr. Lavigne's resignation, the Audit Committee is comprised of just two independent members and does not have a financial expert. On February 9, 2007, we received a NASDAQ Staff Deficiency Letter confirming that we fail to comply with NASDAQ's audit committee requirements.

We have a cure period until August 8, 2007 to comply with these requirements and we are currently searching for a new candidate to serve on our Board of Directors and its Audit Committee who possesses qualifications that will satisfy both the independence requirements and the audit committee financial expert requirement. However, if we are unable to find a suitable candidate before August 8, 2007, we may be subject to delisting by NASDAQ.

If our stock is delisted and thus no longer eligible for quotation on the NASDAQ Global Select Market or the NASDAQ Global Market, it would trade either on the NASDAQ Capital Market or on the over-the-counter market, both of which are viewed by most investors as less desirable and less liquid marketplaces. The loss of our listing on the NASDAQ Global Select Market would also complicate compliance with state blue-sky laws. Furthermore, our ability to raise additional capital would be severely impaired. As a result of these factors, the value of the common stock would decline significantly.

If the market price of our stock continues to be highly volatile, the value of an investment in our common stock may decline.

Since January 1, 2006, the closing sale price of our common stock on the NASDAQ Global Select Market ranged from $41.43 to $90.00 per share. The market price of the shares of our common stock has been and may continue to be highly volatile. Actual sales, or the market's perception with respect to possible sales, of a substantial number of shares of our common stock within a narrow period of time could cause our stock price to fall. Announcements by others or us may also have a significant impact on the market price of our common stock. These announcements may include:

- our operating results;
- new issuances of equity, debt or convertible debt;
- developments in our relationships with corporate customers;
- announcements by our customers or competitors;
- changes in regulatory policy or interpretation;
- governmental investigations;
- changes in the ratings of our stock by securities analysts;
- purchase or development of real estate and/or additional IBX centers;
- announcements with respect to the operational performance of our IBX centers;
- market conditions for telecommunications stocks in general; and

- general economic and market conditions.

The stock market has from time to time experienced extreme price and volume fluctuations, which have particularly affected the market prices for emerging telecommunications companies, and which have often been unrelated to their operating performance. These broad market fluctuations may adversely affect the market price of our common stock.

We are subject to securities class action and derivative litigation, which may harm our business and results of operations.

In the past, securities class action litigation has often been brought against a company following periods of volatility in the market price of its securities. During the quarter ended September 30, 2001, putative shareholder class action lawsuits were filed against us, a number of our officers and directors, and several investment banks that were underwriters of our initial public offering. The suits allege that the underwriter defendants agreed to allocate stock in our initial public offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases in the aftermarket at pre-determined prices. Plaintiffs allege that the prospectus for our initial public offering was false and misleading and in violation of the securities laws because it did not disclose these arrangements. In July 2003, a special litigation committee of our board of directors agreed to participate in a settlement with the plaintiffs. The settlement agreement, as amended, is subject to court approval and sufficient participation by defendants in similar actions. If the proposed settlement, as amended, is not approved by the court, or if a sufficient number of defendants do not participate in the settlement, the defense of this litigation may continue and therefore increase our expenses and divert management’s attention and resources. In addition, we may, in the future, be subject to other securities class action or similar litigation.

On June 29, 2006 and September 18, 2006, shareholder derivative actions were filed in the Superior Court of the State of California, County of San Mateo, naming Equinix as a nominal defendant and several of Equinix’s current and former officers and directors as individual defendants. These actions were consolidated, and the consolidated complaint was filed in January 2007. The consolidated complaint alleges that the individual defendants breached their fiduciary duties and violated California securities law as a result of purported backdating of stock option grants, insider trading and the preparation and approval of inaccurate financial results. Plaintiffs seek to recover, on behalf of Equinix, unspecified monetary damages, corporate governance changes, equitable and injunctive relief, restitution, and fees and costs. In March 2007, the state court stayed this action in deference to a federal shareholder derivative action filed in the United States District Court for the Northern District of California in October 2006. The federal action named Equinix as a nominal defendant and several current and former officers and directors as individual defendants. This complaint alleged that the individual defendants breached their fiduciary duties and violated California and federal securities laws as a result of purported backdating of stock options, insider trading and the dissemination of false statements. On April 12, 2007, the federal action was voluntarily dismissed without prejudice pursuant to a joint stipulation entered as an order by the court. The parties to the state court action have informed the state court that the federal action was dismissed. In addition to the pending state court derivative action, we may be subject to additional derivative or other lawsuits that may be presented on an individual or class basis alleging claims based on our stock option granting practices. Responding to, investigating and/or defending against these complaints will present a substantial cost to us in both cash and the attention of certain management. Any adverse outcome in litigation could seriously harm our business and results of operations.

Risks Related to Our Industry

If the use of the Internet and electronic business does not grow, our revenues may not grow.

Acceptance and use of the Internet may not continue to develop at historical rates and a sufficiently broad base of consumers may not adopt or continue to use the Internet and other online services as a medium of commerce. Demand for Internet services and products are subject to a high level of uncertainty and are subject to significant pricing pressure, especially in Asia-Pacific. As a result, we cannot be certain that a viable market for our IBX centers will materialize. If the market for our IBX centers grows more slowly than we currently anticipate, our revenues may not grow and our operating results could suffer.

Government regulation may adversely affect the use of the Internet and our business.

Various laws and governmental regulations governing Internet related services, related communications services and information technologies, and electronic commerce remain largely unsettled, even in areas where there has been some legislative action. This is true both in the U.S. and the various foreign countries in which we operate. It may take years to determine whether and how existing laws, such as those governing intellectual property, privacy, libel, telecommunications services, and taxation, apply to the Internet and to related services such as ours. We have limited experience with such international regulatory issues and substantial resources may be required to comply with regulations or bring any non-compliant business practices into compliance with such regulations. In addition, the development of the market for online commerce and the displacement of traditional telephony service by the Internet and related communications services may prompt an increased call for more stringent consumer protection laws or other regulation both in the U.S. and abroad that may impose additional burdens on companies conducting business online and their service providers. The compliance with, adoption or modification of, laws or regulations relating to the Internet, or interpretations of existing laws, could have a material adverse effect on our business, financial condition and results of operation.

Industry consolidation may have a negative impact on our business model.

The telecommunications industry is currently undergoing consolidation. As customers combine businesses, they may require less colocation space, and there may be fewer networks available to choose from. Given the competitive and evolving nature of this industry, further consolidation of our customers and/or our competitors may present a risk to our network neutral business model and have a negative impact on our revenues. In addition, increased utilization levels industry-wide could lead to a reduced amount of attractive expansion opportunities available to us.

Terrorist activity throughout the world and military action to counter terrorism could adversely impact our business.

The September 11, 2001 terrorist attacks in the U.S., the ensuing declaration of war on terrorism and the continued threat of terrorist activity and other acts of war or hostility appear to be having an adverse effect on business, financial and general economic conditions internationally. These effects may, in turn, increase our costs due to the need to provide enhanced security, which would have a material adverse effect on our business and results of operations. These circumstances may also adversely affect our ability to attract and retain customers, our ability to raise capital and the operation and maintenance of our IBX centers. We may not have adequate property and liability insurance to cover catastrophic events or attacks.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Submission of Matters to a Vote of Security Holders

None.

Item 5. Other Information

None.

Table of Contents

Item 6. Exhibits

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date/ Period End Date	Exhibit	
2.1	Combination Agreement, dated as of October 2, 2002, by and among Equinix, Inc., Eagle Panther Acquisition Corp., Eagle Jaguar Acquisition Corp., i-STT Pte Ltd, STT Communications Ltd., Pihana Pacific, Inc. and Jane Dietze, as representative of the stockholders of Pihana Pacific, Inc.	Def. Proxy 14A	12/12/02		
3.1	Amended and Restated Certificate of Incorporation of the Registrant, as amended to date.	10-K/A	12/31/02	3.1	
3.2	Certificate of Designation of Series A and Series A-1 Convertible Preferred Stock.	10-K/A	12/31/02	3.3	
3.3	Bylaws of the Registrant.	10-K	12/31/02	3.2	
3.4	Certificate of Amendment of the Bylaws of the Registrant.	10-Q	6/30/03	3.4	
4.1	Reference is made to Exhibits 3.1, 3.2, 3.3 and 3.4.				
4.2	Registration Rights Agreement (see Exhibit 10.15).				
4.3	Indenture dated February 11, 2004 by and between Equinix, Inc. and U.S. Bank National Association, as trustee.	10-Q	3/31/04	10.99	
4.4	Indenture dated March 30, 2007 by and between Equinix, Inc. and U.S. Bank National Association, as trustee.	8-K	3/30/07	4.4	
4.5	Form of 2.50% Convertible Subordinated Note Due 2012 (see Exhibit 4.4).				
10.1	Warrant Agreement, dated as of December 1, 1999, by and among the Registrant and State Street Bank and Trust Company of California, N.A. (as warrant agent).	S-4 (File No. 333-93749)	12/29/99	10.2	
10.2	Form of Indemnification Agreement between the Registrant and each of its officers and directors.	S-4 (File No. 333-93749)	12/29/99	10.5	
10.3+	Lease Agreement with Carlyle-Core Chicago LLC, dated as of September 1, 1999.	S-4/A (File No. 333-93749)	5/9/00	10.9	

Exhibit Number	Exhibit Description	Incorporated by Reference Form	Filing Date/ Period End Date	Exhibit	Filed Herewith
10.4+	Lease Agreement with Rose Ventures II, Inc., dated June 10, 1999.	S-4/A (File No. 333-93749)	5/9/00	10.12	
10.5	2000 Equity Incentive Plan.	S-1 (File No. 333-39752)	6/21/00	10.24	
10.6	2000 Director Option Plan.	S-1/A (File No. 333-39752)	7/19/00	10.25	
10.7	Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated June 21, 2000.	S-1/A (File No. 333-39752)	8/9/00	10.27	
10.8+	Lease Agreement with Burlington Associates III Limited Partnership, dated as of July 24, 2000.	10-Q	9/30/00	10.31	
10.9	First Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated September 26, 2001.	10-Q	9/30/01	10.46	
10.10	2001 Supplemental Stock Plan.	10-Q	9/30/01	10.48	
10.11	Second Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated May 20, 2002.	10-Q	6/30/02	10.53	
10.12+	Second Amendment to Lease Agreement with Burlington Realty Associates III Limited Partnership, dated as of October 1, 2002.	10-Q	9/30/02	10.56	
10.13	Form of Severance Agreement entered into by the Company and each of the Company's executive officers.	10-Q	9/30/02	10.58	
10.14	Third Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of September 30, 2002.	10-K	12/31/02	10.74	
10.15	Registration Rights Agreement by and among Equinix and the Initial Purchasers, dated as of December 31, 2002.	10-K	12/31/02	10.75	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date/ Period End Date	Exhibit	
10.16	Securities Purchase and Admission Agreement, dated April 29, 2003, among Equinix, certain of Equinix's subsidiaries, i-STT Investments Pte Ltd, STT Communications Ltd and affiliates of Crosslink Capital.	8-K	5/1/03	10.1	
10.17	Fourth Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of November 21, 2003.	10-K	12/31/03	10.94	
10.18+	Sublease Agreement between Sprint Communications Company, L.P. and Equinix Operating Co., Inc. dated as of October 24, 2003.	10-K	12/31/03	10.95	
10.19+	Lease Agreement dated as of April 21, 2004 between Eden Ventures LLC and Equinix, Inc.	10-Q	6/30/04	10.103	
10.20	Equinix, Inc. 2004 International Employee Stock Purchase Plan effective as of June 3, 2004.	10-Q	6/30/04	10.105	
10.21	Equinix, Inc. Employee Stock Purchase Plan effective as of June 3, 2004.	10-Q	6/30/04	10.106	
10.22	First Amendment to Sublease Agreement dated as of June 21, 2004 between Equinix Operating Co. Inc. and Sprint Communications Company L.P.	10-K	12/31/04	10.107	
10.23+	Assignment and Assumption of Lease and First Amendment to Lease dated as of December 6, 2004, between Equinix Operating Company, Inc., Abovenet Communications, Inc., and Brokaw Interests; and Lease dated December 29, 1999 between Abovenet Communications, Inc., and Brokaw Interests.	10-K	12/31/04	10.109	
10.24	Form of Restricted Stock Agreement for Equinix's executive officers under the Company's 2000 Equity Incentive Plan.	10-K	12/31/05	10.115	
10.25	Lease Agreement dated June 9, 2005 between Equinix Operating Co., Inc. and Mission West Properties L.P. and associated Guaranty of Equinix, Inc.	10-Q	6/30/05	10.117	
10.26	Letter Agreement dated October 6, 2005 among Equinix, Inc., STT Communications Ltd. and I-STT Investments Pte. Ltd.	8-K	10/6/05	99.1	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date/ Period End Date	Exhibit	
10.27	Transition and Severance Agreement between Equinix, Inc. and Philip Koen dated November 7, 2005.	8-K	11/8/05	99.1	
10.28	Lease Agreement dated December 21, 2005 between Equinix Operating Co., Inc. and iStar El Segundo, LLC and associated Guaranty of Equinix, Inc.	10-K	12/31/05	10.126	
10.29+	Loan and Security Agreement and Note between Equinix RP II, LLC and SFT I, Inc. dated December 21, 2005 and associated Guaranty of Equinix, Inc.	10-K	12/31/05	10.127	
10.30	Lease Agreement dated as of December 21, 2005 between Equinix RP II, LLC and Equinix, Inc.	10-K	12/31/05	10.128	
10.31	Fifth Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc. dated January 1, 2006 and associated Guaranty of Equinix, Inc.	10-K	12/31/05	10.129	
10.32	Lease Agreement dated September 14, 2006 between 777 Sinatra Drive Corp. and Equinix, Inc.	10-Q	9/30/06	10.135	
10.33+	Second Amended and Restated Loan and Security Agreement dated August 10, 2006 between Silicon Valley Bank, General Electric Capital Corporation, Equinix, Inc. and Equinix Operating Co., Inc.	10-Q	9/30/06	10.136	
10.34	2007 Equinix Annual Incentive Plan	10-K	12/31/06	10.35	
10.35	First Omnibus Modification Agreement dated December 27, 2006 by and among SFT I, Inc. (“SFT I”), Equinix RP II, LLC (“RP II”) and Equinix, Inc. (“Equinix”), Amended and Restated Promissory Note dated December 27, 2006 by RP II in favor of SFT I and Reaffirmation of Guaranty dated December 27, 2006 by RP II and Equinix in favor of SFT I.	10-K	12/31/06	10.37	
10.36	First Amendment to Deed of Lease dated December 27, 2006 by and between Equinix RP II, LLC and Equinix Operating Co., Inc.	10-K	12/31/06	10.38	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date/ Period End Date	Exhibit	
10.37	Development Loan and Security Agreement dated February 2, 2007 by and between CHI 3, LLC and SFT I, Inc. and related Promissory Notes One through Four.				X
10.38	Guaranty dated February 2, 2007 by and between Equinix, Inc. and SFT I, Inc.				X
10.39	Completion and Payment Guaranty dated February 2, 2007 by and between Equinix, Inc. and SFT I, Inc.				X
10.40	Master Lease dated February 2, 2007 by and between CHI 3, LLC and Equinix Operating Co., Inc. and associated Guaranty of Lease by Equinix, Inc.				X
10.41	Purchase and Sale Agreement and Joint Escrow Instructions dated January 25, 2007 by and between Equinix, Inc. and Rose Ventures II, Inc.				X
10.42	Form of letter agreement dated March 12, 2007 between Equinix, Inc. and certain holders of Equinix's 2.50% Convertible Debentures due February 15, 2024 ("Notes"), effecting exchanges of common stock for the Notes.				X
10.43	Offer of employment dated March 16, 2007 to Stephen M. Smith by Equinix Operating Co., Inc., accepted by Stephen M. Smith.				X
10.44	Severance Agreement dated March 16, 2007 by and between Stephen M. Smith and Equinix, Inc.				X
10.45	Form of Restricted Stock Agreements for Stephen M. Smith under the Equinix, Inc. 2000 Equity Incentive Plan.				X
10.46	Amendment No. 1 to Second Amended and Restated Loan and Security Agreement dated March 26, 2007 by and among Equinix, Inc., Equinix Operating Co., Inc., General Electric Capital Corporation and Silicon Valley Bank.				X
21.1	Subsidiaries of Equinix.				X
31.1	Chief Executive Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				X

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date/ Period End Date	Exhibit	
31.2	Chief Financial Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				X
32.1	Chief Executive Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.				X
32.2	Chief Financial Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.				X

+ Confidential treatment has been requested for certain portions which are omitted in the copy of the exhibit electronically filed with the Securities and Exchange Commission. The omitted information has been filed separately with the Securities and Exchange Commission pursuant to Equinix's application for confidential treatment.

Table of Contents

EQUINIX, INC.

SIGNATURES

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

EQUINIX, INC.

Date: May 2, 2007

By: /S/ KEITH D. TAYLOR
Chief Financial Officer
(Principal Financial and Accounting Officer)

INDEX TO EXHIBITS

Exhibit Number	Description of Document
10.37	Development Loan and Security Agreement dated February 2, 2007 by and between CHI 3, LLC and SFT I, Inc. and related Promissory Notes One through Four.
10.38	Guaranty dated February 2, 2007 by and between Equinix, Inc. and SFT I, Inc.
10.39	Completion and Payment Guaranty dated February 2, 2007 by and between Equinix, Inc. and SFT I, Inc.
10.40	Master Lease dated February 2, 2007 by and between CHI 3, LLC and Equinix Operating Co., Inc. and associated Guaranty of Lease by Equinix, Inc.
10.41	Purchase and Sale Agreement and Joint Escrow Instructions dated January 25, 2007 by and between Equinix, Inc. and Rose Ventures II, Inc.
10.42	Form of letter agreement dated March 12, 2007 between Equinix, Inc. and certain holders of Equinix's 2.50% Convertible Debentures due February 15, 2024 ("Notes"), effecting exchanges of common stock for the Notes.
10.43	Offer of employment dated March 16, 2007 to Stephen M. Smith by Equinix Operating Co., Inc., accepted by Stephen M. Smith.
10.44	Severance Agreement dated March 16, 2007 by and between Stephen M. Smith and Equinix, Inc.
10.45	Form of Restricted Stock Agreements for Stephen M. Smith under the Equinix, Inc. 2000 Equity Incentive Plan.
10.46	Amendment No. 1 to Second Amended and Restated Loan and Security Agreement dated March 26, 2007 by and among Equinix, Inc., Equinix Operating Co., Inc., General Electric Capital Corporation and Silicon Valley Bank.
21.1	Subsidiaries of Equinix.
31.1	Chief Executive Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Chief Financial Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Chief Executive Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Chief Financial Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

$110,000,000

DEVELOPMENT LOAN AND SECURITY AGREEMENT

between

CHI 3, LLC,
a Delaware limited liability company,
as Borrower

and

SFT I, INC.,
a Delaware corporation,
as Lender

Dated as of February 2, 2007

Loan No. 1364:01

TABLE OF CONTENTS

		Page
SECTION 1 DEFINITIONS		1
1.1	General Definitions	1
1.2	Terms; Utilization of GAAP for Purposes of Financial Statements Under Agreement	28
1.3	Other Definitional Provisions	28
SECTION 2 AMOUNTS AND TERMS OF THE LOAN		29
2.1	Loan Disbursement and Note	29
2.2	Interest.	29
2.3	Payments	31
2.4	Payments and Prepayments on the Loan.	31
2.5	Lender’s Records; Mutilated, Destroyed or Lost Notes	33
2.6	Taxes	34
2.7	Application of Payments	34
2.8	Commitment Fee	35
2.9	Security Agreement	35
2.10	Certain Secured Party Remedies	35
SECTION 3 CONDITIONS TO LOAN		36
3.1	Conditions to Initial Funding of the initial proceeds of the Loan on the Closing Date	36
3.2	Subsequent Advances	41
3.3	Conditions to Final Development Advance for Construction	48
3.4	Conditions to Final Development Advance	49
3.5	Performance of Development	50
3.6	Contingency; Cost Reallocation	51
3.7	Other Remedies of Lender	52
3.8	Protection Against Liens	52
3.9	Nonliability of Lender	53
SECTION 4 REPRESENTATIONS AND WARRANTIES		53
4.1	Organization, Powers, Qualification and Organization Chart	53
4.2	Authorization of Borrowing; No Conflicts; Governmental Consents; Binding Obligations and License and Security Interests of Loan Documents	54
4.3	Financial Statements	55
4.4	Indebtedness	55
4.5	No Material Adverse Change	55
4.6	Title to Property; Liens; Zoning; Contracts; Condition of the Mortgaged Property	55
4.7	Litigation	58
4.8	Payment of Taxes	58
4.9	Governmental Regulation; Margin Loan	59
4.10	Employee Benefit Plans; ERISA; Employees	60

4.11	Intellectual Property	60
4.12	Broker’s Fees	61
4.13	Environmental Compliance	61
4.14	Solvency	61
4.15	Disclosure	62
4.16	Insurance	62
4.17	Development Budget	62
4.18	Accounts	62
4.19	Intentionally Omitted	62
4.20	Special Assessments; Taxes	62
4.21	Leases	63
4.22	Representations Remade	63
4.23	Construction	63
SECTION 5 AFFIRMATIVE COVENANTS		63
5.1	Financial Statements and Other Reports	63
5.2	Existence; Qualification	65
5.3	Payment of Impositions and Lien Claims; Permitted Contests	65
5.4	Insurance, Requirements during and following Construction	67
5.5	Tax Reserve and Insurance Reserve	73
5.6	Maintenance of Mortgaged Property	73
5.7	Inspection; Lender Meeting	74
5.8	Environmental Compliance	74
5.9	Environmental Disclosure	75
5.10	Compliance with Laws, Employee Benefit Plans and Contractual Obligations	75
5.11	Further Assurances	76
5.12	Intentionally Omitted	76
5.13	Intentionally Omitted.	76
5.14	Intentionally Omitted	76
5.15	Intentionally Omitted	76
5.16	Intentionally Omitted	77
5.17	Intentionally Omitted	77
5.18	Management	77
5.19	Construction Matters	77
5.20	Rate Cap; Rate Cap Reserve	78
5.21	Intentionally Omitted	78
5.22	Name	78
5.23	Intentionally Omitted	78
5.24	Intentionally Omitted	78
5.25	Intentionally Omitted	78
5.26	Protection of Collateral; Assessments; Reimbursement	78
5.27	Lender’s Verification of Subcontracts	78
5.28	Lender Responsibility	79
5.29	Intentionally Omitted	79
SECTION 6 ACCOUNTS/CASH MANAGEMENT		79
6.1	Establishment of Accounts and Cash Management Procedures	79

6.2	Intentionally Omitted	79
6.3	Intentionally Omitted	79
6.4	Rate Cap Agreement Payments	79
6.5	Intentionally Omitted	79
6.6	Intentionally Omitted	79
6.7	Accounts	79
6.8	Intentionally Omitted	79
6.9	Creation of Security Interest in Accounts	79
6.10	Intentionally Omitted	80
6.11	Intentionally Omitted	80
6.12	Covenants Regarding Loan Account Collateral	80
6.13	Intentionally Omitted	81
SECTION 7 NEGATIVE COVENANTS		81
7.1	Indebtedness	81
7.2	Liens and Related Matters	81
7.3	Material Rights	81
7.4	Restriction on Fundamental Changes	81
7.5	Restriction on Leases	82
7.6	Transactions with Affiliates	82
7.7	Intentionally Omitted	82
7.8	Management Fees and Compensation; Contracts	82
7.9	Conduct of Business	82
7.10	Use of Lender’s Name	83
7.11	Compliance with ERISA	83
7.12	Due on Sale or Encumbrance	83
7.13	Payments; Distributions	85
7.14	Single Purpose Bankruptcy Remote Entities	85
7.15	Alterations	85
7.16	Master Lease	86
SECTION 8 CASUALTY AND CONDEMNATION		86
8.1	Restoration Following Casualty or Condemnation	86
SECTION 9 DEFAULT, RIGHTS AND REMEDIES		88
9.1	Event of Default	88
9.2	Acceleration and Remedies	91
9.3	Remedies Cumulative; Waivers; Reasonable Charges	92
SECTION 10 SECONDARY MARKET TRANSACTION		93
10.1	Secondary Market Transaction	93
SECTION 11 MISCELLANEOUS		95
11.1	Expenses and Attorneys’ Fees	95
11.2	Certain Lender Matters	96
11.3	Indemnity	97
11.4	Amendments and Waivers	98

11.5	Notices	99
11.6	Survival of Warranties and Certain Agreements	100
11.7	Miscellaneous	100
11.8	Applicable Law	101
11.9	Successors and Assigns	101
11.10	Consent to Jurisdiction and Service of Process	101
11.11	Waiver of Jury Trial	102
11.12	Publicity	102
11.13	Borrower Recourse Liability	103
11.14	Performance by Lender/Attorney-in-Fact	105
11.15	Brokerage Claims	106
11.16	Agreement	107
SECTION 12	ADDITIONAL MASTER LEASE PROVISIONS	107
12.1	Representations, Warranties and Covenants of Master Lessee	107
12.2	Satisfaction of Borrower Obligations by Master Lessee	107
12.3	Subordination of Master Lease	107
12.4	Master Lease Guaranty	109
12.5	Representations, Warranties and Covenants of Carveout Guarantor with respect to the Master Lease	109
SECTION 13	SUBDIVISION AND PARTIAL RELEASE	109
13.1	Conditions to Subdivision and Partial Release	109
13.2	Partial Release	111

DEVELOPMENT LOAN AND SECURITY AGREEMENT

THIS DEVELOPMENT LOAN AND SECURITY AGREEMENT (this "**Agreement**") dated as of February 2, 2007, by and between **CHI 3, LLC**, a Delaware limited liability company "**Borrower**"), having an address at c/o Equinix, Inc., 301 Velocity Way, 5th Floor, Foster City, California 94404, and **SFT I, INC.**, a Delaware corporation (together with its successors and assigns, hereinafter referred to as "**Lender**"), with offices at 1114 Avenue of the Americas, 27th Floor, New York, New York 10036.

R E C I T A L S

A. **The Mortgaged Property**. Borrower is the fee owner of the Land and Improvements.

B. **The Loan**. Borrower desires to borrow from Lender and Lender desires to lend to Borrower, a loan in the amount of $110,000,000.

NOW, **THEREFORE**, in consideration of the foregoing and of the covenants, conditions and agreements contained herein, Borrower and Lender agree as follows:

SECTION 1
DEFINITIONS

1.1 General Definitions. In addition to any other terms defined in this Agreement, the following terms shall have the following meanings:

"**Acceptable Financial Institution**" means a depository institution or trust company incorporated under the laws of the United States of America or any state thereof and subject to supervision and examination by federal or state banking authorities, so long as at all times the short-term commercial paper, certificates of deposit or other debt obligations of such depository institution or trust company are rated at least A-1 by S&P and P-1 by Moody's and the long-term unsecured debt obligations of which are rated at least A by S&P and the equivalent thereof by Moody's.

"**Accounting Changes**" means (A) changes in accounting principles required by GAAP consistently applied and implemented by Borrower; and (B) changes in accounting principles recommended or approved by Borrower's outside auditor, with the approval of Lender, which approval shall not be unreasonably withheld

"**Accounts**" means Borrower's present and future rights to payment of money, accounts and accounts receivable including (a) rights to payment of money, accounts and accounts receivable arising from or relating to the construction, use, leasing, occupancy or operation of the Mortgaged Property, the rental of, or payment for, space, goods sold or leased or services rendered, whether or not yet earned by performance, and all other "accounts" (as defined in the UCC), (b) rights to payment, accounts, and accounts receivable arising from any consumer credit, charge, entertainment or travel card or service organization or entity, (c) all reserves, deferred payments, refunds, cost savings payments and deposits no matter how evidenced and

whether now or later to be received from third parties (including all earnest money sales deposits) or deposited with, or by, Borrower by, or with, third parties (including all utility deposits), (d) all chattel paper, instruments, documents, notes, drafts and letters of credit (other than any letters of credit in favor of Lender), (e) the Loan Accounts, any tenant security deposit account, and any and all other accounts held by or on behalf of Lender and/or Borrower pursuant to this Agreement, (f) all "deposit accounts" (as defined in the UCC), (g) all "securities accounts" (as defined in the UCC), and (h) all contracts and agreements which relate to any of the foregoing.

"**Affiliate**" means any Person: (A) directly or indirectly controlling, controlled by, or under common control with, another Person; (B) directly or indirectly owning or holding ten percent (10%) or more of any equity interest in another Person; or (C) ten percent (10%) or more of whose voting stock or other equity interest is directly or indirectly owned or held by such other Person; provided, however, that no shareholder of Carveout Guarantor shall be deemed to be an Affiliate of Carveout Guarantor, Borrower Representative or Borrower. When used with respect to Borrower, the term "Affiliate" shall also include Family Members, Affiliates of Family Members and trusts for the benefit of another Affiliate of Borrower.

"**Agreement**" means this Development Loan and Security Agreement (including all schedules, exhibits, annexes and appendices hereto), as amended, modified or supplemented from time to time.

"**Alteration**" is defined in Section 7.15.

"**Alternate Rate**" In the event the LIBOR Rate is no longer published, as of any date of determination, the "prime rate" (or "base rate") reported in the Money Rates column or section of *The Wall Street Journal* published on the second full Business Day preceding the first day of the applicable Interest Period as having been the rate in effect for corporate loans at large U.S. money center commercial banks (whether or not such rate has actually been charged by any such bank) or, if *The Wall Street Journal* ceases publication of such "prime rate" or "base rate," the annual rate of interest announced by JP Morgan Chase Bank (or another financial institution with a main or branch office in New York, New York, selected, from time to time, by Lender) from time to time as its "prime rate" or "base rate" in effect at its principal office in New York, New York at 5:00 p.m., New York City time (in either case, the "**Prime Rate**"), for such date. Such rate of interest shall be computed on the basis of a 360-day year for the actual number of days elapsed.

"**Approved Capital Improvements**" means capital improvement items which are set forth in the Development Budget or are otherwise approved in advance by Lender, including without limitation Construction in connection with the Phase II Build-Out.

"**Architect**" means an architect or engineer, as applicable, which has entered into a written agreement to perform all or any portion of the design services, including architectural or engineering services, as the architect or engineer, as applicable, of record which is responsible for sealing its plans and drawings for the Construction, which architect or engineer, as applicable, and applicable Architect's Agreement has been approved by Lender as set forth in Section 3.1(AA), and for the Project means Sheehan Partners, Ltd., a duly licensed architect in the State and, as required, locally where the Land is located, and such other duly licensed architect or engineer in the State and, as required, locally where the Land is located, as approved in writing by Lender, from time to time.

“**Architect’s Agreement**” means from time to time each agreement between Borrower and an Architect, including as modified by Change Orders, for the performance of architectural or engineering services as the architect or engineer, as applicable, of record which is responsible for sealing all plans and drawings for its portion of Construction, and for the Project means that certain Consulting Services Agreement dated February 10, 2006 between Borrower Representative and Sheehan Partners, Ltd.

“**Assignment of Contracts**” means the Assignment of Contracts, Agreements and Equipment Leases of even date herewith from Borrower to Lender.

“**Assignment of Permits**” means the Assignment of Licenses, Permits and Approvals of even date herewith from Borrower to Lender.

“**Assignment(s)**” means individually and collectively, the Assignment of Leases and Rents, Assignment of Architect’s Agreement, Assignment of MEP Engineer’s Agreement, Assignment of Construction Contracts, Assignment of Contracts, the Assignment of Permits, the assignments of management agreement, if any, the assignment of trademarks, tradenames and copyrights, if any, and such other assignments of even date herewith from Borrower to or for the benefit of Lender, each granting a security interest in collateral for the Loan.

“**Assignments of Architect’s Agreements**” means all Assignments of Architect’s Agreements from Borrower, Borrower Representative or Carveout Guarantor to Lender collaterally assigning each Architect’s Agreement to Lender, and each such assignment is herein called an “**Assignment of Architect’s Agreement.**”

“**Assignments of Construction Contracts**” means all Assignments of Construction Contracts from Borrower, Borrower Representative or Carveout Guarantor to Lender collaterally assigning each Construction Contract to Lender, and each such assignment is herein called an “**Assignment of Construction Contract.**”

“**Assignments of MEP Engineer’s Agreements**” means all Assignments of MEP Engineer’s Agreements from Borrower, Borrower Representative or Carveout Guarantor to Lender collaterally assigning each MEP Engineer’s Agreement to Lender, and each such assignment is herein called an “**Assignment of MEP Engineer’s Agreement**.”

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy,” as amended from time to time and all rules and regulations promulgated thereunder.

“**Bank(s)**” means the Acceptable Financial Institution at which the Collection Account is maintained.

“**Base Rate**” means a variable rate per annum equal to the sum of the LIBOR Rate plus two and three quarters of one percent (2.75%), or the Alternate Rate, as the case may be, plus one half of one percent (.50%), increasing or decreasing with each increase or decrease in the LIBOR Rate, or the Alternate Rate, as the case may be (as and when the LIBOR Rate or the Alternate Rate change as described herein).

"**Borrower**" is defined in the first paragraph of this Agreement.

"**Borrower Account**" means a demand, time or deposit account maintained by the Borrower at the Bank or other financial institution selected by the Borrower.

"**Borrower Recourse Liabilities**" means the Obligations for which Borrower is personally liable pursuant to the last sentence of Section 11.13(A), the last sentence of Section 11.13(B) and Borrower's Obligations under Section 11.15.

"**Borrower Representative**" means Equinix Operating Co., Inc., a Delaware corporation, the sole member of Borrower.

"**Budget Savings**" is defined in Section 3.6(B).

"**Business Day**" means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state is closed.

"**Calculation Date**" means for any measurement as of the end of any Loan Month the fifteenth (15th) day of the following Loan Month (e.g., if the measurement is as of March 31, the applicable Calculation Date is April 15).

"**Capital Lease**" means any lease of any property (whether real, personal or mixed) that, in conformity with GAAP, should be accounted for as a capital lease.

"**Carveout Guarantor**" means Equinix, Inc., a Delaware corporation and its successors.

"**Carveout Guaranty**" means the Guaranty of Carveout Guarantor in favor of Lender of even date herewith.

"**Change Order**" means any amendment, waiver, or modification to the Plans and Specifications, any Construction Contract, any Architect's Agreement, any MEP Engineer's Agreement, any of the Entitlement Documents, or the Development Budget which has been approved in writing by Lender; provided, however, that no Lender approval is required for any Change Order which is a Permitted Construction Change Order.

"**CHI 3 Procurement**" means CHI 3 Procurement, LLC, an Illinois limited liability company, a wholly-owned subsidiary of Borrower Representative.

"**Claims**" is defined in Section 5.3(A).

"**Closing**" means that all conditions for disbursement of the initial proceeds of the Loan to or for the benefit of Borrower have been satisfied, waived in writing by Lender and the initial disbursement of the proceeds of the Loan shall have been made to, or upon the order of, Borrower.

“**Closing Date**” means the date on which the Closing occurs.

“**Closing Date Advance**” is defined in Section 2.1.

“**Code**” means the United States Internal Revenue Code of 1986, and any rule or regulation promulgated thereunder from time to time.

“**Collateral**” means the Mortgaged Property, the Loan Account Collateral and all other real and personal property of Borrower or any other Person pledged or mortgaged to Lender as collateral security for repayment of the Loan.

“**Collection Account**” means an Eligible Account which is a federally insured demand deposit account or securities account, which account shall be in the name of Borrower, having Lender as a secured party or, if required by Lender, such account shall be in the name of Lender or a designee for the benefit of Lender.

“**Commitment Fee**” means an amount of money equal to $1,512,500.00.

“**Completion Guaranty**” means the Completion Guaranty of even date herewith from Carveout Guarantor to Lender guaranteeing Completion of Construction.

“**Completion of Construction**” means the completion of the Construction, in accordance with the Plans and Specifications and pursuant to the terms of this Agreement.

“**Confidential Information**” is defined in Section 11.12.

“**Construction**” means all labor, materials and equipment required for the construction, equipping, fixturing and furnishing of the Project all as set forth in more detail in the Plans and Specifications and any other construction, equipping, fixturing and furnishing, approved by Lender.

“**Construction Contract**” means from time to time each agreement between Borrower (or Borrower Representative or Guarantor, as approved by Lender) and a Contractor, including as modified by Change Orders, for performance of Construction, or any portion thereof, and for the Project means that certain (A) Construction Services Master Terms and Conditions dated August 1, 2006 between Carveout Guarantor and Clayco Corporation, (B) Construction Services Master Terms and Conditions dated October 1, 2006 between Carveout Guarantor and Continental Electrical Construction Company, LLC, and (C) Construction Contract dated August 1, 2006 between Borrower and NOVA. Corp., which contracts are all “guaranteed maximum price construction contracts.”

“**Construction Legal Compliance**” means Borrower’s satisfaction of all of the following: (A) (i) the applicable Construction through the applicable date of determination, has been constructed substantially in accordance with the applicable Plans and Specifications (other than deviations therefrom that are immaterial individually and in the aggregate); and (ii) the applicable Construction has been, or will be, constructed in substantial compliance with all applicable Legal Requirements; (B) all applicable material entitlements, approvals, allocations, certificates, authorizations, Licenses and Permits required through the then-current stage of

Construction have been obtained from all appropriate Governmental Authorities and have been validly and irrevocably obtained without qualification, appeal or existence of unexpired appeal periods; (C) all conditions to the issuance of, and the requirements under, all Licenses and Permits, including, without limitation, any conditional use permits and licenses, required through the current stage of Construction have been satisfied in all material respects; and (D) no appeals, suits or other actions are pending or threatened in writing by any Governmental Authority which, if determined adversely to the interests of Borrower or the Mortgaged Property, would result in the revocation, suspension or qualification of any of such Licenses and Permits, approvals, entitlements, allocations, certificates or authorizations.

“**Contingent Obligation**,” as applied to any Person, means any direct or indirect liability, contingent or otherwise, of that Person: (A) with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto; (B) with respect to any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (C) under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement or arrangement designed to protect the applicable Person against fluctuations in interest rates; or (D) under any foreign exchange contract, currency swap agreement or other similar agreement or arrangement designed to protect that Person against fluctuations in currency values. Contingent Obligations shall include (1) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another, (2) the obligation to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement, and (3) any liability of such Person for the obligations of another through any agreement to purchase, repurchase or otherwise acquire such obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to maintain the solvency, financial condition or any balance sheet item or level of income of another. The amount of any Contingent Obligation shall be equal to the amount of the obligation so guaranteed or otherwise supported or, if not a fixed and determined amount, the maximum amount so guaranteed.

“**Contractor**” means the contractor(s) or construction manager(s) duly licensed in the State and, as required, locally where the Land is located, which has entered into a written agreement with Borrower to perform all or any portion of the Construction, which contractor(s) or construction manager(s) and applicable Construction Contract has been approved by Lender as set forth in Section 3.1(AA), and for the Project means Clayco Corporation, Continental Electrical Construction Company, LLC, and NOVA. Corp., each, a duly licensed contractor or construction manager, as applicable, in the State and, as required, locally where the Land is located, and such other duly licensed contractor or construction manager in the State and, as required, locally where the Land is located, as approved in writing by Lender from time to time.

“**Contracts**” means all contracts, agreements, warranties and representations relating to or governing the use, occupancy, design, construction, operation, management, repair and service of any component of the Mortgaged Property, as amended, modified or supplemented from time to time.

“**Contractual Obligation**,” as applied to any Person, means any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject including the Loan Documents.

“**Control**” (including with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”) means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Default**” means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default if that condition or event were not cured or removed within any applicable grace or cure period.

“**Default Interest**” is defined in Section 2.2(A).

“**Default Rate**” means a rate per annum equal to the Base Rate plus five percent (5%).

“**Development Advance**” means an advance of Loan proceeds by Lender in connection with the design, development or Construction made pursuant to Section 3, including, without limitation, the Closing Date Advance and the Initial Advance.

“**Development Budget**” means the detailed line item budget, including all Hard Costs, Soft Costs, a separate line item for Hard Cost Contingency, and a separate line item for Soft Cost Contingency, setting forth Borrower’s estimate of all costs to be incurred in connection with and to obtain Completion of Construction, in a form and in such detail as required by Lender, which budget has been approved by Lender. The Development Budget covers the acquisition, development, design, construction and furnishing of the Project in accordance with the Plans and Specifications, and the development, maintenance and operation of the Project, and shall include cash flow projections for the duration of the Construction through Completion of Construction. Except in connection with Permitted Construction Change Orders, all amendments to the Development Budget shall be subject to Lender’s prior written approval. The Development Budget shall include any and all approved amendments and Change Orders (including Permitted Construction Change Orders). The Development Budget includes a line item for each Architect’s Agreement, each MEP Engineer’s Agreement, and each Construction Contract. The Development Budget includes all costs of materials, equipment, fixtures, furnishings, personal property and labor to be incurred in the Construction, including the provision of all utilities to the Project. The Development Budget (and any amendment thereto) shall, among other things, consist of the following for each Construction Contact: (a) a description of work (such work being classified and shown on a line item basis) reasonably satisfactory to Lender for the building and other improvements to be built as part of the Project for such Construction Contract; and (b) an allocation to each construction line item of a scheduled portion of the **guaranteed maximum price** in such Construction Contract. The Development Budget for the Project is attached hereto as **Schedule 1.1(A)**.

"**Development Draw Schedule**" means a detailed projected schedule of advances, including all line items in the Development Budget, setting forth Borrower's estimate of such chronological advances, which schedule for the Project is attached hereto as **Schedule 1.1(B)**.

"**Development Schedule**" means the projected schedule for the progress of development, design, construction and equipping of the Project and a development progress schedule reflecting, among other things, the anticipated completion dates of the various subcategories and line items in the Development Budget, together with such supporting schedules for each line item therein as Lender may request, all in such form and containing such details as Lender shall require, including primary milestone dates, which for the Project is attached hereto as **Schedule 1.1(C)**.

"**Distribution**" is defined in Section 7.13.

"**Dollars**" and the sign "**$**" mean the lawful money of the United States of America.

"**EDGAR**" is defined in Section 5.1.

"**Eligible Account**" means a segregated account maintained at an Acceptable Financial Institution. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

"**Embargoed Person**" is defined in Section 4.9.

"**Employee Benefit Plan**" means an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Part 3 of Title I of ERISA or Section 412 of the Code and is either (a) maintained by any Person or any member of a Controlled Group for employees of such Person or any member of such Controlled Group or (b) maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which such Person or any member of a Controlled Group is then making or has any obligation to make contributions or, within the preceding five plan years, has made or has had any obligation to make contributions.

"**Environmental Claims**" is defined in Section 4.13.

"**Environmental Indemnity Agreement**" means the Environmental Indemnity Agreement, dated of even date herewith, executed by Borrower and Carveout Guarantor in favor of Lender, together with all amendments, modifications, renewals, substitutions and extensions thereto.

"**Environmental Laws**" means all present and future federal, state and/or local laws, statutes, ordinances, codes, rules, regulations, orders, decrees, licenses, decisions, orders, injunctions, requirements and/or directives of Governmental Authorities, as well as common law, imposing liability, standards of conduct or otherwise pertains or relates to, or for, for the environment, industrial hygiene, the regulation of Hazardous Materials, natural resources, pollution or waste management.

“**Environmental Reports**” means those reports and audits itemized on **Schedule 1.1(D)** hereto.

“**Equinix Parent Transaction Event**” means any Transfer or series of related Transfers (a) resulting in any Person or Group acquiring, directly or indirectly, more than a forty-nine (49%) ownership interest in Carveout Guarantor (if such Person or Group did not, prior to such Transfer or series of Transfers, own at least forty-nine percent (49%) of the ownership interests of Carveout Guarantor) or (b) made in connection with the merger, consolidation or reorganization of Carveout Guarantor and which, in the case of either clause (a) or (b), does not constitute a Qualified Parent Transaction Event.

“**Equipment Leases**” means all leases and other agreements for equipment necessary for the operation of the Land or Improvements for the use or uses contemplated hereunder.

“**Equity Contribution**” is defined in Section 3.1(S).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, and all rules and regulations promulgated thereunder.

“**ERISA Affiliate**” means any Person who is a member of a group which is under common control with another Person, who together with such other Person is treated as a single employer within the meaning of Sections 414(b), (c), (m) and (o) of the IRC or Sections 4001 of ERISA. Carveout Guarantor shall be deemed to be an ERISA Affiliate of Borrower for purposes of this Agreement, irrespective of whether it and Borrower would be treated as a single employer.

“**Event of Default**” is defined in Section 9.1.

“**Excess Interest**” is defined in Section 2.2(C).

“**Expenses**” means the costs and expenditures accrued or incurred by Borrower, without duplication, in connection with the ownership, operation and management of the Mortgaged Property, specifically including in Expenses (1) periodic deposits required to be made into the Reserves; (2) capital expenditures incurred pursuant to the Development Budget to the extent not paid from any Reserves or the proceeds of the Loan; and (3) management fees and specifically excluding from Expenses, however, (i) all expenditures to the extent funded from any Reserves, (ii) principal, interest and all other payments made by Borrower to Lender under the Loan Documents, (iii) federal or state income taxes and (iv) depreciation and other non-cash expenses of the Mortgaged Property.

“**Extension Conditions**” shall mean the following conditions, all of which must be satisfied, in order for the Initial Maturity Date to be extended to the First Extended Maturity Date and for the First Extended Maturity Date to be extended to the Second Extended Maturity Date: (a) not less than thirty (30) days prior to the Initial Maturity Date or First Extended Maturity Date, as applicable, Borrower shall have delivered to Lender an irrevocable written notice requesting the extension; (b) no Default or Event of Default shall exist under this Agreement or any of the other Loan Documents either at the time of the delivery of the notice to extend or at the time of the effective date of the extension; (c) Borrower shall deliver to Lender, an Officer’s

Certificate dated as of the Initial Maturity Date or First Extended Maturity Date, as applicable certifying, without qualification, (i) that no Default or Event of Default has occurred which remains uncured and (ii) that the representations and warranties in the Loan Documents of all parties thereto (other than Lender) are true and correct in all material respects on and as of, as applicable, the Initial Maturity Date or First Extended Maturity Date; (d) if requested by Lender, delivery of an updated appraisal (Borrower shall be responsible for the expense of any such appraisal); and (f) with respect to the extension of the Initial Maturity Date only, (i) the Completion of Construction and (ii) delivery of all necessary mechanic's lien waivers evidencing lien free Completion of Construction.

"**Family Members**" means the spouse, ancestors, descendents and siblings of an Affiliate of Borrower.

"**Financial Strength Criteria**" has the meaning set forth in the Master Lease.

"**Financing Statements**" means the UCC-1 Financing Statements naming Borrower, as debtor, and Lender, as secured party, and filed with such filing offices as Lender may require.

"**FIRREA**" means The Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73 Stat. 183 (1989) and the regulations adopted pursuant thereto, as the same may be amended from time to time.

"**First Anniversary Date**" means February 2, 2008.

"**First Extended Maturity Date**" means January 31, 2011.

"**Fixtures and Personality**" means all fixtures, machinery, furnishings, equipment, furniture and other tangible personal property now or hereafter affixed or attached to, installed in, located on, under, above or within the Land or in the Improvements or used in connection with the use, occupancy, operation and maintenance of all or any part of the Land, Improvements or any other part of the Mortgaged Property, whether or not permanently affixed thereto, together with all accessions, replacements and substitutions thereto or therefore and the proceeds thereof, including all "equipment" (as defined in the UCC), Inventory, "farm products" (as defined in the UCC), "fixtures" (as defined in the UCC), "manufactured homes" (as defined in the UCC), oil, gas and other minerals (whether before or after extraction), and other "goods" (as defined in the UCC) and any and all of the following: machinery; signs; artwork; office furnishings and equipment; partitions and screens; generators, uninterrupted power supply systems, boilers, compressors and engines; fuel; water and other pumps and tanks; irrigation lines and sprinklers; refrigeration equipment; pipes and plumbing; elevators and escalators; sprinkler systems and other fire extinguishing machinery, and equipment; heating, incinerating, ventilating, air conditioning and air cooling ducts, machinery, equipment and systems; gas and electric machinery and equipment; facilities used to provide utility services; laundry, drying, dishwashing and garbage disposal machinery or equipment; communication apparatus, including television, radio, music, and cable antennae and systems; floor coverings, raised flooring, rugs, carpets, window coverings, blinds, awnings, shades, curtains, drapes and rods; screens, storm doors and windows; stoves, refrigerators, dishwashers and other installed appliances; attached cabinets; trees, plants and other items of landscaping; motorized, manual, mechanical or other

buses, boats, aircrafts and vehicles of any nature whatsoever; visual and electronic surveillance systems and other security systems; elevators; escalators; telecommunications equipment including telephones, switchboards, exchanges, wires and phone jacks; maintenance equipment, golf carts, pro shop merchandise, tables, chairs, mirrors, desks, wall coverings, clocks, lamps; kitchen, restaurant, bar, lounge, public room, public area, and other operating or specialized equipment, including menus, dishes, flatware, dishware, glassware, cooking utensils, tables, refrigerating units, microwave equipment, ovens, timers; food and beverages; liquor; cleaning materials other similar items; swimming pool heaters and equipment; recreational equipment and maintenance supplies; clubhouse equipment, furnishings and supplies, including lockers and sporting equipment; and health and recreational facilities; and linens. Fixtures and Personality does not include fixtures, equipment and personality owned by tenants under leases (excluding the Master Lease) of the Mortgaged Property or any part thereof (it being understood that Fixtures and Personality includes Borrower's rights and interest in and to any other fixtures, equipment and personality located at the Mortgage Property under the terms of the Master Lease).

"**Force Majeure**" means a fire or other casualty, adverse weather, labor disputes or other causes beyond Borrower's reasonable control, provided, however, that in no event shall a Force Majeure include any event arising due to the lack or unavailability of funds, financing or capital sources; provided, however, that when a Construction Contract is entered into by Borrower and a Contractor, the definition of Force Majeure as used in this Agreement and applicable to the work included in such contract shall be deemed to be the broader of the definition of Force Majeure (provided, however, such broader definition shall not include any event arising due to lack or unavailability of funds) set forth above or the definition for such term or similar term set forth in such contract. Time for performance of any Obligation related to or pertaining to the Construction or the Completion of Construction (other than the payment of money, compliance with any Legal Requirements or compliance with Section 5.4 hereof) is subject to Force Majeure.

"**GAAP**" means generally accepted accounting principles in the United States of America, consistently applied, as of the date in question.

"**General Intangibles**" means all causes in action, causes of action and all other intangible personal property of Borrower of every kind and nature (other than the Accounts), wherever located, including all Proprietary Rights, all "general intangibles" (as defined in the UCC), all "payment intangibles" (as defined in the UCC), all "software" (as defined in the UCC), corporate or other business records relating to Borrower, and/or the Mortgaged Property (including computer-readable memory and any computer hardware or software necessary to retrieve such memory), insurance policies (including claims under, and interests in, insurance policies), condemnation awards, good will, inventions, designs, software, patents, trademarks and applications therefor, computer programs, trade names, trade styles, trade secrets, copyrights, registrations and other intellectual property, licenses, franchises, customer lists, tax refund claims, claims for wages, salaries or other compensation of an employee, landlord's liens, liens given by statute or other rule of law for services or materials, agricultural liens, judgments and rights represented by judgments and rights of recoupment or set-off. The General Intangibles also include the Rate Cap/Swap Agreement and all Contracts.

"**Governmental Authority**" means the United States of America, any state, any foreign governments and any political subdivision or regional division of the foregoing, and any agency, department, court, regulatory body, commission, board, bureau or instrumentality of any of them.

"**Gross Revenues**" means, for the applicable period, all Rents and all other income, rents, revenues, issues, profits, deposits (other than security deposits except to the extent applied by Borrower in accordance with applicable Leases), proceeds of business interruption insurance, lease termination or similar payments and all other payments actually received by or for the benefit of Borrower in cash or current funds or other consideration from any source whatsoever from or with respect to the Mortgaged Property; provided, however, that Gross Revenues shall exclude Proceeds (other than insurance proceeds in respect of business interruption insurance), litigation proceeds, sale or refinancing proceeds and any other non-recurring income from extraordinary events.

"**Group**" means any Person or Persons acting together which would constitute a "group" for purposes of Section 13(d) of the Exchange Act, as in effect on the date hereof, together with all affiliates and associates (as defined in Rule 12b-2 under the Exchange Act, as in effect on the date hereof) thereof.

"**Hard Cost Contingency**" is defined in Section 3.6(A).

"**Hard Costs**" means the total of all fees, expenses and costs for the Construction and the Completion of Construction other than Soft Costs, as shown in the Development Budget (and specifically excludes Land acquisition costs, if any).

"**Hazardous Materials**" means (a) any pollutants, toxic pollutants, oil, gasoline, petroleum products, asbestos, materials or substances containing asbestos, explosives, chemical liquids or solids, radioactive materials, polychlorinated biphenyls or related or similar materials, or any other solid, liquid or other emission, substance, material, product or by-product defined, listed or regulated as a hazardous, noxious, toxic or solid substance, material or waste or defined, listed or regulated as causing cancer or reproductive toxicity, or otherwise defined, listed or regulated as hazardous or toxic in, pursuant to, or by any federal, state or local law, ordinance, rule, or regulation, now or hereafter enacted, amended or modified, in each case to the extent applicable to the Mortgaged Property including the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601, *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, *et seq.*); Sections 25117, 25281, 25316 or 25501 of the California Health & Safety Code; any so-called "Superfund" or "Superlien" law; the Toxic Substance Control Act of 1976 (15 U.S.C. Section 2601 *et seq.*); the Clean Water Act (33 U.S.C. Section 1251 *et seq.*); and the Clean Air Act (42 U.S.C. Section 7901 *et seq.*); (b) any substance which is or contains asbestos, radon, polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, lead paint, motor fuel or other petroleum hydrocarbons, (c) fungus, mold, mildew, or other biological agents the presence of which may adversely affect the health of individuals or other animals or materially adversely affect the value or utility of the Mortgaged Property, and/or (d) any other substance which causes or poses a threat to cause a contamination or nuisance with respect to all or any portion of the Mortgaged Property or any adjacent property or a hazard to the environment or to the health or safety of Persons.

“**Impositions**” means all real estate and personal property taxes, and vault charges and all other taxes, levies, assessments and other similar charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of every kind and nature whatsoever, which at any time prior to, at or after the execution hereof may be assessed, levied or imposed by, in each case, a Governmental Authority upon the Mortgaged Property or upon the ownership, use, occupancy or enjoyment thereof, and any interest, cost or penalties imposed by such Governmental Authority with respect to any of the foregoing. Impositions shall not include any sales or use taxes or any income taxes payable by Borrower.

“**Improvements**” means all buildings, improvements, Alterations or appurtenances now, or at any time hereafter, located upon, in, under or above the Land or any part thereof. The term “Improvements” also includes all buildings, improvements, Alterations or appurtenances not located on, in, under or above the land to the extent of Borrower’s right, title and interest therein.

“**Indebtedness**” means with respect to any Person, without duplication, (a) any indebtedness of such Person for borrowed money (whether by loan, the issuance and sale of debt securities or the sale of any property or asset of such Person to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such property from such Person), (b) any obligations of such Person for the deferred purchase price of property or services, (c) any obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) any obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) any obligations of such Person as lessee under Capital Leases, (f) any obligations of such Person as a result of any final judgment rendered against such Person or any settlement agreement entered into by such Person with respect to any litigation unless such obligations are stayed upon appeal (for so long as such appeal shall be maintained) or are fully discharged or bonded within thirty (30) days after the entry of such judgment or execution of such settlement agreement, (g) any obligations, contingent or otherwise, of such Person in respect of acceptances, letters of credit or similar extensions of credit, (h) any Contingent Obligations, (i) any Indebtedness of others referred to in clauses (a) through (h) above or clause (j) below guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (1) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (2) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss, (3) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (4) otherwise to assure a creditor against loss, and (j) any Indebtedness referred to in clauses (a) through (i) above 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 (including Accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

“**Indemnified Liabilities**” is defined in Section 11.3.

“**Indemnitees**” is defined in Section 11.3.

“**Independent Architect**” is defined in Section 7.15.

“**Initial Advance**” means the first Development Advance occurring after the Closing Date Advance.

“**Initial Advance Date**” means the date of the Initial Advance.

“**Initial Closing Development Conditions**” is defined in Section 3.2(A).

“**Initial Development Contracts**” means, each as applicable to the Project, the Architect’s Agreement, MEP Engineer’s Agreement, and Construction Contract.

“**Initial Maturity Date**” means January 31, 2010.

“**Initial Project**” means the site work and other improvements to be developed, designed, and constructed on the Land with the proceeds of the Loan and other funds and generally described as an approximately 250,000 square foot, three floor, Internet Business Exchange (IBX) collocation facility and data center (collectively “IBX Centers”) and ancillary administrative or other support services or any facility that as a result of technological changes is substantially equivalent, or a technological successor, to an IBX Center.

“**Installment Sale Agreement**” means that certain Master Installment Sale Agreement dated February 1, 2007 by and between Borrower and CHI 3 Procurement for the purchase and sale of certain equipment as more particularly described therein, along with all Equipment Schedules (as such terms is defined therein) attached thereto or hereafter entered into by Borrower and CHI 3 Procurement in connection with the Installment Sale Agreement.

“**Insurance Reserve**” is defined in Section 5.5.

“**Insurance Reserve Account**” is defined in Section 3.2(B).

“**Interest Period**” means the period of time beginning on the first (1st) day of a Loan Month and ending on (a) the last calendar day of such Loan Month or (b) pursuant to a LIBOR Rate Election, the last calendar day of the Loan Month which occurs one, three or six months thereafter, provided, however, the first Interest Period shall commence on the date the Loan commences to bear interest and continues to and includes February 28, 2007.

“**Interest Rate**” means the applicable of the Base Rate or the Default Rate.

“**Interest Reserve**” is defined in Section 5.15.

“**Intermediate Borrower Entity**” is defined in Section 7.4

“**Inventory**” means “inventory” (as defined in the UCC), including any and all goods, merchandise and other personal property, whether tangible or intangible, now owned or hereafter acquired by Borrower which is held for sale, lease or license to customers, furnished to customers under any contract or service or held as raw materials, work in process, or supplies or materials used or consumed in Borrower’s business.

“**Investment**” means (A) any direct or indirect purchase or other acquisition by Borrower of any beneficial interest in, including stock, partnership interest or other Securities of, any other Person or (B) any direct or indirect loan, advance or capital contribution by Borrower to any other Person, including all Indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business.

“**Investment Grade Criteria**” has the meaning set forth in the Master Lease.

“**Land**” means the real estate located in Elk Grove Village, Illinois, comprising the Mortgaged Property, as more specifically described in the Mortgage including, to the extent owned by Borrower, all oil, gas and mineral rights, oil, gas and minerals (whether before or after extraction), easements, appurtenances, water rights, water stock, rights in and to streets, roads and highways (whether before or after vacation thereof), hereditaments and privilege relating, in any manner whatsoever, to the Land. The Land is legally described on **Exhibit A**.

“**Late Charge**” is defined in Section 2.2(D).

“**Lease Form**” means the standard form of lease to be used by Borrower for all leases relating to the Mortgaged Property which has been approved by Lender as of the Closing Date or as may be approved by Lender thereafter, and as the same may, from time to time thereafter, be amended by Borrower with the approval of Lender, which approval shall not be unreasonably withheld or delayed.

“**Leases**” means any and all leases, subleases, occupancy agreements or grants of other possessory interests, whereby Borrower acts as the lessor, sublessor, licensor, grantor or in another similar capacity, now or hereafter in force, oral or written, covering or affecting the Land or Improvements, or any part thereof, together with all rights, powers, privileges, options and other benefits of Borrower thereunder and any and all guaranties of the obligations of the lessees, sublessees, occupants, and grantees thereunder, as such leases, subleases, occupancy agreements or grants may be extended, renewed, modified or replaced from time to time (exclusive of any ground lease having Borrower as ground lessee). For the avoidance of doubt, “Leases” shall not include any lease, license or occupancy agreement whereby the Master Lessee or any sublessee of the Master Lessee acts as the lessor, sublessor, licensor, grantor or in another similar capacity, now or hereafter in force, oral or written, covering or affecting the Land or Improvements, or any part thereof.

“**Legal Requirements**” means all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting Borrower, Carveout Guarantor, the Mortgaged Property or any part thereof, the construction, use, Alteration or operation thereof, or any part thereof, or any or all of any other Collateral whether now or hereafter enacted and in force, and all applicable Licenses and Permits and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of

record, known to Borrower or otherwise, at any time in force affecting Borrower, Carveout Guarantor, the Mortgaged Property, or any part thereof, or any or all of the other Collateral including, without limitation, any which may (a) require repairs, modifications or Alterations in or to the Mortgaged Property or any part thereof, or (b) in any way limit the use and enjoyment thereof.

"**Lender**" is defined in the first paragraph of this Agreement.

"**Lender's Construction Consultant**" means LM Consultants, Inc. or such other consultant as may be named by Lender in such capacity from time to time, and any of Lender's internal representatives responsible for the review of the Construction, and design and development thereof, and compliance with the covenants set forth in this Agreement.

"**Lender's Consultant's Report**" means a report addressed to Lender regarding the Plans and Specifications, Development Budget, and such other matters pertaining to the applicable Construction as Lender may require.

"**Lender's Estimate of Development Costs**" is defined in **Section 3.2(D)**.

"**LIBOR Rate**" or "**London Interbank Offered Rate**" means a floating interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to the London Interbank Offered Rate (LIBOR) with a one, three or six month maturity, as elected by Borrower, as reported in the Money Rates column or section of *The Wall Street Journal* published on the second full Business Day preceding the first day of the Interest Period. For purposes hereof, the LIBOR Rate for the period commencing on the date of disbursement of the Loan to and including the final day of the Interest Period commencing on the Closing Date shall be 5.375%.

"**LIBOR Rate Election**" is defined in Section 2.2(E).

"**Licenses and Permits**" means all building permits, certificates of occupancy and other governmental permits, licenses and authorizations, including all state, county and local occupancy certificates, and other licenses, in any way applicable to the Project or any part thereof or to the development, construction, ownership, use, occupancy, operation, maintenance, marketing and sale of the Mortgaged Property (other than any lease, license or occupancy agreement whereby the Master Lessee or any sublessee of the Master Lessee acts as the lessor, sublessor, licensor, grantor or in another similar capacity, now or hereafter in force, oral or written, covering or affecting the Land or Improvements, or any part thereof).

"**Lien**" means (a) any lien, mortgage, pledge, security interest, charge or monetary encumbrance of any kind, whether voluntary or involuntary (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any security interest) and (b) any negative pledge or analogous agreement including any agreement not to directly or indirectly convey, assign, sell, mortgage, pledge, hypothecate, grant a security interest in, grant options with respect to, transfer or otherwise dispose of, voluntarily or involuntarily, by operation of law or otherwise, any direct or indirect interest in an asset or direct or indirect interest in the ownership of an asset.

“**Loan**” means the loan from Lender to Borrower as evidenced by the Note in the aggregate amount of up to the lesser of (i) One Hundred Ten Million and No/100 Dollars ($110,000,000) or (ii) sixty percent (60%) of the Hard Costs and Soft Costs set forth in the Development Budget approved by Lender**.**

“**Loan Account Collateral**” is defined in Section 6.9.

“**Loan Accounts**” means the Accounts controlled by Lender established after an occurrence of an Event of Default, any Account controlled by Lender in which Borrower has deposited funds (e.g., Interest Reserve Account) and any other securities or deposit Accounts required to be maintained pursuant to this Agreement or the other Loan Documents.

“**Loan Documents**” means this Agreement, the Note, the Mortgage, the Environmental Indemnity Agreement, the Financing Statements, the Carveout Guaranty, the Completion Guaranty, the Assignments, and all other documents, instruments, certificates and other deliveries made by Borrower or Carveout Guarantor to Lender in accordance herewith or which otherwise evidence, secure and/or govern the Loan.

“**Loan Month**” means a calendar month.

“**Loan Quarter**” means a calendar quarter.

“**Lockout Expiration Date**” means the date which is twenty-four (24) months from the Initial Advance Date.

“**Manager**” means any Person engaged by Borrower or Carveout Guarantor to manage the Mortgaged Property approved by Lender.

“**Manager’s Subordination and Consent**” means the Subordination and Consent of Manager of even date herewith.

“Master Lease” means that certain Master Lease between Borrower, as lessor, and Borrower Representative in its capacity as Master Lessee, as lessee, dated as of even date herewith as amended from time to time to the extent permitted under this Loan Agreement, the Mortgage and the other Loan Documents, with respect to the Mortgaged Property, and any guaranty required in connection therewith.

“**Master Lessee**” means Borrower Representative or the then current lessee under the Master Lease to the extent permitted thereunder, in its capacity as lessee under the Master Lease.

“**Master Lease Guaranty**” is defined in Section 12.4.

“**Material Adverse Effect**” means (A) a material adverse effect upon the business, operations, properties, assets or condition (financial or otherwise) of Borrower, Carveout Guarantor or the Mortgaged Property, (B) the impairment, in any material respect, of the ability of Borrower or Carveout Guarantor to perform its respective obligations under any of the Loan Documents or of Lender to enforce or collect any of the Obligations, (C) any material adverse effect on the ability of Borrower to construct and complete the Construction on or before the

Required Completion Date, (D) the cessation of the Construction for any or no reason for more than fifteen (15) consecutive Business Days or more than thirty (30) days in the aggregate and/or (E) any act, condition, event, circumstance or event which causes or is reasonably likely to cause the cessation of the Construction for more than fifteen (15) consecutive days or more than thirty (30) days in the aggregate. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event does not of itself have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then existing events would result in a Material Adverse Effect.

"**Material Contracts**" means (a) the Master Lease and any other Leases approved by Lender, (b) Architect's Agreements, (c) MEP Engineer's Agreements, (d) Construction Contracts (limited to those certain guaranteed maximum price construction contracts identified in the definition of Construction Contract and such other major Construction Contracts for performance of Construction), and (e) those (i) Contracts set forth on **Schedule 4.6(C)** attached hereto and (ii) other Contracts enter into by Borrower which, if not complied with by Borrower, could reasonably be expected to have a Material Adverse Effect.

"**Maturity Date**" means the Initial Maturity Date, First Extended Maturity Date (if extended in accordance with the terms of this Agreement) or the Second Extended Maturity Date (if extended in accordance with the terms of this Agreement) or such earlier date as the Loan is prepaid in full in accordance with the terms of this Agreement or accelerated.

"**Maximum Rate**" is defined in Section 2.2(C).

"**MEP Engineer**" means an engineer which has entered into a written agreement to perform all or any portion of the MEP engineering services as the MEP engineer of record which is responsible for stamping its plans and drawings for the Construction, which engineer and its MEP Engineer's Agreement has been approved by Lender as set forth in Section 3.1(AA), and for the Project means CH2M Hill Industrial Design & Construction, Inc., a duly licensed engineer in the State and, as required, locally where the Land is located, and such other duly licensed engineer in the State and, as required, locally where the Land is located, as approved in writing by Lender, from time to time.

"**MEP Engineer's Agreement**" means from time to time each agreement between Borrower and a MEP Engineer, including as modified by Change Orders, for the performance of MEP engineering services as the engineer of record which is responsible for stamping all plans and drawings for its portion of Construction, and for the Project means that certain Consulting Services Agreement dated April 25, 2006 between Borrower Representative and CH2M Hill Industrial Design & Construction, Inc. and that certain Addendum 002 to Consulting Agreement CSA-2006-CH2M0426.

"**Monthly Equity Submission**" is defined in Section 3.1(S).

"**Mortgage**" means the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith from Borrower to or for the benefit of Lender, constituting a first Lien on Mortgaged Property as collateral for the Loan.

"**Mortgaged Property**" means the Land, the Improvements, the Inventory, the Accounts, the General Intangibles, the Fixtures and Personality, the Leases, the Rents and other Gross Revenues, the Other Property, the Proceeds, the Plans and Specifications, and all other property of every kind and description used or useful in connection with the ownership, occupancy, operation and maintenance of the other components of the Mortgaged Property and all substitutions therefor, replacements and accessions thereto, and proceeds including "proceeds" (as defined in the UCC) derived therefrom, all as more specifically described in the Mortgage.

"**Multiemployer Plan**" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which Borrower or any ERISA Affiliate is making, or is accruing an obligation to make, contributions or has made, or been obligated to make, contributions within the preceding six (6) years, or for which Borrower or any ERISA Affiliate has any liability, including contingent liability.

"**Net Cash Flow**" means the excess, if any, of (a) all Gross Revenues of the Mortgaged Property, during the twelve (12) Loan Months preceding the Loan Month in which the applicable Calculation Date occurs over (b) the sum of all Expenses of the Mortgaged Property, during the twelve (12) Loan Months preceding the Loan Month in which the applicable Calculation Date occurs.

"**Nonconsolidation Opinion**" means an opinion of counsel selected by Borrower (or other applicable Person) and reasonably satisfactory to Lender, which shall be independent outside counsel, addressed to the Rating Agencies (or which expressly permits reliance by the Rating Agencies) and Lender, in form and substance consistent with nonconsolidation opinions provided in connection with secured loan transactions of similar type and structure, which may include customary assumptions and qualifications, to the effect that in a properly presented case, a bankruptcy court in a case involving the Person designated by Lender, or an Affiliate thereof reasonably designated by Lender, would not disregard the corporate, limited liability company or partnership forms of Borrower, so as to consolidate the assets and liabilities of Borrower with those of the designated entities.

"**Note**" means, collectively, Promissory Note-One, Promissory Note-Two, Promissory Note-Three, Promissory Note-Four, together with the Substitute Notes and all future advances, extensions, renewals, substitutions, modifications and amendments of the Promissory Note-One, Promissory Note-Two, Promissory Note-Three, Promissory Note-Four and any Substitute Note.

"**Obligations**" means, in the aggregate, all obligations, liabilities and Indebtedness of every nature of Borrower from time to time owed to Lender under the Loan Documents, including the principal amount of all debts, claims and Indebtedness, accrued and unpaid interest and all fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and/or from time to time hereafter owing, due or payable to Lender under the Loan Documents whether before or after the filing of a proceeding under the Bankruptcy Code by or against Borrower. The term "Obligations" shall also include any judgment against Borrower or the Mortgaged Property with respect to such obligations, liabilities and Indebtedness of Borrower.

"**OFAC**" is defined in Section 4.9.

"**Officer's Certificate**" means the certificate of an executive officer, chief financial officer or other officer or representative with knowledge of the matters addressed in such certificate.

"**Organizational Documents**" means, as applicable, for any Person, such Person's articles or certificate of incorporation, by-laws, partnership agreement, trust agreement, certificate of limited partnership, articles of organization, certificate of formation, shareholder agreement, voting trust agreement, operating agreement, limited liability company agreement and/or analogous documents, as amended, modified or supplemented from time to time.

"**Other Property**" means all of Borrower's now and/or hereafter existing and/or arising right, title and interest in and to all "securities entitlements" (as defined in the UCC), "chattel paper" (as defined in the UCC), "commercial tort claims" (as defined in the UCC) and all other tort claims, "documents" (as defined in the UCC), "instruments" (as defined in the UCC), "letter-of-credit rights" (as defined in the UCC), "money" (as defined in the UCC), "letters of credit" (as defined in the UCC), Investments, and all "investment property" (as defined in the UCC). Other Property includes all Security Deposit Letters of Credit.

"**Payment Date**" means the first (1st) day of each calendar month commencing on March 1, 2007.

"**Permitted Construction Change Order**" means a Change Order for a Construction Contract entered into at a time when no Event of Default exists which satisfies all of the following conditions: (i) such Change Order does not change the cost of the Construction by more than $500,000 in the aggregate of all scheduled line items value for each individual Change Order, (ii) such Change Order does not materially increase the time scheduled for Completion of Construction or materially modify the scope, quality, functionality, or marketability of the Project or Improvements, (iii) if such Change Order increases the cost of the Construction and the increased cost exceeds the amount remaining available to Borrower in the Hard Cost Contingency (pursuant to Section 3.6) of the Development Budget, Borrower deposits the amount of such increase with Lender prior to execution of the Change Order in question, (iv) such Change Order does not materially adversely affect the structural components of the Construction, (v) no portion of the Change Order deletes or reduces the Construction in any materially adverse respect (i.e., it is not a deductive Change Order in whole or in part) and (v) Borrower provides a copy of such Change Order to Lender promptly after execution of such Change Order.

"**Permitted Contest**" is defined in Section 5.3(B).

"**Permitted Encumbrances**" means the following: (a) the Master Lease; (b) the matters and exceptions appearing on the Title Policy and identified on**Exhibit B**, (c) Liens permitted under the Master Lease which do not require Landlord's consent or to which Landlord and Lender have consented in writing, and (d) Liens securing purchase money Indebtedness that is Permitted Indebtedness (provided that such Liens are confined to the property purchased with the proceeds of such Indebtedness).

“**Permitted Indebtedness**” means (a) ordinary and customary trade payables incurred in the ordinary course of business of ownership, operation, construction and development of the Mortgaged Property which are payable not later than forty-five (45) days after receipt of the original invoice which are in fact not more than sixty (60) days overdue, unless such trade payables are being contested in good faith, (b) the Loan, (c) purchase money Indebtedness used to acquire removable Fixtures and Personalty that do not comprise the Initial Project or any other portion of the Collateral, to be located on the Mortgaged Property and which purchase money Indebtedness shall not exceed Ten Million and No/100 Dollars ($10,000,000) in the aggregate outstanding at any one time, (d) all Project Costs, including, without limitation, the amounts owed under the Construction Contract, the Architect’s Agreement, the MEP Engineer’s Agreement or any other Contracts or other obligations of Borrower relating to the Completion of Construction, (e) obligations of Borrower under the Rate Cap/Swap Agreement, and (f) the Installment Sale Agreement.

“**Person**” means and includes natural persons, corporations, limited liability companies, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and agencies and political subdivisions thereof and their respective permitted successors and assigns (or in the case of a governmental person, the successor functional equivalent of such Person).

“**Phase II Build-Out**” means the Construction of the necessary Improvements to the Mortgaged Property, including any alterations or modifications to the existing Improvements in order to increase the number of cabinets utilized for IBX collocation facility from approximately 2,500 up to 3,850.

“**Physical Condition Report**” means the report(s) regarding the physical inspection of the Land and Improvements listed on**Schedule 1.1(E)**.

“**Plans and Specifications**” means the final drawings, plans and specifications for the development and construction of each component part of the Construction (as the same may be amended in accordance with the provisions permitted by this Agreement), as applicable, which plans and specifications and all amendments thereto shall be (i) subject to Lender’s approval, to the extent required herein, which approval shall not be unreasonably withheld or delayed, and (ii) in accordance with all applicable Legal Requirements. The Plans and Specifications for the Project are identified in **Schedule 1.1(F)**.

“**Post-Closing Obligation Letter**” means a certain letter agreement of even date herewith between Borrower and Lender regarding satisfaction of certain conditions to the Closing.

“**Prepayment Premium**” means four percent (4.00%) of the amount prepaid if prepayment is made prior to the Prepayment Premium Expiration Date. However, if an Event of Default occurs on or before the Lockout Expiration Date and the Loan is accelerated, the Prepayment Premium shall be equal to the Yield Maintenance Amount.

“**Prepayment Premium Expiration Date**” means the date which is nine (9) months after the Lockout Expiration Date.

“**Prescribed Laws**” means, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and implementing regulations thereto, (c) the International Emergency Economic Power Act, 50 U.S.C. § 1701 *et seq.*, (d) all other laws, regulations and executive orders administered by the Office of Foreign Assets Control and (e) all other Legal Requirements relating to money laundering or terrorism.

“**Proceeds**” is defined in Section 8.1.

“**Project**” means the Initial Project, except when specifically referring to the Restoration or the Alterations.

“**Project Completion Date**” means the earliest to occur of (i) June 30, 2008 or (ii) the Completion of Construction; provided, however, that if such Completion of Construction is delayed due to Force Majeure, the Project Completion Date shall be extended by such time as reasonably determined by Lender based upon the delay caused by the Force Majeure, in no event to exceed 120 additional days.

“**Promissory Note-Four**” means the Promissory Note dated of even date herewith made by Borrower to the order of Oak Hill Credit Alpha Finance I, LLC in the original principal amount of up to Two Million Five Hundred Thousand and No/100 Dollars ($2,500,000).

“**Promissory Note-One**” means the Promissory Note dated of even date herewith made by Borrower to the order of Lender in the original principal amount of up to Ninety Million and No/100 Dollars ($90,000,000).

“**Promissory Note-Two**” means the Promissory Note dated of even date herewith made by Borrower to the order of Oak Hill Credit Alpha Finance I (Offshore), Ltd. in the original principal amount of up to Nine Million Five Hundred Thousand and No/100 Dollars ($9,500,000).

“**Promissory Note-Three**” means the Promissory Note dated of even date herewith made by Borrower to the order of Oak Hill Credit Opportunities Financing, Ltd. in the original principal amount of up to Eight Million and No/100 Dollars ($8,000,000).

“**Proprietary Rights**” is defined in Section 4.11.

“**Punch-List Items**” means details of construction, decoration and mechanical and electrical adjustment as identified and compiled by Borrower, Architect, MEP Engineer, and Contractor, and agreed to by Lender, which in the aggregate are minor in character and do not materially interfere with the intended use and operation of the applicable Construction and which can be completed within thirty (30) days.

“**Qualified Parent Transaction Event**” means any transaction that is permitted under subclause (x) or subclause (y) of Section 7.12.

“**Rate Cap/Swap Agreement**” shall mean either (i) an interest rate cap agreement or (ii) an interest rate swap agreement, including the related confirmation, obtained at the sole cost and expense of Borrower, issued by a Rate Cap/Swap Counterparty with a notional amount equal to at least 70% of the outstanding principal balance of the Loan, pursuant to which Borrower will be protected against an increase in the Base Rate by capping the all-in interest rate paid under the agreement at nine percent (9%) per annum. The Rate Cap/Swap Agreement shall be subject to the reasonable approval of Lender as to form and substance and shall be assignable to Lender, its successors and assigns.

“**Rate Cap/Swap Counterparty**” shall mean the counterparty to the Rate Cap/Swap Agreement, which counterparty shall be an Acceptable Financial Institution or another financial institution reasonably approved by the Lender and (a) the credit rating assigned to the unsecured debt of such counterparty by S&P must, at all times, equal or exceed A, (b) the credit rating assigned to the short-term unsecured debt of such counterparty by Fitch must, at all times, equal or exceed F1 and (c) the credit rating assigned to the long-term unsecured debt of such counterparty by Fitch must, at all times, equal or exceed A.

“**Rate Cap/Swap Pledge Agreement**” shall mean that certain Rate Cap/Swap Pledge and Security Agreement, in form and substance reasonably acceptable to Lender, to be entered into between Borrower and Lender in the event Borrower enter into a Rate Cap/Swap Agreement with a Rate Cap/Swap Counterparty. The Rate Cap/Swap Counterparty shall acknowledge the pledge and security interest grant by executing the joinder attached to the Rate Cap/Swap Pledge Agreement.

“**Rating Agencies**” shall mean Standard & Poor’s Ratings Services, a Division of The McGraw-Hill Companies, Inc. (‘**S&P**”), Fitch Inc. (“**Fitch**”), and Moody’s Investors Service, Inc. (“**Moody’s**”) or, if any of such firms shall for any reason no longer perform the functions of a securities rating agency, any other nationally recognized statistical rating agency reasonably designated by Lender; provided, however, that at any time during which the Loan is an asset of a Securitization, “Rating Agencies” shall mean the rating agencies that from time to time rate the securities issued in connection with such Securitization. If the Loan is not an asset in a Securitization, Rating Agency shall mean those rating agencies designated by Lender from time to time.

“**Rating Agency Confirmation**” shall mean, collectively, an affirmation from each of the Rating Agencies that the credit rating by such Rating Agency of the securities issued in connection with a Securitization of the Loan or otherwise secured by a pledge of the Note immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency’s sole and absolute discretion provided, however if the Loan has not been securitized in connection with a Securitization in which some or all of the securities have been rated by one or more of the Rating Agencies, Rating Agency Confirmation means Lender’s approval, which approval is not to be unreasonably withheld or delayed.

"**Rents**" shall mean rents, income, receipts, royalties, profits, issues, service reimbursements, fees, termination payments receivables, accounts receivable and payments from time to time accruing under the Leases.

"**Request for Advance**" means a request from Borrower to Lender in connection with a request for an advance of proceeds of the Loan in the form of **Schedule 1.1(G)**, accompanied by all of the following items, which request and items are subject to the approval of Lender: (a) currently dated certificate from Borrower representing, warranting, and certifying to Lender (i) that all conditions precedent to such advance set forth in the Loan Documents, to the extent not waived in writing by Lender, have been satisfied as required by such Loan Documents, (ii) the amount and uses of such requested advance, and that Borrower is entitled to receive such funds under the Loan Documents and the uses thereof (iii) that each party which is to receive proceeds from such requested advance is entitled to the sums being requested, all in the form and content reasonably approved by Lender; (b) Contractor's application and certificate for payment, in form and content reasonably approved by Lender; (c) if requested by Lender, from time to time, the requisitions for payment applicable to such Request for Advance from subcontractors and material suppliers engaged by Contractor, in the form attached as part of **Schedule 1.1(G)**; (d) Architect's certificate for payment approving Contractor's application and certificate for payment (referenced in clause (b) above), in form attached as part of **Schedule 1.1(G)**; (e) applications and certificates of payment from all other parties contracting with Borrower, in each case where such applications and certificates are conditions precedent to payment, in form and content approved by Lender; (f) Required Lien Waivers; (g) certificate from Lender's Construction Consultant confirming that, based upon an on-site inspection of the Construction, all work and services included in such Request for Advance has been completed; (h) if the Title Policy includes exceptions, qualifications or endorsements relating to "pending disbursements," an endorsement to the Title Policy increasing the amount thereof by the requested disbursement; and (i) such other information and documents as may be reasonably requested or required by Lender or Lender's Construction Consultant, if any, including, but not limited to, certificates, inspections, evidence of tenant occupancy, title policy endorsements or searches, invoices, receipts, estoppel certificates, Licenses and Permits and certificates of occupancy, affidavits and other documents, appropriate for the applicable stage of Construction

"**Required Completion Date**" means June 30, 2008.

"**Required Lien Waivers**" means, waivers of liens executed by (a) for each Request for Advance, each party which has entered into an Architect's Agreement, MEP Engineer's Agreement, or Construction Contract, respectively, waiving their respective rights, if any, and any right of a subcontractor claiming through or under any of them, to file or maintain any construction liens or claims, all in such form containing such provisions as may be reasonably required by Lender and in accordance with applicable law and (b) for each Request for Advance that includes a request for final payment to any subcontractor, such subcontractor, waiving its right to file or maintain any construction liens or claims, all in such form and containing such provisions as may be reasonably required by Lender executed with respect to and applicable to the extent such subcontractor has received payment. Such waivers may be conditioned upon payment for work performed and materials supplied; provided, that the Request for Advance that includes the request described in clause (b) above shall include (and in the case of the final Request for Advance, within ten (10) days after the funding of such final Request for Advance, Borrower shall deliver to Lender) a duly executed, unconditional waiver for each Person described in clause (a) or (b) above.

“**Required Restoration Date**” is defined in Section 8.1.

“**Reserves**” means to the extent applicable the Tax Reserve and the Insurance Reserve.

“**Restoration**” is defined in Section 8.1.

“**Retainage**” is defined in Section 3.2(M).

“**Second Extended Maturity Date**” means January 31, 2012.

“**Securities**” means any stock, shares, voting trust certificates, bonds, debentures, options, warrants, notes, or other evidences of Indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

“**Securitization**” is defined in Section 10.1.

“**Servicer**” is defined in Section 10.1.

“**Soft Cost Contingency**” is defined in Section 3.6(A).

“**Soft Costs**” means the total of all fees, costs, and expenses, including payment of Loan interest as shown in the Development Budget, other than (i) Hard Costs, relating to the Project, (ii) the Land acquisition costs, if any, relating to the Project, (iii) Hard Cost Contingency and (iv) Soft Cost Contingency.

“**Special Purpose Bankruptcy Remote Entity**” is defined in **Schedule 7.14**.

“**Stored Materials**” is defined in Section 3.2(X).

“**Subcontracts**” means the subcontracts, if any, and any other contracts for the provisions of labor or materials for the Construction entered into by a Contractor in accordance with its Construction Contract.

“**Subsequent Owner**” means with respect to the Additional Master Lease Provisions in Section 12, any individual or entity which acquires the fee simple title to or possession of the Mortgaged Property at or through a foreclosure (together with any successors or assigns thereof), including, without limitation, (i) Lender or its designee, (ii) any purchaser of the Mortgaged Property from Lender, or (iii) any lessee of the Mortgaged Property from Lender (other than Master Lessee).

“**Subsidiary**” means, with respect to any Person (the “**parent**”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial

statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more Subsidiaries of the parent or by the parent and one or more Subsidiaries of the parent.

"**Substantial Completion and Substantially Completed**" means the satisfaction of all of the following conditions: (a) the date when the applicable Construction shall have been completed (except for Punch List Items and minor items which can be fully completed without material interference with the use and operation of the Mortgaged Property) in accordance with the Plans and Specifications for the applicable Construction as certified by the Architect and Engineer, as applicable, in the form required by Lender and included as part of **Schedule 1.1(G)** and approved by Lender's Construction Consultant, if any, and Lender, such approval not to be unreasonably withheld; (b) all material permits and approvals required for the normal use and occupancy of the Construction (including a final unconditional certificate of occupancy if required for occupancy under applicable Legal Requirements; provided that if only a temporary certificate is available, it shall be accepted only if it is subject only to conditions which are customary for similar projects in the same geographic location and is otherwise satisfactory to Lender in its sole discretion and then for so long as it is effective and operative until Borrower obtains the final certificate) shall have been issued by the appropriate Governmental Authority and shall be in full force and effect; (c) the Construction shall have been equipped with all furnishings, fixtures, equipment and furniture required for the intended use and operation of the Project other than tenant improvements or build-out under Leases; and (d) Architect and MEP Engineer shall have issued a certificate of Substantial Completion on AIA Form G-704 or otherwise in form and substance acceptable to Lender.

"**Substitute Note**" means all notes given in substitution or exchange for the Promissory Note-One, Promissory Note-Two, Promissory Note-Three, Promissory Note-Four or another Substitute Note.

"**SVB Loan Agreement**" means that certain Second Amended and Restated Loan and Security Agreement, dated as of August 10, 2006, among Carveout Guarantor and Borrower Representative, as borrowers, the Working Capital Lenders, and Silicon Valley Bank, as administrative agent for the Working Capital Lenders.

"**Tax Reserve**" is defined in Section 5.5.

"**Title Company**" means Chicago Title Insurance Company.

"**Title Policy**" means a mortgagee's policy of title insurance issued on the 1992 Form B ALTA form by the Title Company (or the closest equivalent available in any given jurisdiction), together with such reinsurance and direct access agreements as Lender may require, insuring that the Mortgage is a valid first and prior enforceable lien on Borrower's fee simple interest (or leasehold interest, as applicable) in the Mortgaged Property (including any easements

appurtenant thereto but excluding any non-real estate property interests included in the definition of Mortgaged Property) subject only to the Permitted Encumbrances. The Title Policy shall contain an affirmative creditors' rights endorsement, comprehensive endorsement, zoning 3.0 endorsement with parking, pending disbursements endorsement and such other endorsements as Lender may reasonably require.

"**Total Loss**" means (i) a casualty, damage or destruction of (i) all of the Mortgaged Property, (ii) any portion of the Mortgaged Property which renders the remaining portion of the Mortgaged Property unsuitable or uneconomical for the continuation of the Borrower's use or business therein, or (iii) any portion of the Mortgaged Property and the estimated time to repair or replace such portion of the Mortgaged Property is in excess of one (1) year, as reasonably estimated by Lender, or under applicable law the Mortgaged Property cannot be rebuilt to a condition that is suitable and economical for the operation of Borrower's business therein.

"**Transfer**" means, (a) when used as a verb, to, directly or indirectly, lease, sell, assign, convey, give, exchange, devise, mortgage, encumber, pledge, hypothecate, alienate, grant a security interest, or otherwise create or suffer to exist any Lien, transfer or otherwise dispose, or to contract or agree to do any of the foregoing, whether by operation of law, voluntarily, involuntarily or otherwise, as well as any other action or omission which has the practical effect of initiating or completing the foregoing and (b) when used as a noun, a direct or indirect, lease, sale, assignment, conveyance, gift, exchange, devise, mortgage, encumbrance, pledge, hypothecation, alienation, grant of a security interest or other creation or sufferance of a Lien, transfer or other disposition, or the contract or agreement by which any of the foregoing may be effected, whether by operation of law, voluntary or involuntary and any other action or omission which has the practical effect of initiating or completing the foregoing.

"**Treasury Rate**" means the annualized yield on securities issued by the United States Treasury having a maturity corresponding to the scheduled Lockout Expiration Date, as quoted in Federal Reserve Statistical Release H. 15(519) under the heading "U.S. Government Securities – Treasury Constant Maturities" for the Treasury Rate Determination Date (as defined below). If yields for such securities of such maturity are not shown in such publication, then the Treasury Rate shall be determined by Lender by linear interpolation between the yields of securities of the next longer and next shorter maturities. If said Federal Reserve Statistical Release or any other information necessary for determination of the Treasury Rate in accordance with the foregoing is no longer published or is otherwise unavailable, then the Treasury Rate shall be reasonably determined by Lender based on comparable data.

"**Treasury Rate Determination Date**" means the date which is five (5) Business Days prior to the scheduled prepayment date.

"**UCC**" means the Uniform Commercial Code as in effect in the State of New York.

"**UCC Collateral**" is defined in Section 2.9.

"**Working Capital Lenders**" means the "Lenders" from time to time party to the SVB Loan Agreement.

“**Yield Maintenance Amount**” means the positive excess, if any, as of the date of prepayment of (i) the present value of the Yield Maintenance Cash Flows, which present value shall be calculated using a monthly discount rate equal to “X” divided by 12; where “X” equals the Treasury Rate (the “**Yield Maintenance Spread**”) in the event of a prepayment of the Note, over (ii) the outstanding principal balance of the Loan on the date of prepayment. For purposes of computing the Yield Maintenance Amount with regard to Section 2.4(C)(iii) the date of prepayment shall be deemed the date the Loan is accelerated.

“**Yield Maintenance Cash Flows**” means the aggregate of (i) the monthly scheduled payments that would be payable to Lender from the date of prepayment through the Initial Maturity Date if the Loan were not prepaid and (ii) a balloon payment equal to the outstanding principal amount of the Loan on the Initial Maturity Date, assuming, in the case of clause (i) and clause (ii), that the scheduled payments would be paid in full, in cash on the dates such scheduled payments would be otherwise due and payable from the date of prepayment through the Initial Maturity Date calculated using the Base Rate then in effect at the date of prepayment.

1.2 Terms; Utilization of GAAP for Purposes of Financial Statements Under Agreement For purposes of this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to such terms in conformity with GAAP. Financial statements and other information furnished to Lender pursuant to subsection 5.1 shall be prepared in accordance with GAAP as in effect at the time of such preparation. No Accounting Changes shall affect financial covenants, standards or terms in this Agreement; provided, that Borrower shall prepare footnotes to the financial statements required to be delivered hereunder that show the differences between the financial statements delivered (which reflect such Accounting Changes) and the basis for calculating financial covenant compliance (without reflecting such Accounting Changes).

1.3 Other Definitional Provisions. References to “**Sections**,” “**Exhibits**” and “**Schedules**” shall be to Sections, Exhibits and Schedules, respectively, of this Agreement unless otherwise specifically provided. Any of the terms defined in Section 1.1 may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. In this Agreement, “**hereof**,” “**herein**,” “**hereto**,” “**hereunder**” and the like mean and refer to this Agreement as a whole and not merely to the specific section, paragraph or clause in which the respective word appears; words importing any gender include the other genders; references to “**writing**” include printing, typing, lithography and other means of reproducing words in a tangible visible form; the words “**including**,” “**includes**” and “**include**” shall be deemed to be followed by the words “**without limitation**”; the phrase “**and/or**” shall mean that either “and” or “or” may apply; the phrases “**attorneys’ fees**,” “**legal fees**” and “**counsel fees**” shall include any and all attorneys’, paralegal and law clerk fees and disbursements, including court costs, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Mortgaged Property and the Collateral and enforcing its rights hereunder and/or the other Loan Documents; references to agreements and other contractual instruments shall be deemed to include subsequent amendments, assignments, and other modifications thereto, but only to the extent such amendments, assignments and other modifications are not prohibited by the terms of this Agreement or any other Loan Document; references to Persons include their respective permitted successors and assigns or, in the case of governmental Persons, Persons succeeding to the relevant functions of such Persons; references to a Person’s “**knowledge**” in this Agreement

or the other Loan Documents refers to the actual knowledge of the Person in question and such knowledge as a reasonably prudent Person would have acquired by virtue of such inquiry and due diligence as a reasonably prudent Person would have undertaken and all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. Where any provision of this Agreement or any of the other Loan Documents refers to action to be taken by any Person, or which such Person is prohibited from taking, such provisions shall be applicable whether such action is taken directly or indirectly by such Person.

SECTION 2
AMOUNTS AND TERMS OF THE LOAN

2.1 Loan Disbursement and Note. Subject to the terms and conditions of this Agreement, Lender shall lend the initial proceeds of the Loan to Borrower on the Closing Date. The proceeds of the Loan shall be used to pay or reimburse Borrower for a portion of Hard Costs and Soft Costs set forth on the Development Budget and (ii) closing costs incurred in connection with the Loan and set forth on a settlement statement approved by Lender. The initial disbursement of the Loan (the "**Closing Date Advance**") in accordance with the foregoing shall be made on the Closing Date pursuant to a Request for Advance and the settlement statement, each as approved by Lender to fund such closing costs, including without limitation, the Commitment Fee and certain other Soft Costs. Lender shall fund sixty percent (60%) of the amount requested in each Request for Advance that is approved by Lender and shall be funded pari passu with the remaining forty percent (40%) to be funded by Borrower as part of its Equity Contribution. The Loan shall be evidenced by the Note. The Obligations of Borrower under this Agreement, the Note and the other Loan Documents are secured by, among other things, the Mortgage and the Liens created or arising under the other Loan Documents. Subsequent disbursements will be made in accordance with Section 3.2 and, as applicable, Sections 3.3 and 3.4 inclusive.

2.2 Interest.

(A) **Interest Rate**. Subject to the provisions of Section 2.2(C) hereof, the outstanding principal balance of the Loan shall bear interest at the Base Rate. However, (a) upon and during the continuance of any Default by Borrower in the payment of any sum of principal, interest or other Indebtedness of Borrower owing Lender when due, (b) during the existence of any Event of Default, or (c) after the Maturity Date or earlier upon acceleration of the Loan, the principal amount of the Loan shall bear interest ("**Default Interest**") at the Default Rate. With respect to any scheduled payments of principal and interest (excluding the payment due on the Maturity Date), Borrower will be entitled to a grace period of five (5) Business Days from such date before Default Interest is imposed by reason of such late payment; provided, however, such grace period will not be available more than once in any 12 Loan Month period and if Borrower fails to make the required payment within said five (5) Business Day period, Default Interest will be calculated from the original due date. Except as set forth in the preceding sentence, the Default Interest shall commence, without notice, immediately upon and from the occurrence of (a), (b) or (c) above, as the case may be, and shall continue until all Defaults are cured and all sums then due and payable under the Loan Documents are paid in full. Default Interest shall be payable upon demand, and, to the extent unpaid, shall be compounded monthly at the Default

Rate. The obligations of the Borrower under this Agreement, the Note and the other Loan Documents are secured by, among other things, the Mortgage.

(B) **Computation and Payment of Interest**. Interest on the outstanding principal balance of the Loan and all other Obligations owing to Lender shall be computed on the daily outstanding principal balance of the Note (it being understood that the such outstanding balance of the Note shall be the aggregate of all sums advanced by Lender pursuant to this Agreement) and such other Obligations on the basis of actual days elapsed and a 360-day year. Interest on the Loan is payable in arrears. Payments of interest shall be paid to Lender as specified in Section 2.3. In addition, all accrued and unpaid interest shall be paid to Lender on the earlier of the date of prepayment (to the extent prepayment is permitted under Section 2.4) and maturity, whether by acceleration or otherwise. The Loan shall commence to bear interest on the date the proceeds of the Loan are to be disbursed to or for the order of Borrower, provided, however, if the proceeds are disbursed to an escrowee, the Loan shall commence to bear interest from and including the date of disbursement to such escrowee regardless of the date such proceeds are disbursed from escrow.

(C) **Interest Laws**. Notwithstanding any provision to the contrary contained in this Agreement or the other Loan Documents, Borrower shall not be required to pay, and Lender shall not be permitted to collect, any amount of interest in excess of the maximum amount of interest permitted by law ("**Excess Interest**"). If any Excess Interest is provided for or determined by a court of competent jurisdiction to have been provided for in this Agreement or in any of the other Loan Documents, then in such event: (1) the provisions of this Section shall govern and control; (2) Borrower shall not be obligated to pay any Excess Interest; (3) any Excess Interest that Lender may have received hereunder shall be, at Lender's option, (a) applied as a credit against the outstanding principal balance of the Obligations due and owing to Lender (without any prepayment penalty or premium therefor) or for accrued and unpaid interest thereunder (not to exceed the maximum amount permitted by law), (b) refunded to the payor thereof, or (c) any combination of the foregoing; (4) the interest rate(s) provided for herein shall be automatically reduced to the maximum lawful rate allowed from time to time under applicable law (the "**Maximum Rate**"), and this Agreement and the other Loan Documents shall be deemed to have been and shall be, reformed and modified to reflect such reduction; and (5) Borrower shall not have any action against Lender for any damages arising out of the payment or collection of any Excess Interest. Notwithstanding the foregoing, if for any period of time interest on any Obligation due and owing to Lender is calculated at the Maximum Rate rather than the applicable rate under this Agreement, and thereafter such applicable rate becomes less than the Maximum Rate, the rate of interest payable on such Obligations due and owing to Lender shall, to the extent permitted by law, remain at the Maximum Rate until Lender shall have received or accrued the amount of interest which Lender would have received or accrued during such period on Obligations due and owing to Lender had the rate of interest not been limited to the Maximum Rate during such period.

(D) **Late Charges**. If any scheduled payment of principal and/or interest or other amount owing pursuant to this Agreement or the other Loan Documents is not paid when due, Borrower shall pay to Lender, in addition to all sums otherwise due and payable, a late charge ("**Late Charge**") in an amount equal to four percent (4%) of the unpaid amount. With respect to regular monthly payments of principal and/or interest (excluding the payment due on the

Maturity Date), Borrower will be entitled to a grace period of five (5) Business Days from the date due before a late charge is imposed by reason of such late payment; provided, however, such grace period will not be available more than once in any calendar year. Any unpaid late charge shall bear interest at the Default Rate until paid.

(E) **LIBOR Rate Election**. At Borrower's election, indicated in writing by facsimile notice given by Borrower to Lender (or such other parties as Lender may from time to time designate) in accordance with Section 11.5 not later than 12:00P.M. (New York time), at least three (3) Business Days prior to the commencement date of the first or next succeeding Interest Period (as applicable), Borrower may designate a one, three or six month maturity for the LIBOR Rate (each a "**LIBOR Rate Election**"). Notwithstanding the foregoing, after giving effect to all LIBOR Rate Elections, (i) the number of LIBOR Rate Elections shall not exceed five (5) at any one time and (ii) each LIBOR Rate Election shall be for a minimum amount of $1,000,000. If Borrower fails to timely notify Lender in accordance with this Section 2.2(E), the LIBOR Rate shall be based on a one month maturity. In the event that five (5) LIBOR Rate Elections exists at the time of any Development Advance, Borrower shall timely notify Lender to select one of the five existing LIBOR Rate Elections to apply to such Development Advance, otherwise the LIBOR Rate shall be based on a one month maturity.

2.3 Payments. Interest for the period commencing on the date of disbursement of the Loan and ending on February 28, 2007 shall be paid on the Payment Date occurring on March 1, 2007. Commencing on the Payment Date occurring on March 1, 2007 and on each Payment Date thereafter until the Initial Maturity Date, Borrower shall pay to Lender interest on the outstanding principal of the Loan accrued from and including the immediately preceding Payment Date, to, but not including, the Payment Date on which such payment is to be made. If the Extension Conditions are satisfied prior to the Initial Maturity Date or First Extended Maturity Date, as applicable, commencing on the Payment Date occurring immediately after the Initial Maturity Date or First Extended Maturity Date, as applicable, and on each Payment Date thereafter, Borrower shall pay to Lender on each such Payment Date (i) a monthly amount of interest and principal sufficient to fully amortize the entire outstanding principal balance of the Loan based on a 15-year, level payment, amortization schedule using an interest rate equal to the Base Rate then in effect at the time of the Initial Maturity Date and (ii) any other amounts that are due and payable under this Agreement and the other Loan Documents (including, without limitation, any Default Interest and Late Charges). A balloon payment consisting of the principal or remaining principal, as applicable, of the Loan evidenced by the Note, along with all accrued and unpaid interest thereon will be required on the Maturity Date.

2.4 Payments and Prepayments on the Loan.

(A) **Manner and Time of Payment**. Borrower agrees to pay all of the Obligations relating to the Loan as such amounts become due or are declared due pursuant to the terms of this Agreement and the other Loan Documents. All payments shall be made without deduction, defense, setoff or counterclaim by the wire transfer or ACH/EFT of good immediately available wire transferred federal funds to Lender's account at JP Morgan Chase for the account of ABA: 021-000-021 A/C: SFT I, Inc., A/C #230-368913, Reference: Equinix Chicago Debt Service, or at such other place as Lender may direct from time to time by notice to Borrower. Borrower shall receive credit for such funds on the date received if such funds are received by Lender by

2:00 P.M. (New York time) on such day. In the absence of timely receipt, such funds shall be deemed to have been paid by Borrower on the following Business Day. Whenever any payment to be made under the Loan Documents shall be stated to be due on a day that is not a Business Day, or any time period relating to a payment to be made hereunder is stated to expire on a day that is not a Business Day, the payment may be made on the following Business Day and the period will not expire until the following Business Day.

(B) **Maturity**. The outstanding principal balance of the Loan, all accrued and unpaid interest thereon and all other sums owing to Lender pursuant to the Loan Documents, shall be due and payable on the Initial Maturity Date. Notwithstanding the foregoing, if the Extension Conditions are satisfied prior to the Initial Maturity Date, the maturity of the Loan shall be extended for an additional one (1) year period to the First Extended Maturity Date, and if the Extension Conditions are further satisfied prior to the First Extended Maturity Date, the maturity of the Loan shall be further extended for an additional one (1) year period to the Second Extended Maturity Date.

(C) **Prepayments**.

(i) No prepayment of the Loan shall be allowed in whole or in part, on or prior to the Lockout Expiration Date other than prepayment from Proceeds under Section 8.1 hereof. Thereafter, the Loan may be prepaid, upon not less than thirty (30) days' irrevocable prior notice to Lender. Any prepayments on the principal balance of the Loan evidenced by the Note whether voluntary or involuntary, shall be accompanied by payment of interest accrued to the date of prepayment, together with the applicable Prepayment Premium. Any prepayments made pursuant to the foregoing shall be made on a Payment Date provided, however, Borrower may elect to make any such prepayments on a Business Day which is not a Payment Date if, in addition to all interest which has accrued to and including the date of prepayment and the Prepayment Premium, Borrower also pays all interest which would accrue on the Loan to, but not including, the Payment Date following the date of prepayment. Notwithstanding any provision contained in this Agreement to the contrary, no Prepayment Premium will be due on account of (a) a voluntary prepayment pursuant to this Section 2.4(C)(i) made on the Prepayment Premium Expiration Date or thereafter, or (b) provided no Event of Default shall have occurred and be continuing, an involuntary prepayment resulting from a casualty or condemnation of the Mortgaged Property. Amounts prepaid shall not be re-borrowed.

(ii) In the event of (a) the payment of any principal of the Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default) or (b) the failure to borrow or prepay the Loan as specified in any notice delivered pursuant to this Agreement or the other Loan Documents, then, in any such event and, in addition to the payments to be made to Lender pursuant to Section 2.4(C)(i), Borrower agrees to compensate Lender for all losses, costs, expenses and damages Lender may incur attributable to such event. A certificate of Lender setting forth any amount or amounts that Lender is entitled to receive pursuant to this Section shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(iii) If, following an Event of Default, payment of all or any part of the Loan is tendered by Borrower or otherwise recovered by Lender, such tender or recovery shall be deemed a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in Section 2.4(C)(i) and Borrower shall pay to Lender, in addition to the other Obligations, the Prepayment Premium. If the Maturity Date is accelerated, due to an Event of Default or otherwise, or if any prepayment of all or any portion of the Loan hereunder occurs, whether in connection with Lender's acceleration of the Loan or otherwise, or if the Mortgage is satisfied or released by foreclosure (whether by power of sale or judicial proceeding), deed in lieu of foreclosure or by any other means, then the Prepayment Premium shall become immediately due and owing and Borrower shall immediately pay the Prepayment Premium to Lender. Nothing contained in this Section 2.4(C)(iii) shall create any right of prepayment.

(iv) Notwithstanding any provision to the contrary contained in this Agreement, in the event of an Equinix Parent Transaction Event, (x) Lender may declare immediately due and payable, without further notice, protest, presentment, notice of protest or demand, all Obligations including, without limitation, all monies advanced under this Agreement, the Note, the Mortgage and/or any of the Loan Documents which are then unpaid, together with all interest then accrued thereon up to and including the date of Lender's receipt of payment in full of the Loan and all other amounts then owing (including any Default Interest owed as a result of such acceleration and the Prepayment Premium) and (y) so long as no Event of Default shall have occurred and be continuing immediately prior to such Equinix Parent Transaction Event, the Prepayment Premium (notwithstanding the definition set forth in Section 1.1) shall equal (A) for the period from the Closing Date through but not including the First Anniversary Date, the greater of Three percent (3%) or the Yield Maintenance Amount (assuming that the Treasury Rate plus 1.75% is used in calculating the Yield Maintenance Spread), and (B) for the period after the First Anniversary Date through but not including the Prepayment Premium Expiration Date, Three percent (3.00%).

2.5 Lender's Records; Mutilated, Destroyed or Lost Notes. The balance on Lender's books and records shall be presumptive evidence (absent manifest error) of the amounts due and owing to Lender by Borrower; provided that any failure to so record or any error in so recording shall not limit or otherwise affect Borrower's obligation to pay the Obligations. In case any Note shall become mutilated or defaced, or be destroyed, lost or stolen, Borrower shall, upon request from Lender, execute and deliver a new Note of like principal amount in exchange and substitution for the mutilated or defaced Note, or in lieu of and in substitution for the destroyed, lost or stolen Note. In the case of a mutilated or defaced Note, the mutilated or defaced Note shall be surrendered to Borrower upon delivery to Lender of the new Note. In the case of any destroyed, lost or stolen Note, Lender shall furnish to Borrower, upon delivery to Lender of the new Note (i) certification of the destruction, loss or theft of such Note and (ii) such security or indemnity as may be reasonably required by Borrower to hold Borrower harmless.

2.6 Taxes. Any and all payments or reimbursements made under this Agreement, the Note or the other Loan Documents shall be made free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto arising out of or in connection with the transactions contemplated by the Loan Documents; excluding, however, the following: taxes imposed on the income of Lender by any jurisdiction or any political subdivision thereof; taxes that are not directly attributable to the Loan; and any “doing business” taxes, however denominated, charged by any state or other jurisdiction. If Borrower shall be required by law to deduct any such amounts from or in respect of any sum payable hereunder to Lender, then the sum payable hereunder shall be increased as may be necessary so that, after making all required deductions, Lender receives an amount equal to the sum it would have received had no such deductions been made. In the event that, subsequent to the Closing Date, (1) any changes in any existing law, regulation, treaty or directive or in the interpretation or application thereof, (2) any new law, regulation, treaty or directive enacted or any interpretation or application thereof, or (3) compliance by Lender with any new request or directive (whether or not having the force of law) from any Governmental Authority does or shall subject Lender to any tax of any kind whatsoever with respect to this Agreement, the other Loan Documents or the Loan, or change the basis of taxation of payments to Lender of principal, fees, interest or any other amount payable hereunder (except for income taxes, or franchise taxes imposed in lieu of income taxes, imposed generally by federal, state or local taxing authorities with respect to interest or commitment or other fees payable hereunder or changes in the rate of interest or tax on the overall income of Lender, taxes that are not directly attributable to the Loan and any “doing business” taxes, however denominated, charged by any state or other jurisdiction) and the result of any of the foregoing is to increase the cost to Lender of making or continuing its Loan hereunder, as the case may be, or to reduce any amount receivable hereunder, then, in any such case, Borrower shall promptly pay to Lender, within thirty (30) days after its demand, any additional amounts necessary to compensate Lender, on an after-tax basis, for such additional cost or reduced amount receivable, as determined by Lender with respect to this Agreement or the other Loan Documents. If Lender becomes entitled to claim any additional amounts pursuant to this Section 2.6, it shall promptly notify Borrower of the event by reason of which Lender has become so entitled. Furthermore, if subsequent to the Closing Date there are any changes in law that impose or modify any reserve, special default or similar requirements relating to LIBOR Rate based pricing which are applicable to Lender’s source of financing for the Loan, Lender shall advise Borrower of such changes, and Borrower shall promptly pay to Lender within thirty (30) days after its demand, the amount necessary (as determined by Lender in good faith) to compensate Lender for costs arising out of such changes.

2.7 Application of Payments. Except as otherwise expressly provided in the last sentence of this Section 2.7, all payments made hereunder shall be applied first, to the payment of any Late Charges and other sums (other than principal and interest) due from Borrower to Lender under the Loan Documents, second, to any interest then due at the Default Rate, third to interest then due at the Base Rate, and last to the principal amount. Following and during the continuance of an Event of Default, all sums collected by Lender shall be applied in such order of priority to such items set forth below as Lender shall determine in its sole discretion: (i) to the costs and expenses, including reasonable attorneys’ and paralegals’ fees and costs of appeal, incurred in the collection of any or all of the Loan due or the realization of any collateral securing any or all of the Loan; and (ii) to any or all unpaid amounts owing pursuant to the Loan Documents in any order of application as Lender, in its sole discretion, shall determine.

2.8 **Commitment Fee**. Borrower shall pay the Commitment Fee to Lender on the Closing Date. The Commitment Fee shall be considered fully earned and is non-refundable.

2.9 **Security Agreement**. To secure the payment, performance and discharge of the Obligations, Borrower hereby grants, assigns, transfers, conveys and sets over unto Lender, and hereby grants to Lender a continuing first priority, perfected security interest in all of Borrower's right, title and interest in, to and under any and all of the following, whether now and/or existing and/or now owned and/or hereafter acquired and/or arising:

(1) the Accounts;

(2) the Contracts;

(3) the Loan Accounts and other Loan Account Collateral;

(4) the Equipment Leases;

(5) the Fixtures and Personalty;

(6) the General Intangibles;

(7) the Inventory;

(8) the Leases;

(9) the Other Property;

(10) the Rate Cap/Swap Agreement;

(11) the Rents and other Gross Revenues;

(12) the Plans and Specifications;

(13) the Proceeds;

(14) without any duplication, any and all other assets, and other personal property of Borrower; and

(15) together with all accessions to, substitutions for, and replacements of, and of the foregoing and any and all products and cash and non-cash proceeds of any of the foregoing (collectively, the "**UCC Collateral**").

With respect to all UCC Collateral constituting a part of the Mortgaged Property, including, without limitation, the Accounts, this Agreement shall constitute a "security agreement" within the meaning of, and shall create a security interest under, the UCC. Borrower hereby acknowledges and agrees that Lender shall be permitted to file one or more Financing Statements naming Borrower as debtor and Lender as secured party identifying "all assets and personal property" of Borrower in the collateral description thereon. As to the UCC Collateral, the grant, transfer, and assignment provisions of this Section 2.9 shall control over the grant provision of Section 2.1 of the Mortgage. Borrower represents and warrants that, except for any financing statement filed by Lender, no presently effective financing statement covering the Collateral or any part thereof has been filed with any filing officer, and no other security interest has attached to or has been perfected in the Collateral or any part thereof. Borrower shall from time to time within fifteen (15) days after request by Lender, execute, acknowledge and deliver, or authorize the filing of any financing statement, renewal, affidavit, certificate, continuation statement or other document as Lender may reasonably request in order to evidence, perfect, preserve, continue, extend or maintain this security agreement and the security interest created hereby as a first priority Lien on the UCC Collateral, subject only to the Permitted Encumbrances.

2.10 **Certain Secured Party Remedies**. If an Event of Default shall have occurred and be continuing, Lender shall have all the remedies of a secured party under the UCC and all other

rights and remedies now or hereafter provided or permitted by law, including, without limitation, the right to take immediate and exclusive possession of the UCC Collateral, or any part thereof, and for that purpose Lender may, as far as Borrower can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any premises on which any of the Collateral or any part thereof may be situated. Without limitation of the foregoing, Lender shall be entitled to hold, maintain, preserve and prepare all of the Collateral for sale and to dispose of said Collateral, if Lender so chooses, from the Mortgaged Property, provided that Lender may require Borrower to assemble such UCC Collateral and make it available to Lender for disposition at a place to be designated by Lender from which the UCC Collateral would be sold or disposed of, and provided further that, for a reasonable period of time prior to the disposition of such UCC Collateral, Lender shall have the right to use same in the operation of the Mortgaged Property. Borrower will execute and deliver to Lender any and all forms, documents, certificates and registrations as may be necessary or appropriate to enable Lender to sell and deliver good and clear title to the UCC Collateral to the buyer at the sale as herein provided. Unless the UCC Collateral is of the type customarily sold on a recognized market, Lender will give Borrower at least ten (10) days' notice of the time and place of any public sale of such UCC Collateral or of the time after which any private sale or any other intended disposition thereof is to be made. The requirements of reasonable notice shall be met if such notice is given to Borrower at least ten (10) days before the time of the sale or disposition. Lender may buy at any public sale and, if the UCC Collateral is of a type customarily sold in a recognized market or is a type which is the subject of widely distributed standard price quotations, it may buy at private sale. Unless Lender shall otherwise elect, any sale of the UCC Collateral shall be solely as a unit and not in separate lots or parcels, it being expressly agreed, however, that Lender shall have the absolute right to dispose of such UCC Collateral in separate lots or parcels. Lender shall further have the absolute right to elect to sell the UCC Collateral as a unit with, and not separately from, the Land and Improvements constituting a portion of the Mortgaged Property. The net proceeds realized upon any disposition of the UCC Collateral, after deduction for the expenses of retaining, holding, preparing for sale, selling and the like and the attorneys' fees and legal expenses incurred by Lender shall be applied towards satisfaction of such of the Obligations secured hereby, and in such order of application, as Lender may elect. If all of the Obligations are satisfied, Lender will account to Borrower for any surplus realized on such disposition.

SECTION 3
CONDITIONS TO LOAN

3.1 Conditions to Initial Funding of the initial proceeds of the Loan on the Closing Date The obligation of Lender to disburse the Closing Date Advance of the proceeds of the Loan is subject to the prior or concurrent satisfaction of the conditions set forth below in this Section 3.1.

(A) **Performance of Agreements; Truth of Representations and Warranties; No Injunction** Borrower, Carveout Guarantor and all other Persons executing any Loan Document on behalf of Borrower and Carveout Guarantor shall have performed in all material respects all agreements which any of the Loan Documents provide shall be performed on or before the Closing Date. The representations and warranties contained in the Loan Documents shall be true, correct and complete in all material respects on and as of the Closing Date to the same extent as though made on and as of that date. No Legal Requirements shall have been adopted,

no order, judgment or decree of any Governmental Authority shall have been issued or entered, and no litigation shall be pending or threatened, which in the reasonable judgment of Lender would enjoin, prohibit or restrain, or impose or result in an adverse effect upon the making, borrowing or repayment of the Loan or the execution, delivery or performance of the Loan Documents. No Default or Event of Default shall have occurred and then be continuing.

(B) **Opinion of Counsel**. Lender shall have received and approved written opinions of counsel for Borrower, Carveout Guarantor, Rate Cap/Swap Counterparty and Borrower Representative including such Persons' local and Delaware counsel, in form and substance reasonably satisfactory to Lender and its counsel, dated as of the Closing Date. By execution of this Agreement, Borrower authorizes and directs its counsel to render and deliver such opinions to Lender. Notwithstanding anything to the contrary herein, a written opinion of counsel for the Rate Cap/Swap Counterparty shall only be required at such time as Borrower enters into a Rate Cap/Swap Agreement.

(C) **Loan Documents**. On or before the Closing Date, Borrower shall execute and deliver and cause to be executed and delivered, to Lender all of the Loan Documents, each, unless otherwise noted, dated the Closing Date, duly executed, in form and substance satisfactory to Lender and in quantities designated by Lender (except for the Note, of which only the original shall be executed). Borrower hereby authorizes Lender to file the Financing Statements in such filing offices as Lender reasonably determines is necessary to perfect Lender's security interest in the Collateral. Lender shall provide notice of any filings made outside of the Commonwealth of Virginia and the State of Delaware.

(D) **Intentionally Omitted**.

(E) **Insurance Policies and Endorsements**. Lender shall have received and approved certificates of insurance or copies of the original policies of insurance required to be maintained under this Agreement and the other Loan Documents, together with endorsements satisfactory to Lender naming Lender as additional insured under such policies.

(F) **Organizational and Authorization Documents**. Lender shall have received all documents reasonably requested by Lender, including all Organizational Documents, with regard to the due organization, existence, internal governance, power and authority, due authorization, execution and delivery, authorization to do business and good standing of Borrower, Carveout Guarantor, Borrower Representative and such other Persons as Lender may reasonably designate, the validity and binding effect of the Loan Documents and other matters relating thereto, in form and substance satisfactory to Lender.

(G) **Closing Statement**. Lender shall have received and approved a closing and disbursement statement executed by Borrower with respect to the disbursement of the proceeds of the Loan.

(H) **Financial Statements**. Lender shall have approved financial statements of Carveout Guarantor for the last two (2) years or portion thereof, which financial statements Lender acknowledges are available on EDGAR.

(I) **Intentionally Omitted**.

(J) **Appointment of Agent for Service of Process**. Lender shall have received evidence reasonably satisfactory to it that Incorporating Services, Ltd. has been appointed as Borrower's, Carveout Guarantor's and Borrower Representative's agent for service of process in the State of Delaware.

(K) **Material Contracts and Other Agreements**. Lender shall have received and approved true, correct and complete certified copies of all Material Contracts, all other operating agreements, service contracts and equipment leases and all permits, licenses and documents pertaining to the Proprietary Rights relating to all or any of the Mortgaged Property.

(L) **Environmental Assessments, Physical Condition Reports and Lender's Inspection and Appraisal**. Lender shall have received and approved the Environmental Reports and Physical Condition Reports relating to the Mortgaged Property, together with letters from the preparer(s) thereof permitting Lender (and Persons designated by Lender) to rely upon the Environmental Reports and Physical Condition Reports. Lender shall have completed its site visit(s) to the Mortgaged Property and be satisfied with such visit(s). Lender shall have received an independent appraisal of the Mortgaged Property from a state certified appraiser approved by Lender and made in accordance with the requirements of FIRREA, which indicates the fair market value of the Mortgaged Property and is satisfactory to Lender in all respects**.**

(M) **Title Policy, Survey, Searches, Perfection and Priority**. Lender shall have received and approved (i) the Title Policy and (ii) a plat of survey of the Land, Improvements and other components of the Mortgaged Property constituting real estate certified to such Persons as Lender may designate and prepared in accordance with Lender's requirements. Lender shall have received and approved copies of UCC financing statement, judgment, tax lien, bankruptcy and litigation search reports of such jurisdictions and offices as Lender may reasonably designate with respect to Borrower, Carveout Guarantor, Borrower Representative and such other Persons as Lender may reasonably require. Lender shall have received such other evidence as Lender may reasonably require confirming that Lender has a perfected first priority security interests and Lien upon the Collateral.

(N) **Builder's Risk and Other Insurance**. Borrower shall have obtained or caused Contractor to have obtained Builder's Risk Insurance covering the design, development, and Construction and equipping of the Project through the Completion of Construction as required by the provisions of Section 5.4 hereof and shall have delivered a certificate of such insurance to Lender. Borrower shall have furnished to Lender evidence satisfactory to Lender that Borrower and any Contractor performing any Construction maintains adequate workmen's compensation insurance, employer's liability insurance and commercial general liability insurance (including contractual liability), and that the commercial general liability insurance shall name Lender as an additional insured, with liability insurance limits approved by Lender in its sole and absolute discretion.

(O) **Intentionally Omitted**.

(P) **Commitment Fee**. Lender shall have received its Commitment Fee.

(Q) **Other Documents and Deliveries**. Borrower shall have delivered such other documents and deliveries reasonably requested by Lender.

(R) **Legal Fees; Closing Expenses**. Borrower shall have paid any and all legal fees and expenses of counsel to Lender, together with all recording fees and taxes, title insurance premiums, and other costs and expenses related to the Loan.

(S) **Equity**. Borrower shall have demonstrated to Lender's satisfaction that Borrower has satisfactorily invested or has committed to invest not less than Seventy-Two Million Six Hundred Fifteen and No/100 Dollars ($72,615,000) (the "**Equity Contribution**") in the Mortgaged Property; provided, however, the Equity Contribution may be made in a series of installments with each Request for Advance such that (A) Borrower pays for forty percent (40%) of the amount requested in each applicable Request for Advance on a pari passu basis with Lender and (B) subject to delays in Construction due to Force Majeure (other than relating to Borrower's financial condition or having sufficient funds), no later than (i) the last day of the twelfth month from the Closing Date, (a) Borrower shall have invested at least seventy-five percent (75%) of the Equity Contribution and (b) Lender shall have advanced at least seventy-five percent (75%) of the proceeds of the Loan in accordance with the Development Budget and the terms and provisions of this Agreement, and (ii) the last day of the eighteenth month from the Closing Date, (a) Borrower shall have fully funded the Equity Contribution and (b) all proceeds of the Loan have been advanced in accordance with the Development Budget and the terms and provisions of this Agreement. Borrower's investment of the Equity Contribution (and any portion thereof), which shall be at least forty percent (40%) of all Hard Costs and Soft Costs incurred to date of each Request for Advance, and shall be demonstrated to Lender by submitting to Lender with each Request for Advance the same or similar information required for a Development Advance under Section 3.2, but indicating equity is being used to pay such Hard Costs and/or Soft Costs demonstrated thereby (each a "**Monthly Equity Submission**"). Lender will indicate in writing its approval of each Monthly Equity Submission within the same timeframe required for Development Advances under Section 3.2. Lender will cause Lender's Construction Consultant to review the Construction evidenced by each Monthly Equity Submission and submit monthly reports in the same manner as required by this Agreement for Development Advances. Upon approval of the Monthly Equity Submission, Lender will fund sixty percent (60%), on a pari passu basis, of the total amount indicated on the Monthly Equity Submission with each Development Advance.

(T) **Intentionally Omitted**.

(U) **Master Lease**. Lender shall have received a duly executed Master Lease in form and substance acceptable to Lender.

(V) **Photographs**. Borrower shall provide Lender with reproducible aerial or exterior photographs of the Land and Improvements that are in Borrower's possession. Notwithstanding anything to the contrary in this Agreement, Borrower shall not be required to provide Lender, and Lender shall not be permitted to take or obtain any photographs of the interior of the Improvements.

(W) **Utilities**. Borrower shall have delivered to Lender, and Lender shall have approved availability letters, drawings, easement agreements and/or permits, as applicable, from appropriate utility companies or applicable Governmental Authorities that the Mortgaged Property will have adequate water, gas and electrical supply, storm and sanitary sewerage facilities, any other required public utilities, and means of access between the Improvements and public rights-of-way. Borrower also shall have furnished to Lender evidence satisfactory to Lender that no such supplies or facilities will be delayed or impeded by virtue of any requirements under any applicable Legal Requirements, that all such facilities comply with any and all applicable Legal Requirements, ordinance, regulations, restrictive covenants and requirements of applicable Governmental Authorities (including zoning laws and environmental regulations) and that in the event of any damage or destruction of all or a portion of the Mortgaged Property caused by fire or other casualty, such applicable Legal Requirements will permit the restoration or repair of such utilities and facilities and that the source of supply for each of the foregoing utilities is from the public right of way adjacent to the Mortgaged Property or in, on, under or through permanent easement rights therefor benefiting the Mortgaged Property. If any of such facilities are located on land beyond the Mortgaged Property, other than land which has been dedicated to the public or to the utility which is to furnish the service, Borrower shall have forwarded to Lender evidence satisfactory to Lender of the existence of permanent easement rights therefor benefiting the Mortgaged Property which easement rights shall be covered by the lien of the Mortgage and which easement shall be insured under the Title Policy.

(X) **Licenses, Permits and Approvals**. Lender shall have received and approved a building permit for the Construction or, to the extent not so received, then all building permits necessary and applicable to the Construction then being conducted, in which event Borrower covenants and agrees to thereafter obtain such other required building permits needed for each portion of the Construction prior to commencing such portion of Construction and deliver copies thereof to Lender. Borrower will have obtained and delivered to Lender all other applicable licenses, permits and approvals as Lender or any Governmental Authority may require or, to the extent not so received, then all other applicable licenses, permits and approvals necessary and applicable to the Construction then being conducted, in which event Borrower covenants and agrees to thereafter obtain such other required licenses, permits and approvals needed for each portion of the Construction prior to commencing such portion of Construction and deliver copies thereof to Lender. Evidence satisfactory to Lender that the Project may be completed in accordance with applicable Legal Requirements, and all rules and regulations promulgated thereunder and that any such Legal Requirements are in full force and effect and Borrower is in full compliance therewith.

(Y) **Zoning**. Lender shall have received evidence satisfactory to Lender as to the compliance of the Land and Project with all applicable Legal Requirements. Lender shall have received and approved a zoning certification letter from the applicable Governmental Authorities or a third party zoning report that the Project, as described in the Plans and Specifications will, when built, be in compliance with all applicable zoning and land use laws.

(Z) **Development Budget**. Lender shall have received the Development Budget listing all Hard Costs, all Soft Costs, and Land acquisition costs, if applicable, all in a form and substance with such level of detail for each line item therein acceptable to Lender.

(AA) **Initial Development Contracts**. Lender shall have received and approved: (i) a copy of each Construction Contract, together with a list of a Subcontractors and copies of all Subcontracts relating to the Construction which Lender may request, (ii) a copy of each Architect's Agreement, and (iii) a copy of each MEP Engineer's Agreements, each certified by Borrower to be a true, correct and complete copy of each such agreement, all such agreements and contracts being in a form and substance acceptable to Lender and consistent with the Development Budget. Each Contractor, Architect and MEP Engineer shall have consented to the collateral assignment of their respective contracts and agreements pursuant to the form of consent attached hereto as **Exhibit C**, or otherwise satisfactory in form and substance to Lender.

(BB) **Contractor's Statement**. Lender shall have received and approved a statement from the Contractor setting forth, as of a current date, a description of all subcontracts and purchase orders in excess of $500,000.00 issued by such Contractor, relating to the development, construction and equipping of the Project, setting forth the name or names of the Contractor, Subcontractor and material supplier in question, the date of the Contract and purchase order in question and of any supplements or amendments thereto, the scope of the work covered thereby, and the aggregate amounts payable to the Contractor or material supplier thereunder. Any statement furnished to satisfy the requirements of this paragraph need not contain any information which is included in the Request for Advance furnished pursuant to Section CC below.

(CC) **Request for Advance**. Lender shall have received and approved the initial complete Request for Advance from Borrower covering all work done for the Project, together with waivers of lien and subordination of lien covering all work and material for which payments have been made by Borrower prior to the initial advance of the Loan.

(DD) **Plans and Specifications**. Lender shall have received and approved two (2) sets of the Plans and Specifications for the Construction of the Project.

(EE) **Intentionally Omitted**.

(FF) **Lender's Consultant's Report**. Lender's Construction Consultant shall have provided Lender with the Lender's Consultant's Report, such report to be satisfactory to Lender.

(GG) **Development Schedule and Development Draw Schedule**. Lender shall have received and approved the Development Schedule and Development Draw Schedule.

3.2 Subsequent Advances.

The obligation of Lender to disburse proceeds of the Loan subsequent to the Closing Date Advance is subject to the prior or concurrent satisfaction of the conditions precedent to such subsequent advances set forth below in this Section 3.2.

(A) **Advances**. Following the Closing Date Advance of the Loan made pursuant to Section 3.1 above, so long as no Event of Default or Default exists, within ten (10) Business Days after Lender's receipt of a complete Request for Advance (or otherwise as set forth in this Agreement), Lender shall, on the terms and conditions set forth in this Section 3.2 and, when applicable Section 3.3 and 3.4, make Development Advances (including the Initial Advance) to

pay a portion of Borrower's Hard Costs and Soft Costs incurred in connection with the Completion of Construction for the Project when such terms and conditions are satisfied or waived in writing by Lender. Additionally, to the extent Lender did not receive all deliveries and provide all approvals relating to the Project as set forth in Section 3.1 (N), (W), (X), (Y), (Z), (AA), (BB), (CC), (DD), (FF) and (GG) (collectively, the "**Initial Closing Development Conditions**") and Lender has waived in whole or in part such Initial Closing Development Conditions and made the initial disbursement of the Loan pursuant to Section 3.1, then Lender shall have no further obligations to make one or more subsequent disbursements of the Loan for any portion of the development, design or Construction of the Project for which such Initial Closing Development Conditions have not been satisfied and obtained. To the extent Lender has received and approved the Initial Closing Development Conditions applicable to a portion of the development, design and Construction of the Project, and all other conditions and requirements applicable thereto as set forth in this Section 3.2, and as applicable 3.3 and 3.4, Lender shall make disbursements of the Loan for such purposes. The Development Advances shall be made by Lender in accordance with the terms and conditions of this Section 3.

(B) **Intentionally Omitted**.

(C) **Intentionally Omitted**.

(D) **Loan Balancing; Right to Require Deposits**. Notwithstanding anything to the contrary herein, it is expressly understood and agreed that the Loan shall at all times be "in balance." The Loan shall be deemed to be "in balance" only at such time and from time to time, as Lender may reasonably determine that either: (a) the then undisbursed portion of the Loan (giving effect to all escrow reserves, retainage and that portion of the Hard Cost Contingency and Soft Cost Contingency available for Borrower's then current use as permitted by this Agreement) equals or exceeds the amount necessary to pay for (i) all Hard Costs for work done and not theretofore paid for or to be done in connection with the Completion of Construction in accordance with the Plans and Specifications based on "Lender's Estimate of Development Costs" (as defined below), and (ii) all Soft Costs and other costs payable by Borrower under this Agreement or otherwise in connection with the Construction of the Project and equipping of the Project until Completion of Construction of the Project also based on Lender's Estimate of Development Costs, in each case based on the Development Budget (as modified to reflect cost savings and/or reallocations to the extent permitted hereunder), or (b) the then undisbursed portion of the Loan does not equal or exceed the foregoing described respective amount or amounts, but Borrower either: (x) has deposited with Lender or into a construction escrow held by Lender cash sufficient to bring the Loan "in balance," (y) has, with Lender's prior approval (which approval may be given or withheld at Lender's reasonable discretion) delivered to Lender financial assurances of Borrower's ability to complete and fund all Hard Costs, Soft Costs and Land acquisition costs, if any (which assurances shall be determined by Lender in its reasonable discretion, and which may include, letters of credit, cash or cash equivalent), or (z) has, with Lender's prior approval (which approval may be given or withheld in Lender's sole discretion) agreed to fund, and is funding, the deficiency from outside sources, as payments for such Hard Costs, Soft Costs, and Land acquisition costs, if any, and, until the Loan is in balance, prior to any further Development Advances. All funds deposited by Borrower with Lender will be disbursed by Lender for Hard Costs and Soft Costs in accordance with the Development Budget (as it may be modified by Lender's Estimate of Development Costs) prior to any further

Development Advance. Interest shall be paid to Borrower with respect to any such amounts deposited with Lender to the extent the financial institution with which such funds are deposited provides interest thereon. Borrower agrees that Lender shall have the right to make from time to time in Lender's discretion an estimate of all Hard Costs and Soft Costs which estimate is herein sometimes called "Lender's Estimate of Development Costs." In the first instance, Lender's Estimate of Development Cost shall be made upon the basis of the Construction Contracts, executed Subcontracts and purchase orders, or, in those instances where Subcontracts or purchase orders have not yet been let, upon the basis of either written bids with responsible contractors, tradesmen and material suppliers obtained by Borrower and approved by Lender, or Lender's estimate of such costs where written bids have not been obtained, and shall take into account all Soft Costs and other costs and expenses to be paid by Borrower hereunder through the Completion of Construction, with such allowances for reserves and contingencies as Lender shall deem appropriate in its discretion for the Project. Thereafter, Lender's Estimate of Development Costs will take into account, in addition to the Construction Contract, Subcontracts and purchase orders, and other considerations which Lender, in its sole judgment, deems relevant or likely to have an impact upon all Hard Costs and Soft Costs for the Project. Borrower agrees that if for any reason the amount of undisbursed proceeds of the Loan shall at any time be or become insufficient for the purposes described herein, regardless of how such condition may have been brought about, upon ten (10) Business Days' written notice to Borrower during which time Borrower shall have the right to bring the Loan into balance as described above, and upon Borrower's failure to bring the Loan into balance, it shall be an Event of Default hereunder and, in addition to any other rights or remedies of Lender hereunder or at law or in equity, Lender shall not be obligated to disburse the Loan during the period of such insufficiency. Borrower agrees that the determination of Lender's Estimate of Development Costs and the determination of whether the Loan is "in balance" shall be done on a line item basis and not on a gross or aggregate funds available basis, it being understood that all limitations on reallocation of line items as set forth herein shall be observed and taken into account when making Lender's Estimate of Development Costs and determining whether the Loan is "in balance."

(E) **Funding Limitations.** Lender shall have no obligation to make any Development Advance for Hard Costs after the earlier of (i) the Project Completion Date, (ii) the Required Completion Date or (iii) June 30, 2008.

(F) **Limitations of Requests.** Borrower shall submit a Request for Advance no more frequently than once per month with no more than 45 days between each request. Lender shall make no more than one Development Advance per month.

(G) **Request for Advance.** Borrower shall have submitted to Lender an executed completed Request for Advance.

(H) **Required Lien Waivers.** Borrower shall have delivered to Lender all Required Lien Waivers deemed necessary by Lender and the Title Company for services and materials provided in connection with the development, design and Construction through the date of the applicable Development Advance.

(I) **Inspection Approval.** With respect to Development Advances for Construction, the Architect or other design professional, as appropriate, involved with such advance shall have

certified to Lender in form required by Lender and included as part of**Schedule 1.1(G)** that the requested Development Advance is for the payment of construction costs incurred in connection with Construction which has been completed in accordance with the Plans and Specifications for the Project.

(J) **Payment Supporting Information.** Borrower shall provide Lender with true and correct copies of all invoices and bills for Hard Costs and Soft Costs (and Land acquisition costs, if any) incurred in connection with the then completed development, design and Construction of the Project, and there shall be no material deviation from the Development Budget (except with Lender's prior written approval) in connection with the development, design and Construction of the Project which has been completed to date. Specifically, no advance (or advances, as appropriate) for a specific line item in the Development Budget for the Project, including any retainage for said line item, will exceed the amount of said line item in the Development Budget for the Project. For purposes of this Section 3.2, costs shall be deemed to have been "incurred" by Borrower at the following times: (i) Hard Costs – when the labor has been performed or the materials have been supplied and incorporated into the Mortgaged Property, payment therefore has been requested by the contractor or supplier thereof, and such contractor or supplier is entitled thereto; (ii) Soft Costs – when such costs are due and payable (or have been paid by Borrower) and the services relating thereto have been rendered or the value thereof has been received by Borrower; and (iii) Land acquisition costs – when paid.

(K) **Verification.** All Hard Costs, Soft Costs and Land acquisition costs, if any, are to be certified by Borrower in accordance with the Request for Advance and verified by Lender and, as requested by Lender from time to time with respect to Hard Costs by Lender's Construction Consultant as having been incurred for the Project. Verification of the monthly progress of the development, design and Construction, the Hard Costs and the Soft Costs which have been incurred by Borrower, and the estimated total Hard Costs and Soft Costs of Completion of Construction may be made by Lender in its reasonable discretion. All Hard Costs and Soft Costs (and Land acquisition costs, if any) shall be subject to verification and approval by Lender not to be unreasonably withheld or delayed.

(L) **Intentionally Omitted**.

(M) **Retainage.** Except as provided below, Borrower shall not request in a Request for Advance, but rather withhold payment from Contractors as evidenced in each Request for Advance, the amount of 10% of the 'Contract Sum' under such Construction Contract eligible for payment (the "**Retainage**") to each Contractor until such Contractor's portion of the Construction of the Project has achieved Completion of Construction. To the extent permitted by a Construction Contract for the Project, Borrower may request in writing that Lender approve any of the following actions following completion of the applicable requirements set forth below.

(i) Upon or following the Construction of any Subcontractor being fifty percent (50%) complete, no further Retainage being withheld on payments made to Contractor for such Subcontractor's work performed following such fifty percent (50%) (or greater as requested) completion of such Subcontractor's work.

(ii) Upon or following all Construction being fifty percent (50%) complete, no further Retainage being withheld on payments made to Contractor for Contractor's general conditions items and fee, as applicable, which apply to Construction following such fifty percent (50%) (or greater, as requested) completion of all Construction.

(iii) Upon the final Completion of Construction of any Subcontractor's portion of Construction, the release of all or a portion of the Retainage owed to such Subcontractor; provided that if the request is for a release of all such Retainage owed to such Subcontractor, then such request must be accompanied by all lien waivers and other deliveries required for final payment under both the applicable Subcontract and Section 3.3 below.

Lender, acting in its reasonable discretion and under no obligation to do so, may approve or disapprove any such request. It shall be a condition precedent to any such approval by Lender that all applicable sureties consent in writing to such change in Retainage. If so approved, such request shall thereafter be specifically set forth in applicable Request for Advance and deliveries related thereto. Lender shall not be obligated to release or reduce the Retainage for Contractor or on behalf of any Subcontractor who has performed all or any portion of the Construction until all of the Construction has achieved Completion of Construction.

(N) **Payments**. Lender may make Development Advances (i) payable directly to Borrower, or (ii) payable jointly to Borrower and to the applicable party for whom payment is requested. Lender may elect to make all Development Advances through a construction or other escrow agreement with the Title Company.

(O) **Representations and Warranties**. Borrower shall be deemed to have remade, as of the date of each submitted Request for Advance, each and every representation and warranty made by Borrower in this Agreement and in every other Loan Document, and every such representation and warranty shall be true and correct in all material respects at the time of each Development Advance.

(P) **Title Endorsement**. Borrower shall have delivered to Lender an endorsement to the Title Policy, which endorsement: (i) insures Lender against filed and unfiled mechanics' liens; (ii) increases the coverage under the Title Policy to the lesser of (x) full principal amount then advanced under the Loan and (y) the maximum amount of coverage under the Title Policy; (iii) insures that, since the date of the Title Policy or the most recent endorsement to the Title Policy, there has been no change in the vesting of title to the Premises (except for the lien of unpaid taxes, not yet due and payable), and (iv) changes the effective date of the Title Policy to the date of the advance being made by Lender, all in a form acceptable to Lender.

(Q) **Compliance**. With respect to Hard Costs for the Project, Borrower shall have provided Lender with (i) evidence reasonably satisfactory to Lender that the Construction complies with all building, zoning and other Legal Requirements, (ii) all necessary Licenses and Permits, approvals and consents required for the use, occupancy and operation of the Land and Improvements, as altered by the Construction for the Project as applicable to the then current state of the Construction, and (iii) evidence satisfactory to Lender that all Construction completed on the date of the Request for Advance has been inspected and approved by each

Governmental Authority and by each other person or entity (including any tenants) having the right to inspect and approve such Construction, in each case as is required, and (iv) all other elements required for the Construction to achieve Construction Legal Compliance through and including the date of the requested Development Advance.

(R) **Additional Information**. Borrower shall have provided Lender with such other information and material relating to the development, design, entitlements, and Construction of the Project (as appropriate to the stage of development) as Lender reasonably requests, which information and/or material is within Borrower's possession or readily obtainable by Borrower with minimal expense. Additionally, Borrower shall have satisfied such other conditions to any Development Advance which Lender may reasonably require or impose.

(S) **Foundation Survey**. With respect to foundations and footings for the Project, Borrower shall, within thirty (30) days after completing such foundation and footing work for the Project and as a condition precedent to Development Advances made after such thirty (30) days period, deliver to Lender a foundation survey satisfactory to Lender showing the location of such foundations and footings and confirming that none of such foundations, footings or other elements of the Project at the time of such survey encroach upon any easements or adjoining properties or violate any building lines or any applicable Legal Requirements.

(T) **Construction Consultant's Report**. With respect to Hard Costs for the Project, Lender shall have received a written report from Lender's Construction Consultant with respect to the applicable Request for Advance stating: (i) that, in the opinion of Lender's Construction Consultant, all Change Orders and modifications or amendments to the Plans and Specifications, any Development Budget or any Development Schedule required hereby to be approved by Lender are satisfactory to Lender's Construction Consultant; (ii) that, in the opinion of Lender's Construction Consultant, the Construction theretofore completed has been completed in accordance with the Plans and Specifications; (iii) what percentage of the Construction, in the aggregate, has been completed as of the date of the applicable Request for Advance; (iv) the extent to which, if any, the undisbursed Development Advances for the Hard Costs and Soft Costs not yet incurred but necessary for Completion of Construction are not sufficient to permit Completion of Construction in accordance with the Development Schedule; and (v) whether Completion of Construction can, in Lender's Construction Consultant's opinion, be completed prior to the Project Completion Date; provided, however, Lender shall use its best efforts to require Lender's Consultant to diligently review such Request for Advance.

(U) **Change Order**. No Change Orders, other than Permitted Construction Change Orders, shall have been made to any Construction Contract, Architect's Agreement, MEP Engineer Agreement, the Entitlement Documents, the Plans and Specifications or the Development Budget without obtaining Lender's prior written consent to such Change Order. All Change Orders shall have been made in accordance with all Legal Requirements. Borrower shall have promptly notified Lender of any anticipated changes in line items of the Development Budget, which if approved, would result in a net increase in the total amount of the Development Budget. Any agreement, other than in connection with a Permitted Construction Change Order, which causes a net increase in the Development Budget shall require Lender's prior written consent.

(V) **No Stop Notice.** No stop notice (whether bonded or not) shall have been served upon or otherwise delivered to Lender in connection with the Construction or otherwise in connection with the Loan, unless Borrower shall have (a) paid and discharged the same using funds other than Loan funds, (b) effected the release thereof by delivering to Lender a surety bond complying with the requirements of applicable Legal Requirements for such release, or (c) taken such other actions as Lender may approve in writing to release Lender from any obligation or liability with respect to such stop notice.

(W) **No Liens**. No claim of lien, notice and claim of mechanic's lien or other similar document or instrument shall have been recorded against the Mortgaged Property or any portion thereof, unless Borrower shall have (a) paid and discharged the same, (b) effected the release thereof by delivering to Lender a surety bond complying with the requirements of applicable Legal Requirements for such release, (c) delivered to Lender the unconditional commitment of the Title Company to indemnify, defend and hold Lender and the Mortgaged Property harmless from and against all loss, liability, expense, claims, actions and costs (including attorneys' fees and costs) arising out of or in connection with such claim of lien, notice or claim of mechanics' lien, or other similar document or instrument, or (d) taken such other actions as Lender may approve in writing to release Lender from any obligation or liability with respect to such claim of lien, notice and claim of mechanic's lien, or other similar document or instrument.

(X) **Stored Materials**. Disbursements for materials stored offsite in the United States of America or delivered to the site but not yet incorporated into the Project ("**Stored Materials**") shall be subject to Lender's having received satisfactory evidence that the following are true:

(i) The Stored Materials are ready for installation and appropriate for purchase during the then current stage of Construction, unless otherwise approved in writing by Lender in its reasonable discretion;

(ii) The Stored Materials are stored either (1) at the Project site, (2) in a bonded public warehouse or (3) any other facility or location reasonably acceptable to Lender, and such Stored Materials are protected in a manner reasonably acceptable to Lender against theft or damage;

(iii) Ownership of the Stored Materials for which Lender has previously disbursed funds has vested in Borrower free of all security interests except the liens evidenced by the Loan Documents and no other Person has asserted that it has any rights to or interest in such Stored Materials;

(iv) Borrower has caused the Contractor and any other Person that possesses, holds or controls access to any Stored Materials, to execute and deliver to Lender a bailment letter in the form of either **Exhibit D** or **Exhibit E**, as applicable to such situation;

(v) Without limiting any of the foregoing provisions of this Section 3.2, Lender has a perfected, first-priority security interest in the Stored Materials for which Lender or any other Person has previously disbursed funds;

(vi) The Stored Materials are covered by insurance as required by Section 5.4;

(vii) The materialmen have delivered lien waivers and invoices for the full amount of the Stored Materials for which Lender or any other Person has previously disbursed funds; and

(viii) Architect or another party approved by Lender has provided a certification in form and substance satisfactory to Lender verifying the stored materials are in conformance with the Plans and Specifications and containing the location of and a comprehensive inventory list of such Stored Materials based upon a physical inspection, such certification shall be accompanied by digital pictures of such Stored Materials.

The foregoing provisions are not intended to apply to disbursements of Loan proceeds which are made for the purpose of making customary deposits which are required by certain vendors with respect to purchase orders of construction materials, so long as the same have been approved by Lender which approval shall not be unreasonably withheld; provided, however, that if and when any materials are paid for in full by Borrower the provisions of this Section 3.2 above shall apply.

(Y) **Deposits**. Disbursements of Loan Proceeds for deposits which are required by vendors with respect to purchase orders of construction materials requested by Borrower shall only be considered by Lender to the extent (i) specifically and separately set forth in the Development Budget, including supporting schedules thereof, (ii) the deposit is funded for work or materials within the United States of America, and (iii) Lender has received evidence satisfactory to Lender verifying the requirements for and amount of such deposit.

3.3 Conditions to Final Development Advance for Construction. For each Construction Contract, Lender shall make the final disbursement of the Loan for costs of the Construction performed under the Construction Contract for the Project as requested in a Request for Advance provided that no Event of Default then exists and that in addition to the requirements set forth in Section 3.2 above, all of the following conditions precedent thereto set forth in Section 3.3 have been complied with and satisfied, and Borrower agrees to satisfy the following conditions precedent on or before the Required Completion Date, in each case for such Construction included in such Construction Contract:

(A) **Final Completion**. Such Construction shall be substantially completed in accordance with the Plans and Specifications, and except for the amount then being requested, all costs and expenses thereof have been paid in full.

(B) **Lien Waiver**. Borrower has furnished Lender with final lien waivers and certifications in accordance with Section 3.1(CC) as to the Construction from such Contractor, its Subcontractors including material suppliers who have provided materials, labor or both, with respect to the Construction performed by each Contractor.

(C) **As-Built Plans and Specifications**. If then prepared and finalized Borrower shall have delivered to Lender one (1) final and complete set of the final as-built Plans and Specifications, in an electronic form of Adobe PDF (or a Lender approved equivalent), including operations and maintenance manuals, warranties and other applicable close-out documentation, showing all changes from the Plans and Specifications approved by Lender as of the date

thereof; provided, however, if the foregoing are not completed as of the date of the final disbursement, Borrower shall have an additional ninety (90) days to deliver the same to Lender.

(D) **No Proceedings**. There shall be no governmental actions, proceedings or investigations pending or overtly threatened (evidencing an intent to sue or to commence such a proceeding or investigation) against or filed by Borrower which might be reasonably expected to: (i) have a Material Adverse Effect on the Improvements or the value of the Improvements or (ii) adversely impair Lender's security for full and timely performance of all obligations hereunder.

(E) **No Casualty**. The Improvements shall be undamaged by fire or other cause (unless Restoration is taking place as permitted by and pursuant to the terms and conditions of this Agreement) and there shall be no material condemnation or eminent domain proceedings pending or overtly threatened (evidencing an intent to sue or to commence such a proceeding or investigation) against the Mortgaged Property.

(F) **Borrower's Certificate**. Borrower shall have furnished to Lender a certificate from Borrower currently dated, certifying that: (i) no notices from any Governmental Authority of any material claimed violations of ordinances arising from the construction or operation of the Improvements which have not been cured were served upon Borrower or, to Borrower's best knowledge, any contractor or subcontractor, including any Contractor or any Subcontractor, or their respective agents or representatives and (ii) Borrower is not aware of any circumstances which could be reasonably be expected to give rise to the issuance of any such notice of material claimed violation.

3.4 Conditions to Final Development Advance. Lender shall make the final disbursement of the Loan for costs in the Development Budget relating to the development, design, entitlement, and Construction of the Project as requested in a Request for Advance provided that no Event of Default then exists and that, in addition to the requirements set forth in Sections 3.2 and 3.3 above, all of the following conditions precedent thereto set forth in this Section 3.4 have been complied with and satisfied, and Borrower agrees to satisfy the following conditions precedent on or before the Required Completion Date

(A) **Lien Waivers**. Borrower has furnished Lender with final lien waivers, and as applicable sworn statements, from all Contractors, Architects and MEP Engineers who have provided development, design, or Construction work or services for the Project.

(B) **As-Built Survey**. Lender shall have received two (2) final as-built surveys in form satisfactory to Lender, each of which complies with all of Lender's survey requirements.

(C) **Title Endorsement**. Lender shall have received a final and comprehensive endorsement to the Title Policy which includes an ALTA Form 3.1 zoning endorsement (with parking and loading dock coverage) and deletes the "pending disbursements" paragraph, if any, in the Title Policy.

(D) **Certificate of Occupancy.** Borrower shall have furnished Lender with: (i) if required for occupancy by applicable Legal Requirements, a final unconditional certificate of occupancy for all portions of the Improvements from the applicable Governmental Authority

having jurisdiction thereof, or a temporary certificate of occupancy for all portions of the Improvements as to which such final certificate of occupancy has not been issued, which temporary certificate of occupancy is subject only to conditions which are customary for similar projects in the same geographic location and is otherwise satisfactory to Lender in its sole discretion; and (ii) such other certificates, approvals, Licenses and Permits of each Governmental Authority required (or customarily procured) concerning the then existing construction, use, occupancy and operation of the Improvements and that the Improvements, as constructed, are in compliance with all applicable Legal Requirements of all applicable Governmental Authorities, including zoning regulations and building restrictions, environmental requirements, occupational safety and health requirements and similar laws, ordinances and regulations. Notwithstanding the foregoing, this Section 3.3(D) shall not apply to the Phase II Build-Out.

(E) **Other Consents**. Borrower shall have furnished written consents of all sureties, public bodies, or others which either posted bonds or are holding deposits or security for damage or improper performance of work on property other than the Land.

(F) **Other Requirements**. All other requirements of this Agreement for disbursement of Loan proceeds shall have been satisfied.

Notwithstanding anything to the contrary herein, so long as the other conditions to the final advance are otherwise satisfied, in the event of any Budget Savings, Borrower's Request for Advance associated with the final disbursement of the Loan may include an amount in excess of sixty percent (60%) of the actual costs in such Request for Advance, provided, however, in no event shall the aggregate of (a) the final Development Advance and (b) all prior Development Advances exceed sixty percent (60%) of the Hard Costs and Soft Costs identified on the Development Budget approved by Lender as of the Closing Date.

3.5 Performance of Development.

(A) **Construction**. For the Project, Borrower shall: (i) cause Completion of Construction in a good and workmanlike manner and Construction Legal Compliance not later than the Required Completion Date; (ii) commence the development, design and Construction no later than ten (10) days following the Closing Date and pursue the development, design and Construction diligently to completion; (iii) after commencement of the development, design and Construction, not permit cessation of said development, design and Construction for a period in excess of ten (10) consecutive Business Days without the prior written consent of Lender; (iv) cause the progress of the development, design and Construction to adhere, without deviation, with the Development Schedule; (v) complete the development, design and Construction and construct the Project entirely on the Land and so as not to encroach upon any easement, right-of-way or land of others, and so as to not violate any set-back lines, applicable public or private use restrictions, other restrictions or regulations, any Legal Requirements or any other requirement of any Governmental Authority; and (vi) cause all development, design and Construction associated with the Project to be performed in accordance with all Construction Legal Compliance and only by Architects, MEP Engineers and Contractors which are approved by Lender as required by this Agreement. Notwithstanding the foregoing, such ten (10) Business Day period shall be extended, but only up to an aggregate maximum of ninety (90) days, for any event of Force Majeure.

(B) **Compliance with Plans**. Borrower shall not deviate from any Development Budget, or line item therein, and Plans and Specifications for the Project as approved by Lender in any respect beyond normal construction industry tolerances, or issue (accept or agree to) any Change Orders, other than Permitted Construction Change Orders, without the prior written consent of Lender.

(C) **Intentionally Omitted**.

(D) **Initial Development Contracts**. Borrower shall perform faithfully all of its obligations under the Construction Contracts, Architects Agreements and MEP Engineer's Agreements for the Project. Borrower shall not modify, terminate or amend any of such contracts and agreements without first obtaining the written approval of Lender not to be unreasonably withheld or delayed, except in connection with Permitted Construction Change Orders.

(E) **Compliance with Schedule**. Subject to Force Majeure delays, Borrower shall diligently perform the development, design and Construction using all commercially reasonable efforts in accordance with the Development Schedule, and each portion thereof.

(F) **Development Draw Schedule**. Without excusing Borrower's noncompliance with this Agreement, Borrower shall provide to Lender, for Lender's review and approval, an updated Development Draw Schedule, (a) concurrently with each modification of any contract or agreement associated therewith and (b) not later than thirty (30) days after the end of each Loan Quarter (until all Development Advances have been fully disbursed). Each such update shall be accompanied by a written narrative explanation setting forth, in reasonable detail, the deviations, if any, set forth in such update to the such Development Draw Schedule, as previously updated, and the reason(s) for such deviations. Each such update shall be accompanied by a certificate from the Borrower to the effect that all deviations as reflected in such updated Development Draw Schedule are permitted under this Agreement or have been expressly consented to by Lender.

3.6 Contingency; Cost Reallocation.

(A) The Development Budget shall include a "contingency" amount of not less than five percent (5%) of the total Hard Costs (which shall not include any separate contingency for or applicable to any Construction Contracts) ("**Hard Cost Contingency**"), and not less than five percent (5%) of the total Soft Costs ("**Soft Cost Contingency**"). From time to time, upon the request of Borrower and subject to the approval of Lender not to be unreasonably withheld, (a) the Hard Cost Contingency may be used at any time in any amount until twenty-five percent (25%) of the total amount has been expended and thereafter on a pro rata basis according to the percentage of total Hard Costs expended (excluding Land Costs) to pay for other Hard Costs; and (b) the Soft Cost Contingency may be used at any time in any amount until twenty-five percent (25%) of the total amount has been expended and thereafter on a pro rata basis according to the percentage of total Hard Costs expended (excluding Land Costs) to pay other Soft Costs. Upon Completion of Construction of the Project, any funds remaining in the Hard Cost Contingency line item which are attributable, in Lender's sole discretion, to verified Hard Costs savings may be, at Borrower's option, reallocated from the Hard Cost Contingency to the Soft Cost Contingency.

(B) Any savings in line item costs contained in the Development Budget, as verified and determined by Lender in its reasonable discretion, resulting from any change in the Plans and Specifications approved by Lender or realized upon completion of the Development Budget line item and thereby resulting in savings is herein called "**Budget Savings**". Budget Savings resulting from line items which are Hard Costs shall be reallocated to the Hard Cost Contingency. Budget Savings resulting from line items which are Soft Costs shall be reallocated to the Soft Cost Contingency.

3.7 **<u>Other Remedies of Lender</u>**. Upon the occurrence and during the continuance of an Event of Default, in addition to any other remedies available to Lender by the terms of this Agreement or any other Loan Document or by law, Lender may at its sole discretion: (a) complete the Construction in accordance with the Plans and Specifications (with such changes as Lender shall deem appropriate, provided, however such changes do not exceed the Development Budget), all at the risk, cost and expense of Borrower; (b) discontinue at any time the Construction; (c) engage builders, contractors, engineers, architects and others for the purpose of furnishing labor, material and equipment in connection with the Construction, which personnel may, but need not, be the same as those engaged by Borrower; (d) pay, compromise or settle any and all bills or claims incurred in connection with the Construction; (e) exercise any or any or all of its rights under the applicable Loan Documents; (f) take or refrain from taking such action with respect to the Construction as Lender may from time to time determine; and (g) through an advance of Loan proceeds, make payments due for the cost of development, design and Construction directly to any Contractor, any Subcontractor, including any material supplier or any vendor of Fixtures and Personalty, if any, Architect, MEP Engineer or other party owed by Borrower pursuant to a written agreement/contract. All such action shall be at Borrower's sole cost and expense, such sums being secured by the Mortgage.

3.8 **<u>Protection Against Liens</u>**. Borrower shall take all actions reasonably required to prevent the assertion of claims of lien against the Mortgaged Property. If any claim of lien is asserted against the Mortgaged Property by any person furnishing development or design services, or labor or materials for Construction, or sales of any portion of the Mortgaged Property, Borrower shall immediately give notice of the same to Lender and shall, promptly and in any event within ten (10) days after Lender's demand, (a) pay and discharge the same, (b) effect the release thereof by delivering to Lender a surety bond complying with the requirement of applicable Legal Requirements for such release, (c) with respect to mechanic's liens, deliver to Lender the unconditional commitment of the Title Company to indemnify, defend and hold Lender and the Mortgaged Property harmless from and against all loss, liability, expense, claims, actions and costs (including attorneys' fees and costs) arising out of or in connection with such mechanic's lien, or (d) take such other action as Lender may approve in writing to release Lender from any obligation or liability with respect to such stop notice or claim.

3.9 Nonliability of Lender.

Borrower acknowledges and agrees that:

(A) The relationship between Borrower and Lender is and shall remain solely that of borrower and lender, and Lender neither undertakes nor assumes any responsibility to review, inspect, supervise, approve or inform Borrower of any matter in connection with any of the development, design or Construction, including matters relating to: (i) the Plans and Specifications, (ii) architects, contractors, subcontractors and materialmen, or the workmanship of or materials used by any of them, or (iii) the progress of any of the Construction and its conformity with the Plans and Specifications; and Borrower shall rely entirely on its own judgment with respect to such matters and acknowledges that any review, inspection, supervision, approval or information supplied to Borrower by Lender in connection with such matters is solely for the protection of Lender and that neither Borrower nor any third party is entitled to rely on it;

(B) Notwithstanding any other provision of any Loan Document: (i) Lender is not a partner, joint venturer, alter-ego, manager, controlling person or other business associate or participant of any kind of Borrower and Lender does not intend to ever assume any such status; and (ii) Lender shall not be deemed responsible for or a participant in any acts, omissions or decisions of Borrower;

(C) Lender shall not be directly or indirectly liable or responsible for any loss or injury of any kind to any person or property resulting from any construction on, or occupancy or use of, the Mortgaged Property (except to the extent proximately caused by Lender's or Lender's agent's gross negligence or willful misconduct and/or which arises after Lender or Lender's agent takes possession or control of the Mortgaged Property by deed-in-lieu, foreclosure, or the exercise of remedies otherwise available to Lender) whether arising from: (i) any defect in any building, grading, landscaping or other onsite or offsite improvement; (ii) any act or omission of Borrower or any of Borrower's agents, employees, independent contractors, licensees or invitees; or (iii) any accident on the Mortgaged Property or any fire or other casualty or hazard thereon; and

(D) By accepting or approving anything required to be performed or given to Lender under the Loan Documents, Lender shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by Lender to anyone.

SECTION 4
REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that, after giving effect to the Loan, as of the Closing Date:

4.1 Organization, Powers, Qualification and Organization Chart. Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of its state of formation. Borrower and Borrower Representative have all requisite power and authority to own and operate its properties, to carry on its business as now conducted and proposed to be conducted, and in the case of Borrower, to enter into each Loan Document to which it is a party and to perform the terms thereof. Carveout Guarantor is a corporation, duly organized, validly existing and in good standing under the laws of its state of formation and has all requisite power

and authority to own and operate its properties, to carry on its business as now conducted, and to enter into the Master Lease and each Loan Document to which it is a party and to perform the terms thereof. Borrower's U.S. taxpayer identification number is set forth on **Schedule 4.1(A)-1.** Borrower, Borrower Representative and Carveout Guarantor are each duly qualified and in good standing wherever necessary to carry on its present business and operations, except where the failure to be duly qualified or in good standing would not result in a Material Adverse Effect. Borrower Representative is a corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware and is the sole member in Borrower. Borrower is a wholly-owned Subsidiary of Borrower Representative. Borrower Representative is a wholly-owned Subsidiary of Carveout Guarantor. Carveout Guarantor is a publicly owned company and is traded on the NASDAQ stock exchange. The principal place of business and chief executive office of Borrower for the five (5) year period preceding the Closing Date is set forth on **Schedule 4.1(A)-2.** Borrower has no Subsidiaries and has not made an Investment in any Person.

4.2 Authorization of Borrowing; No Conflicts; Governmental Consents; Binding Obligations and License and Security Interests of Loan Documents Borrower has the power and authority to incur the Obligations evidenced by the Note and other Loan Documents, to execute and deliver the Loan Documents and to perform its Obligations, to own the Mortgaged Property and to continue its businesses and affairs as presently conducted. Carveout Guarantor has the power and authority to execute and deliver the Carveout Guaranty, the Environmental Indemnification Agreement and the other Loan Documents to which it is a party. The incurring of the Obligations and the execution, delivery and performance by Borrower and Carveout Guarantor of each of the Loan Documents to which it is a party and the consummation of the transactions contemplated thereby have been duly authorized by all necessary partnership, corporate or limited liability company action, as the case may be. The incurring of the Obligations and the execution, delivery and performance by Borrower and Carveout Guarantor of the Loan Documents to which it is a party and the consummation of the transactions contemplated thereby do not and will not: (1) violate any provision of law applicable to Borrower, Carveout Guarantor or the Mortgaged Property, the respective other Organizational Documents of, or applicable to, Borrower or Carveout Guarantor, as the case may be, or any order, judgment or decree of any court or other agency of government binding on Borrower or Carveout Guarantor or their respective properties including the Mortgaged Property, except where such violation would not result in a Material Adverse Effect; (2) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any Material Contracts or any other material agreement or document to which such Person is a party or by which such Person or its property may be bound; (3) result in or require the creation or imposition of any Lien upon the Mortgaged Property or assets of Borrower or Carveout Guarantor (other than the Liens of Lender); or (4) require any approval or consent of any Person under any Material Contracts or any other agreement or document to which such Person is a party or by which such Person or its property may be bound (except to the extent such approvals or consents have been unconditionally obtained on or before the Closing Date or to the extent the failure to obtain an approval or consent would not result in a Material Adverse Effect). The incurring of the Obligations, the execution, delivery and performance by Borrower and Carveout Guarantor of the Loan Documents to which it is a party and the consummation of the transactions contemplated thereby do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any federal, state or other Governmental

Authority or regulatory body (except to the extent unconditionally obtained, given or taken on or before the Closing Date). The Loan Documents, when executed and delivered by Borrower and Carveout Guarantor, as applicable, will be the legally valid and binding obligations of Borrower and Carveout Guarantor, as applicable, enforceable against Borrower and Carveout Guarantor, subject to bankruptcy, insolvency, moratorium, reorganization and other similar laws affecting creditors' rights generally and to the application of general equitable principles in connection with the enforcement thereof. The Mortgage, together with the Financing Statements to be filed in connection therewith, create a valid, enforceable and perfected first priority lien and security interest in the Mortgaged Property subject to no other interests, Liens or encumbrances, other than the Permitted Encumbrances. Effective upon the establishment of one or more Loan Accounts, Section 6 of this Agreement creates a valid, enforceable and perfected first priority security interest in Borrower's rights in the Loan Account Collateral. Borrower is a "registered organization" (as defined in the UCC) organized under the laws of the State of Delaware.

4.3 Financial Statements. All financial statements concerning Borrower and Carveout Guarantor which have been or will hereafter be furnished by Borrower and Carveout Guarantor to Lender pursuant to this Agreement have been or will be prepared in accordance with GAAP consistently applied (except as disclosed therein and except in the case of footnotes and normal year-end adjustments) and do or will, in all material respects, present fairly the financial condition of the Persons covered thereby as at the dates thereof and the results of their operations for the periods then ended. Lender acknowledges that Borrower's and Borrower Representative's financial statements are prepared on a consolidated basis with Carveout Guarantor

4.4 Indebtedness. As of the Closing Date, after giving effect to the transactions contemplated hereby, Borrower does not have any Indebtedness except for Permitted Indebtedness. All Expenses owing or accrued as of the Closing Date, have been paid in full or have been reserved for by deposit into the Reserves.

4.5 No Material Adverse Change. No event or change has occurred since September 30, 2006 that has caused or evidences, either individually or together with such other events or changes, a Material Adverse Effect.

4.6 Title to Property; Liens; Zoning; Contracts; Condition of the Mortgaged Property.

(A) Borrower has good and marketable fee simple title to the Land, the Improvements and the other components of the Mortgaged Property, subject only to the Permitted Encumbrances. Borrower, Master Lessee or CHI 3 Procurement owns or leases all real and personal property necessary for the operation of the Mortgaged Property subject only to the Permitted Encumbrances. Except for the Permitted Encumbrances, the Mortgaged Property is free and clear of Liens and other encumbrances. There are no outstanding Claims and all work, services or materials the provision of which might ripen into a Claim have been fully paid for. There are no delinquent ground rents, assessments for improvements or other similar outstanding charges or Impositions affecting the Mortgaged Property. No Improvements lie outside the boundaries and building restriction lines of the Land or encroach onto any easements to any extent (unless affirmatively insured by the Title Policy), and no improvements on adjoining properties encroach upon the Land to any extent which would materially impair the Mortgaged

Property. The Title Policy premium has been fully paid. Except for customary gap undertakings, neither Borrower, nor, to Borrower's knowledge, any other Person, has provided any title indemnities (or analogous documentation) or deposits of cash or other security to the title insurer to obtain the Title Policy. The Permitted Encumbrances do not and will not materially interfere with the security intended to be provided by the Mortgage, the use or operation of the Mortgaged Property, the ability of the Mortgaged Property to generate Net Cash Flow sufficient to service the Loan or the marketability or value of the Mortgaged Property. Borrower will preserve its right, title and interest in and to the Mortgaged Property for so long as the Obligations remain outstanding and will warrant and defend same and the validity and priority of the Mortgage and the Liens arising pursuant to the Loan Documents from and against any and all claims whatsoever other than the Permitted Encumbrances.

(B) The Mortgaged Property is zoned for use as I-2 General Industrial District and related amenities, which zoning designation is unconditional, in full force and effect, and is beyond all applicable appeal periods. Borrower is not in violation of, and, the Mortgaged Property is in full compliance with all applicable zoning, subdivision, land use and other Legal Requirements. No legal proceedings are pending or, to Borrower's knowledge threatened, with respect to the compliance of the Mortgaged Property with Legal Requirements. Neither the zoning nor any other right to construct, use or operate the Mortgaged Property is in any way dependent upon or related to any real estate other than the Mortgaged Property and validly created, existing appurtenant perpetual easements insured in the Title Policy or use of public rights of way. In the event that all or any part of the Improvements are destroyed or damaged, said Improvements can be legally reconstructed to their condition prior to such damage or destruction, and thereafter exist for the same use without violating any zoning or other Legal Requirements applicable thereto and without the necessity of obtaining any variances or special permits. The Mortgaged Property shall contain enough permanent parking spaces to satisfy all requirements imposed by applicable Legal Requirements with respect to parking. All licenses, certificates of occupancy, permits and other Proprietary Rights necessary to operate the Mortgaged Property as it is currently operated are in full force and effect including all water permits and approvals. Borrower has not received any written notice of any violation of any such licenses, permits, authorizations, registrations or approvals that materially impair the value of the Mortgaged Property for which such notice was given or which would affect the use or operation of the Mortgaged Property in any material respect, which noticed violation remains uncured.

(C) Borrower has provided Lender with true and complete copies of all Material Contracts, all of which are specifically listed on **Schedule 4.6(C)** hereof. Borrower's, Borrower Representative's and Carveout Guarantor's organizational documents that have been delivered to Lender are, true, correct and complete. Except for the Loan Documents and the SVB Loan Agreement (and with respect to Carveout Guarantor only, those items disclosed in its most recent 10-K filing for the year ended December 31, 2005 and the most recent 10-Q filings for the quarters ended September 30, 2006, June 30, 2006 and March 31, 2006), neither Borrower nor Carveout Guarantor is a party to or bound by, nor is any of their respective property subject to or bound by, any contract or other agreement which restricts its ability to conduct its business at the Mortgaged Property in the ordinary course or, either individually or in the aggregate, has a Material Adverse Effect or could reasonably be expected to have a Material Adverse Effect. Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any contract which could have a Material Adverse Effect.

(D) To the extent any Improvements exist on the Land, all such Improvements are in good condition and repair. Municipal or private water supply, storm and sanitary sewers, and electrical, gas and telephone facilities are available to the Mortgaged Property to the boundary lines of the Mortgaged Property through publicly dedicated streets or highways or perpetual appurtenant easements insured on the Title Policy as appurtenant easements, are sufficient to meet the reasonable needs of the Mortgaged Property as now used or as otherwise presently contemplated to be used, and are connected to, and is in full unimpaired operation with respect to the Improvements and no other utility facilities are necessary to meet the reasonable needs of the Mortgaged Property following its contemplated development. The design conditions of the Mortgaged Property are such that surface and storm water will not accumulate on the Mortgaged Property and does not drain from the Mortgaged Property across land of adjacent property owners or others in any manner which would have a Material Adverse Effect or which require any approvals or easements not already obtained. Except as set forth on **Schedule 4.6(D)** or on the plat of survey delivered to Lender, no part of the Mortgaged Property is within a flood plain or in a flood hazard area as defined by the Federal Insurance Administration and (except to the extent validly created and existing perpetual appurtenant easements insured in the Title Policy have been created therefor) none of the Improvements to be constructed or as constructed create encroachments over, across or upon any of the Mortgaged Property's boundary lines, rights of way or easements, and no building or other improvements on adjoining land create such an encroachment. All irrigation lines servicing the Mortgaged Property are entirely located on the Mortgaged Property or are located on adjacent property pursuant to validly created and existing perpetual appurtenant easements insured as appurtenant easements in the Title Policy. The Land and Improvements (if any) thereon have legally adequate contiguous rights of access to public ways. All roads necessary for the full utilization of the Land and Improvements for their current purpose (or intended as-built purpose with respect to the Improvements to be constructed thereon) have been completed and dedicated to public use and accepted by all Governmental Authorities or are validly created and existing perpetual appurtenant easements insured as appurtenant easements in the Title Policy. No offsite improvements are necessary or used for the ownership, use or operation of the Mortgaged Property, other than public utilities. The Improvements (upon Completion of Construction, if not currently located on the Land), the Land, the Fixtures and Personalty and the Inventory located on the Land constitutes all of the real property, equipment, fixtures and other tangible property currently owned or leased by Borrower or used in the operation of the Mortgaged Property and the Fixtures and Personalty owned by the Borrower are sufficient to own, operate and use the Land and Improvements as currently operated (or upon Completion of Construction with respect to Improvements, as applicable). Except for the Fixtures and Personalty and items of tangible personal property owned by the Master Lessee or by tenants, sublessees or licensees of the Master Lessee permitted by the Master Lease, no other tangible personal property will be located on the Land or in the Improvements. Borrower has not entered into any agreement or option, and is not otherwise bound, to sell the Mortgaged Property (or any part thereof) or to acquire any additional real estate or Investments. As of the date hereof, no portion of the Improvements (if any) constituting part of the Mortgaged Property or on the Land has been materially damaged, destroyed or injured by fire or other casualty which has not been fully restored.

4.7 Litigation. Except as set forth on **Schedule 4.7**, there are no judgments outstanding against Borrower or that are binding upon the Mortgaged Property. There is no litigation, governmental investigation or arbitration pending or, to Borrower's knowledge, threatened against Borrower, and there is no litigation, investigation, governmental investigation or arbitration pending or, to Borrower's knowledge, threatened against Borrower Representative or Carveout Guarantor which seeks to enjoin the consummation of the transactions contemplated hereby or, except as set forth on **Schedule 4.7**, which is reasonably likely to be adversely determined, and if adversely determined, could reasonably be expected to have a Material Adverse Effect on Borrower or Carveout Guarantor. The judgments, litigation, investigations and arbitrations set forth on **Schedule 4.7** will not result, if adversely determined, and could not reasonably be expected to result, either individually or in the aggregate, in any Material Adverse Effect and do not relate to and will not affect the consummation of the transactions contemplated hereby. No petition in bankruptcy, whether voluntary or involuntary, or assignment for the benefit of creditors, or any other action involving debtors' and creditors' rights has ever been filed under the laws of the United States of America or any state thereof, or threatened, by or against, Borrower, Carveout Guarantor or Borrower Representative. There are no mechanics' or materialmen's liens, alienable bills or other claims constituting or that may constitute a Lien on the Mortgaged Property or any part thereof to Borrower's knowledge, and no work contracted for by Borrower for which any such Lien could be asserted has been performed which has not been paid for per the agreed upon contracted terms related to such work. Borrower has not received any notice from any governmental or quasi-governmental body or agency or from any person or entity with respect to (and Borrower does not know of) any actual or threatened taking of the Land or Improvements, or any portion thereof, for any public or quasi-public purpose or of any moratorium which may affect the use, operation or ownership of the Mortgaged Property.

4.8 Payment of Taxes. All tax returns and reports of Borrower, Borrower Representative and Carveout Guarantor required to be filed by such Persons have been timely filed (after giving effect to any extensions of time permitted by applicable Legal Requirements), and all taxes, assessments, fees and other governmental charges upon such Person and upon the Mortgaged Property, assets, income and franchises which are due and payable or which have been levied, imposed or assessed have been paid in full. To Borrower's knowledge, other than the tax returns disclosed on **Schedule 4.8**, no tax returns of Borrower, Borrower Representative or Carveout Guarantor filed by such Person is under audit. No tax liens have been filed and, to Borrower's knowledge no claims are being asserted with respect to any such taxes. The charges, accruals and reserves on the books of Borrower, Borrower Representative and Carveout Guarantor in respect of any taxes or other governmental charges are in accordance with GAAP. **Schedule 4.8** contains a complete and accurate list of all audits of all tax returns that were filed by Borrower since January 1, 2006, including a reasonably detailed description of the nature and outcome of each audit. All deficiencies proposed as a result of such audits have been paid, reserved against, settled, or, as described in **Schedule 4.8**, are being contested in good faith by appropriate proceedings. **Schedule 4.8** describes all adjustments to the United States federal income tax returns filed by Borrower for all taxable years since 2006, and the resulting deficiencies proposed by the Internal Revenue Service. Except as described in **Schedule 4.8**, Borrower, Carveout Guarantor and Borrower Representative have not given or been requested to give waivers or extensions (or is or would be subject to a waiver or extension given by any other Person) of any statute of limitations relating to the payment of taxes of Borrower, Carveout Guarantor and Borrower Representative or for which Borrower, Carveout Guarantor and

Borrower Representative may be liable. All taxes that Borrower, Carveout Guarantor and Borrower Representative is or was required by Legal Requirements to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the applicable Governmental Authority. All tax returns filed by (or that include on a consolidated basis) Borrower, Carveout Guarantor and Borrower Representative are true, correct and complete in all material respects. There is no tax sharing agreement that will require any payment by Borrower, Carveout Guarantor and Borrower Representative after the date of this Agreement. Borrower is taxed as a single-member limited liability company for all federal and state income (or analogous) tax purposes. The Borrower does not intend to treat the Loan and related transactions hereunder as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4). In the event the Borrower determines to take any action inconsistent with the previous sentence, it will promptly notify the Lender thereof. If the Borrower so notifies Lender, the Borrower acknowledges that Lender may treat the Loan as part of a transaction that is subject to Treasury Regulation Section 301.6112-1, and that Lender may maintain any lists and other records required by such Treasury Regulation.

4.9 Governmental Regulation; Margin Loan. Borrower and Carveout Guarantor are not, nor after giving effect to the Loan, will be, subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or to any federal or state statute or regulation limiting its ability to incur Indebtedness for borrowed money. Borrower shall use the proceeds of the Loan only for the purposes set forth in this Agreement and consistent with all applicable laws, statutes, rules and regulations. No portion of the proceeds of the Loan shall be used by Borrower in any manner that might cause the borrowing or the application of such proceeds to violate Regulation U, Regulation T or Regulation X or any other regulation of the Board of Governors of the Federal Reserve System or to violate the Exchange Act or any other Legal Requirements. The Loan is an exempt transaction under the Truth-in-Lending Act (15 U.S.C.A. §§ 1601 et seq.). Borrower is not a non-resident alien for purposes of U.S. income taxation and neither Borrower nor Borrower Representative is a foreign corporation, partnership, foreign trust or foreign estate (as said terms are defined in the United States Internal Revenue Code). Borrower, Borrower Representative and Carveout Guarantor and their respective Affiliates are not, and shall not become, a Person with whom Lender is restricted from doing business with under regulations of the Office of Foreign Asset Control **("OFAC")** of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) or other governmental action relating to terrorism financing, terrorism support and/or otherwise relating to terrorism and are not and shall not engage in any dealings or transaction or otherwise be associated with Persons named on OFAC's Specially Designated and Blocked Persons list. At all times throughout the term of the Loan, including after giving effect to any Transfers, (a) none of the funds or other assets of Borrower and Carveout Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any government or other Person subject to trade restrictions under U.S. law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder or any other laws, regulations or executive orders administered by the Office of Foreign Assets Control with the result that an investment in Borrower or Carveout Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made

by the Lender is in violation of law ("**Embargoed Person**"); (b) no Embargoed Person has any interest of any nature whatsoever in Borrower with the result that the investment in Borrower (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower, Borrower Representative or Carveout Guarantor, as applicable, have been derived from any unlawful activity with result that the investment in Borrower, Borrower Representative or Carveout Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

4.10 **Employee Benefit Plans; ERISA; Employees**. Except for the Employee Benefit Plans set forth on **Schedule 4.10**, neither Borrower nor any ERISA Affiliate of Borrower maintains or contributes to, or has any obligation under, any Employee Benefit Plans. Borrower is not an "Employee Benefit Plan" (within the meaning of section 3(3) of ERISA) to which ERISA applies and the Mortgaged Property and Borrower's assets do not constitute plan assets. No actions, suits or claims under any laws and regulations promulgated pursuant to ERISA are pending or, to Borrower's knowledge, threatened against Borrower. Borrower has no knowledge of any material liability incurred by Borrower which remains unsatisfied for any taxes or penalties with respect to any employee benefit plan or any Multiemployer Plan, or of any lien which has been imposed on Borrower's assets pursuant to section 412 of the Code or section 302 or 4068 of ERISA. The Loan, the execution, delivery and performance of the Loan Documents and the transactions contemplated by this Agreement are not a non-exempt prohibited transaction under ERISA. Borrower has no employees. Borrower is not a party to any collective bargaining or other employment agreement other than the agreements identified on **Schedule 4.10**.

4.11 **Intellectual Property**. **Schedule 4.11** sets forth a true, correct and complete list of all of the registered, issued or pending patents, trademarks, trade names, technology, other intellectual property rights used in the ownership, operation and management of the business of Borrower. Borrower possesses, owns or has valid licenses, permits, certificates of public convenience, service marks, authorizations, licenses, patents, patent rights or licenses, trademarks, trademark rights, trade name rights, trade styles, trade dress, logos and other source or business affiliation identifiers, and copyrights, certificates, consents, orders, approvals and other authorizations from, and have made all declarations and filings with, all federal, state, local and other Governmental Authority, all self-regulatory organizations and all courts and other tribunals (collectively, together with the goodwill associated therewith, "**Proprietary Rights**") presently required or necessary to own or lease, as the case may be, and to operate, its respective properties and to carry on its business as now conducted in accordance with the Development Budget, except where the failure to obtain same would not, individually or in the aggregate, have a Material Adverse Effect. Borrower has fulfilled and performed all of its obligations with respect to such permits, and no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or could result in any other material impairment of the rights of the holder of any such permit; and Borrower has not received any notice of any proceeding relating to unenforceability, invalidity, revocation or modification of any Proprietary Rights, except where such revocation, unenforceability, invalidity, or modification would not, individually or in the aggregate, have a Material Adverse Effect. Borrower has not received any notice that any Proprietary Rights have been declared unenforceable or otherwise invalid by any court or Governmental Authority other than notices relating to Proprietary Rights the loss of which would not, individually or in the aggregate, have a Material Adverse Effect. Borrower has not received any notice of infringement of, or conflict with, and Borrower does not know of any

such infringement of or conflict with, asserted rights of others with respect to any Proprietary Rights which, if such assertion of infringement or conflict were sustained, would have a Material Adverse Effect. The reproduction and dissemination by, or on behalf, of Lender, of photographs, images and other depictions of the Mortgaged Property and the name and address of the Land and Improvements does not require the consent of any other Person and will not subject Lender or Borrower to claims of copyright infringement or any other claim regarding unlawful or unauthorized use, reproduction or dissemination of such items.

4.12 Broker's Fees. Except for a brokerage fee paid to CBRE/Melody, no broker's or finder's fee, commission or similar compensation will be payable with respect to the Loan, the issuance of the Note or any of the other transactions contemplated hereby or by any of the Loan Documents based upon any broker or lender engaged by Borrower, Carveout Guarantor or any affiliate of Borrower.

4.13 Environmental Compliance. Except as disclosed in the Environmental Reports, to Borrower's knowledge there are no claims, liabilities, investigations, litigation, administrative proceedings, whether pending or, threatened in writing, or judgments or orders relating to any Hazardous Materials or any portion of the Mortgaged Property asserted or threatened against Borrower (collectively called "**Environmental Claims**"). Except as disclosed in the Environmental Reports, to Borrower's knowledge, neither Borrower nor any other Person has caused or permitted any Hazardous Material to be used, generated, reclaimed, transported, released, treated, stored or disposed of at the Mortgaged Property in a manner which could form the basis for an Environmental Claim against Borrower. Except as disclosed in the Environmental Reports, to Borrower's knowledge, no Hazardous Materials in violation of applicable Environmental Laws are or were stored or otherwise located, and no underground storage tanks or surface impoundments are or were located on the Mortgaged Property, and no part of the Mortgaged Property, including the groundwater located thereon, is presently contaminated by Hazardous Materials in violation of applicable Environmental Laws or to any extent which has, or in any manner which could reasonably be expected to have, a Material Adverse Effect. Except as disclosed in the Environmental Reports, to Borrower's knowledge, Borrower and the Mortgaged Property has been and is currently in compliance with all applicable Environmental Laws, including obtaining and maintaining in effect all permits, licenses or other authorizations required by applicable Environmental Laws.

4.14 Solvency. As of the date of this Agreement and after giving effect to the consummation of the transactions contemplated by the Loan Documents, Borrower Representative, Carveout Guarantor and Borrower, taken as a whole (the "**Borrower Group**"): (A) own and will own assets the fair saleable value of which are (1) greater than the total amount of liabilities (including Contingent Obligations) of the Borrower Group, and (2) greater than the amount that will be required to pay the probable liabilities of the Borrower Group's then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to the Borrower Group; (B) have capital that is not insufficient in relation to their business as presently conducted or any contemplated or undertaken transaction; and (C) do not intend to incur and do not believe that they will incur debts beyond their ability to pay such debts as they become due. Borrower has not entered into the Loan Documents or the transactions contemplated under the Loan Documents with the actual intent to hinder, delay, or defraud any creditor. After giving effect to the Loan and the transactions occurring on the Closing Date, no Default or Event of Default exist.

4.15 Disclosure. The representations and warranties of Borrower and Carveout Guarantor contained in the Loan Documents, the financial statements referred to in Section 5.1(A), and any other documents, certificates or written statements furnished to Lender by or on behalf of Borrower or Carveout Guarantor for use in connection with the Loan do not contain any untrue statement of a material fact or omit or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which and as of the date the same were made. There is no material fact known to Borrower that has had or will have a Material Adverse Effect that has not been disclosed in this Agreement or in such other documents, certificates and statements furnished to Lender by or, on behalf of, Borrower for use in connection with the Loan.

4.16 Insurance. The certificates of insurance delivered to Lender pursuant to Section 3.1(E) completely and accurately describe all policies of insurance that will be in effect as of the Closing Date for Borrower and such policies of insurance satisfy all of the requirements of Section 5.4. All premiums thereon have been paid in full as of the Closing Date, no notice of cancellation has been received with respect to such policies and Borrower is in compliance, in all material respects, with all conditions contained in such policies.

4.17 Development Budget. The Development Budget is accurate and complete in all material respects and includes all Hard Costs and Soft Costs of the Land and the Project, including all costs and expenses necessary to satisfy, fulfill, comply with and perform all terms, conditions, requirements and obligations under and pursuant to the Legal Requirements, all Construction Contracts, all Architect's Agreements, all MEP Engineer's Agreements and all other Material Contracts, other than those, if any, which a Governmental Authority has agreed, in writing, to perform, together with a Hard Cost Contingency and Soft Cost Contingency as reasonably approved by Lender. No costs or expenses are being incurred or are contemplated except as set forth in the Development Budget.

4.18 Accounts. Schedule 4.18 sets forth a complete and accurate itemization of all of Borrower's time, demand, securities or similar Accounts that are in existence as of the Closing Date.

4.19 Intentionally Omitted.

4.20 Special Assessments; Taxes. Except for Permitted Encumbrances, there are no pending or, to the knowledge of Borrower proposed, special or other assessments for public improvements or otherwise affecting the Mortgaged Property, nor, to Borrower's knowledge, are there any contemplated improvements to the Mortgaged Property that may result in such special or other assessments. Borrower has provided Lender with true, correct and complete copies of all bills and invoices for Impositions which have been levied or assessed against or are outstanding with respect to the Mortgaged Property. Borrower has provided Lender with a true, correct and complete schedule of the assessment of the Mortgaged Property in effect as of the Closing Date. Borrower has not received any notice that any portion of the Mortgaged Property has been re-assessed or is currently the subject of a reassessment. No portion of the Mortgaged

Property is exempt from taxation or constitutes an “omitted” tax parcel. No Impositions are currently delinquent or outstanding with respect to the Mortgaged Property. No tax contests of any Impositions or assessments are currently pending. The Land and Improvements constitute a separate tax lot or lots, with a separate tax assessment or assessments, independent of any other land or improvements not constituting a part of the Mortgaged Property and no other land or improvements is assessed and taxed together with any portion of the Mortgaged Property.

4.21 Leases. There are no Leases other than the Master Lease.

4.22 Representations Remade. The foregoing representations and warranties will be true and shall be deemed remade as of the date of the Closing and as of the date of each other advance of Loan proceeds pursuant to this Agreement. All representations and warranties made in the other Loan Document or in any certificate or other document delivered to Lender by or on behalf of Borrower pursuant to the Loan Documents shall be deemed to have been relied upon by Lender, notwithstanding any investigation made by or on behalf of Lender. All such representations and warranties shall survive the making of the Loan and any or all of the advances of the Loan and shall continue in full force and effect until such time as the Loan has been paid in full.

4.23 Construction. Borrower represents and warrants that: (a) upon Completion of Construction, the Mortgaged Property will contain enough permanent parking spaces to satisfy all requirements imposed by applicable Legal Requirements with respect to parking; and (b) no legal proceedings are pending or threatened with respect to the zoning of the Mortgaged Property.

SECTION 5
AFFIRMATIVE COVENANTS

Borrower covenants and agrees that so long as this Agreement shall remain in effect or the Note shall remain outstanding, Borrower shall perform and comply with all covenants in this Section 5.

5.1 Financial Statements and Other Reports. Borrower will maintain a system of accounting in accordance with sound business practices to permit preparation of financial statements in conformity with GAAP and proper and accurate books, records and Accounts reflecting all of the financial affairs of Borrower with respect to all items of income and expense in connection with the operation of the Mortgaged Property. Notwithstanding anything to the contrary set forth below, to the extent Carveout Guarantor’s financials are made available on an annual and quarterly basis on the U.S. Securities and Exchange Commission’s EDGAR website (“EDGAR”), Borrower and Carveout Guarantor shall be deemed to have satisfied their annual and quarterly reporting requirements set forth below.

(A) **Financial Statements**. Within one hundred twenty (120) days after the end of each calendar year, Borrower shall provide to Lender true and complete annual audited consolidated financial statements for (i) Borrower and Carveout Guarantor and (ii) the operation of the Mortgaged Property prepared in accordance with GAAP. Such financial statements shall (x) be audited by a so-called “Big-4” accounting firm or another independent certified public accounting firm reasonably satisfactory to Lender and (y) include a balance sheet as of the end of

such year, profit and loss statements for such year and a statement of cash flow for such year. As soon as reasonably practicable (but in any event within sixty (60) days) after the end of each calendar quarter (excluding the fourth quarter), Borrower shall provide to Lender a true and complete quarterly cash flow, balance sheet, and operating statement for Borrower and Carveout Guarantor on a consolidated basis, which quarterly statements shall be in form and substance acceptable to Lender. Such quarterly consolidated statements shall be compared to the prior year's quarter and year-to-date. Borrower shall also provide (and cause Carveout Guarantor to provide), such other financial information as Lender may, from time to time, reasonably request certified (if requested by Lender) by the applicable chief financial officer (or similar position). Borrower will deliver, concurrently with the annual and quarterly statements, a certificate of its chief financial officer (or analogous position) certifying that no Default or Event of Default has occurred.

(B) **Intentionally Omitted**.

(C) **Intentionally Omitted**.

(D) **Intentionally Omitted**.

(E) **Notices, Events of Default and Litigation**. Borrower shall promptly deliver, or cause to be delivered, copies of all notices, demands, reports or requests given to, or received by Borrower from, any Governmental Authorities or with respect to any Indebtedness of Borrower, the Master Lease or any Material Contracts, and shall notify Lender within two (2) Business Days after Borrower receives notice or acquires knowledge of, any violation of Legal Requirements, investigation, subpoena or audit by any Governmental Authority or default with respect to the Borrower, Mortgaged Property or any Indebtedness, the Master Lease or Material Contracts. Promptly upon Borrower obtaining knowledge of any of the following events or conditions, Borrower shall deliver a certificate of such Person's chief financial officer or similar officer specifying the nature and period of existence of such condition or event and what action Borrower has taken, is taking and proposes to take with respect thereto: (1) any condition or event that constitutes an Event of Default or Default; and/or (2) or any fact, circumstance, event or condition which has, or would reasonably be expected to have, a Material Adverse Effect. Promptly upon Borrower obtaining knowledge of (1) the institution of any action, suit, proceeding, governmental investigation or arbitration against or affecting Borrower or the Mortgaged Property, or any other property of Borrower or any action, suit, proceeding, governmental investigation or arbitration against or affecting Carveout Guarantor or Borrower Representative which could reasonably result in a Material Adverse Effect or (2) any material development in any action, suit, proceeding, governmental investigation or arbitration at any time pending against or affecting Borrower or the Mortgaged Property or any other property of Borrower, Borrower will give notice thereof to Lender and provide such other information as may be available to it to enable Lender and its counsel to evaluate such matters.

(F) **ERISA**. Borrower shall deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as Lender, in its sole discretion, may request, that (A) Borrower is not and does not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title IV of ERISA, or a "governmental plan" within the meaning of Section 3(3) of ERISA; (B) Borrower is not subject to state statutes regulating

investments and fiduciary obligations with respect to governmental plans; and (C) one or more of the following circumstances is true: (i) Borrower is a wholly-owned subsidiary of Borrower Representative, which is a wholly-owned subsidiary of Carveout Guarantor and the equity interests in Carveout Guarantor are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2); (ii) less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or (iii) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(c) or (e).

(G) **Intentionally Omitted**.

(H) **Property Reports and Leasing**. As soon as available, and in any event within sixty (60) days after the end of each calendar quarter, Borrower will deliver to Lender (i) a licensing agreement summary summarizing basic leasing, subleasing and other information pertaining to the operation of the Mortgaged Property (prepared by the Manager, if applicable), which shall contain customer type, square footage and annual revenue under such licenses and/or subleases and (ii) any information reasonably requested by Lender.

(I) **Estoppel Certificates**. Within ten (10) Business Days following a request by Lender, Borrower shall provide to Lender, a duly acknowledged written statement confirming the amount of the outstanding Obligations, the terms of payment and maturity date of the Note, the date to which interest has been paid, and whether, to Borrower's knowledge, any offsets or defenses exist against the Obligations, and if any such offsets or defenses are alleged to exist, the nature thereof shall be set forth in detail.

(J) **Other**. With reasonable promptness, Borrower will deliver such other information and data with respect to Borrower as from time to time may be reasonably requested by Lender. Borrower will, promptly after it obtains knowledge of any change in the organizational documents or structure (the "**Organization**") of Borrower, Borrower's Representative or Carveout Guarantor, notify Lender of any such change and, upon request from Lender from time to time (but no more frequently than once per calendar year), will, within five (5) Business Days after such request is given to Borrower, provide Lender with either a certificate certified by Borrower that there are no changes in the Organization of Borrower, Borrower's Representative or Carveout Guarantor except as previously expressly disclosed in writing to Lender.

(K) **Electronic Format**. Borrower may provide to Lender a copy of any reports, notices, statements or other deliveries required pursuant to this Section 5.1 in an electronic format reasonably satisfactory to Lender.

5.2 Existence; Qualification. Borrower will at all times preserve and keep in full force and effect its existence, and all rights and franchises material to its business. Borrower will continue to be qualified in all jurisdictions in which it is required to qualify.

5.3 Payment of Impositions and Lien Claims; Permitted Contests.

(A) Subject to Section 5.3(B), Borrower will pay, or cause payment of, (i) all Imposition before in each instance any penalty or fine is incurred with respect thereto, (ii) all

claims ("**Claims**") (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of the Mortgaged Property or Borrower, before in each instance any penalty or fine is incurred with respect thereto, and (iii) all federal, state and local income taxes, sales taxes, excise taxes and all other taxes and assessments levied, imposed, confirmed or assessed against Borrower, its business, income, liabilities or assets or the Mortgaged Property, before in each instance any penalty or fine is incurred with respect thereto.

(B) With prior notice to Lender, Borrower shall have the right to pay Impositions, in full, under "protest." Notwithstanding Section 5.3(A), Borrower shall not be required to pay, discharge or remove or cause payment, discharge or removal of any Imposition or Claims pertaining to labor, services, materials and supplies supplied to the Land and Improvements so long as Borrower contests (each such contest, a "**Permitted Contest**") in good faith such Imposition or Claims or the validity, applicability or amount thereof by an appropriate legal proceeding which operates to prevent the collection of such amounts and the sale of the Mortgaged Property or any portion thereof so long as: (a) at least thirty (30) days prior to the date on which such Imposition or Claims would otherwise have become delinquent, Borrower shall have given Lender notice of its intent to contest said Imposition, (b) at least thirty (30) days prior to the date on which such Imposition would otherwise have become delinquent, Borrower shall have deposited with Lender (or with a court of competent jurisdiction or other appropriate Person approved by Lender) such additional amounts or other security as are necessary to keep on deposit at all times, an amount equal to at least one hundred twenty-five percent (125%) (or such higher amount as may be required by applicable law) of the total of (x) the balance of such Imposition or Claims then remaining unpaid, and (y) all interest, penalties, costs and charges accrued or accumulated thereon, (c) no risk of sale, forfeiture or loss of any interest in the Mortgaged Property or any part thereof arises, in Lender's reasonable judgment, during the pendency of such contest, (d) such contest does not, in Lender's reasonable discretion, have a Material Adverse Effect and (e) in the case of Claims, the liens, if any, securing the Claims in question have been defeased or bonded against in a manner satisfactory to Lender. Each Permitted Contest shall be prosecuted, at Borrower's sole cost and expense, with reasonable diligence, and Borrower shall promptly pay, or cause payment of, the amount of such Imposition or Claims as finally determined, together with all interest and penalties payable in connection with such Permitted Contest. Lender, in its sole discretion, may apply any amount or other security deposited with Lender under this subsection or otherwise to the payment of any unpaid Imposition or Claims to prevent the sale, loss or forfeiture of the Mortgaged Property or any portion thereof. Lender shall not be liable for any failure to so apply any amount or other security deposited. Any surplus retained by Lender after payment of the Imposition or Claims for which a deposit was made shall be repaid to Borrower unless an Event of Default exists, in which case the surplus may be applied by Lender to the Obligations. Notwithstanding any provision of this Section 5.3 to the contrary, Borrower shall promptly pay any Imposition or Claims which it might otherwise be entitled to contest if, in reasonable determination of Lender, the Mortgaged Property or any portion thereof is in jeopardy or in danger of being forfeited or foreclosed. If Borrower refuses to pay any such Imposition or Claims, Lender may (but shall not be obligated to) make such payment and Borrower shall reimburse Lender on demand for all such advances which advances will bear interest at the Default Rate.

(C) Subject to Section 2.6, Borrower shall pay any and all taxes, charges, filing, registration and recording fees, excises and levies imposed upon Lender by reason of its interests in, or measured by amounts payable under, the Note, this Agreement, the Mortgage or any other Loan Document (other than income, franchise and doing business taxes), and shall pay all stamp taxes and other taxes required to be paid on the Note or any of the other Loan Documents. If Borrower fails to make such payment within five (5) Business Days after notice thereof from Lender, Lender may (but shall not be obligated to) pay the amount due, and Borrower shall reimburse Lender on demand for all such advances which will bear interest at the Default Rate. If applicable law prohibits Borrower from paying such taxes, charges, filing, registration and recording fees, excises, levies, stamp taxes or other taxes, then Lender may declare Borrower's Obligations to be immediately due and payable, upon ninety (90) days' prior written notice.

5.4 Insurance, Requirements during and following Construction. Borrower shall at all times provide, maintain and keep in force or cause to be provided, maintained and kept in force, at no expense to Lender, the following policies of insurance with respect to the Mortgaged Property and Borrower, as applicable:

(A) **During Construction**.

(i) Borrower's Requirements:

(a) Builder's Risk. From the closing of the Loan until replaced by permanent property insurance, "All Risk" form of Builder's Risk Insurance, including collapse, in an amount no less than 100% of the replacement value of the Project (exclusive of land value). Such policy shall be written on a Completed Value Form (non-reporting) or its equivalent and shall not contain a limitation on permission to occupy. The policy shall include coverage for Flood and Earthquake (including subsidence and sink hole) with sub-limits no less than 25% of the replacement cost, but each not less than $5,000,000 per occurrence and in the annual aggregate, provided, however, such coverage shall not be required if such coverage cannot be obtained by Borrower or for Borrower at commercially reasonable rates or is not customarily carried by institutional owners or tenants of facilities similar to the Mortgaged Property. If the building is located in a high hazard Earthquake zone, Borrower shall maintain Earthquake limits equal to 100% of the replacement cost with a deductible not greater than 5% of replacement costs. If the building is located in a Special Flood Hazard Zone, as defined by the National Flood Insurance Program (NFIP) flood insurance should be purchased in maximum available limits from the NFIP with excess limits as required by Lender. Such insurance policy shall also include coverage for:

(1) Loss suffered with respect to Borrower's materials, equipment, machinery, and supplies whether on-site, in transit, or stored off site, with a limit of no less than 100% replacement cost and subject to a minimum limit of $1,000,000 provided that Borrower shall obtain or cause to be obtained additional insurance whenever the value of materials in transit or in storage exceed those limits;

(2) Such policy shall include coverage for existing structures, sidewalks, retaining walls, scaffolding, temporary structures, or underground works;

(3) Up to $10,000,000 of the Soft Costs contained in the Development Budget, and including coverage for all types (including but not limited to interest expense; fees; and plans, specifications, blueprints and models, in connection with any restoration following an insured loss);

(4) Loss or delay in start up or completion of the Project for a period of at least 6 months on an actual loss sustained basis. Lender reserves the right to require an endorsement providing for an extended period of indemnity.

(b) Comprehensive Broad Form Boiler and Machinery Insurance, covering all mechanical and electrical apparatus and pressure vessels. Such insurance shall provide coverage against loss or damage from an accident to and/or caused by boilers and machinery, including but not limited to: heating apparatus, pressure vessels, pressure pipes, electrical or air conditioning equipment on a blanket comprehensive coverage form, in such amount as Lender shall reasonably approve but no less than $10,000,000. All exclusions for testing (hot and cold) shall be removed.

(c) Commercial General Liability and Umbrella Liability coverage, including but not limited to, coverage for Personal Injury, Bodily Injury, Death, Property Damage, Fire Damage Legal Liability, with limits of not less than $1,000,000 per occurrence and $2,000,000 in the annual aggregate. The policies described in this paragraph shall cover, without limitation: elevators, escalators, independent contractors, contractual liability and Products and Completed Operations Liability coverage. The completed operations coverage should be maintained for the applicable State Statute of Limitations. Borrower shall add Lender, its directors, officers, employees and agents as additional insured.

(d) Worker's Compensation. If applicable, worker's compensation insurance covering Borrower and its employees at the site to the extent required, and in the amounts required by applicable Laws.

(e) Employers Liability. If applicable in the amount of $1,000,000 per accident, $1,000,000 per illness, per employee and $1,000,000 per illness, in the aggregate.

(ii) Contractor's Requirements – Borrower shall require Contractors of record to provide the following requirements:

(a) Commercial General Liability coverage, including, without limitation, products and completed operations and contractual liability, with minimum limits of $1,000,000 per occurrence and $2,000,000 general aggregate per project and $2,000,000 products / completed operations aggregate per project. The policy shall name Borrower and Lender as additional insured for premises operations and completed operations. The completed operations coverage should be maintained for the applicable State Statute of Limitations. The liability coverage should not be endorsed with the following exclusions:

Damage to work performed by sub-contractors on your behalf;

(1) Explosion, collapse, and underground property damage;

(2) Contractual liability limitation endorsement;

(3) Products / Completed Operations hazard; and

(4) Residential construction.

(b) Commercial Auto Liability, covering all owned hired and non-owned vehicles with minimum limits of $1,000,000 per occurrence.

(c) Contractor's Pollution Liability, if the contract requires removal or disposal of hazardous waste, underground tanks, or asbestos.

(d) Umbrella Liability, with minimum limits of $25,000,000 per occurrence with a per project aggregate of $25,000,000. Umbrella liability should not be more restrictive than the General Liability.

(e) Sub-contractors. Contractor shall also ensure that all subcontractors maintain similar coverage with limits appropriate to the hazard associated with their respective work on the site. All parties engaged in work on the Project shall maintain statutory Workers Compensation, Employer's Liability with limits of at least $1,000,000 and any legally mandated Disability insurance in force for all employees on the job.

(f) Professional Liability. Borrower shall require the Architect, engineers (including Structural and MEP contractors) and all other design professionals retained by the Borrower to purchase and maintain continuous professional liability coverage in the amount of $1,000,000 per claim / and $1,000,000 annual aggregate. This policy may be on a "claims made" basis and should be retroactive back to the first date that professional services were provided to the Project. Evidence of this insurance shall be provided to Borrower in form of insurance certificate for a period of 3 years after Substantial Completion of the Project. Professional contractor's shall also provide evidence of general liability coverage with limits of $1,000,000 per occurrence and statutory workers compensation coverage.

(g) Intentionally Omitted.

(h) OCIP or CCIP. Borrower may provide the Commercial General and Umbrella Liability and Workers Compensation and Employers Liability required to be carried pursuant to the liability requirements stated above, through the purchase of a Wrap-up or Owner Controlled Insurance Program. This program shall provide coverage for all parties engaged in construction operations at the Project with limits approved by Lender.

(B) **Post Construction**. After the earlier of: (i) Substantial Completion of the Project, or (ii) cancellation or expiration of the Builder's Risk Policy, Borrower shall provide the following coverages:

(i) Property Insurance. Property insurance on an "all risk" and "special perils" basis (special form causes of loss) for one hundred percent (100%) of the replacement value of the Mortgaged Property, exclusive of land value (excluding any portions of the Project covered by any tenant's, licensee's or sublessee's insurance as

may be required under the Master Lease or other document) with customary deductibles as approved by Lender. The policy should contain the following endorsements: (1) Replacement Cost (without any deduction made for depreciation), (2) Agreed Amount (waiving co insurance penalties), (3) a standard mortgagee clause acceptable to Lender, and (4) law or ordinance insurance including cost of demolition and increased cost of construction with a sub-limit of not less than $5,000,000, provided, however, such coverage shall not be required if such coverage cannot be obtained by Borrower or for Borrower at commercially reasonable rates or is not customarily carried by institutional owners or tenants of facilities similar to the Mortgaged Property. The policy shall include coverage for Flood and Earthquake with sub-limits no less than 25% of the replacement cost, but each not less than $5,000,000 per occurrence and in the annual aggregate, provided, however, such Earthquake coverage shall not be required if such coverage cannot be obtained by Borrower or for Borrower at commercially reasonable rates or is not customarily carried by institutional owners or tenants of facilities similar to the Mortgaged Property. If the building is located in a high hazard Earthquake zone, Borrower shall maintain Earthquake limits equal to the Probable Maximum Loss (PML) as established by a licensed engineer with a deductible not greater than 5% of replacement costs, provided, however, such coverage shall not be required if such coverage cannot be obtained by Borrower or for Borrower at commercially reasonable rates or is not customarily carried by institutional owners or tenants of facilities similar to the Mortgaged Property. If the building is located in a Special Flood Hazard Zone, as defined by the National Flood Insurance Program (NFIP), flood insurance should be purchased in maximum available limits from the NFIP with excess limits as required by Lender, provided, however, such coverage shall not be required if such coverage cannot be obtained by Borrower or for Borrower at commercially reasonable rates or is not customarily carried by institutional owners or tenants of facilities similar to the Mortgaged Property. Lender shall be named as sole Loss Payee and Mortgagee for the Project.

(ii) Comprehensive Broad Form Boiler and Machinery Insurance, in the minimum amount of $10,000,000 covering all mechanical and electrical equipment against physical damage and covering, without limitation, all tenant improvements and betterments that Borrower is required to insure pursuant to any lease on a replacement cost basis. Such insurance shall provide coverage against loss or damage from an accident to and/or caused by boilers and machinery, including but not limited to: heating apparatus, pressure vessels, pressure pipes, and electrical or air conditioning equipment on a blanket comprehensive coverage form, in such amount Lender shall reasonably approve.

(iii) Business Interruption Insurance against rent loss, extra expense or business interruption, in amounts satisfactory to Lender, but not less than twelve (12) months gross rent or gross income from the Mortgaged Property based on annualized income, including stabilized management fees and applicable reserve deposits plus debt service. The perils covered by this policy shall be the same as those accepted on the Mortgaged Property including, if applicable, flood and earth movement.

(iv) Terrorism. No policies required to be maintained by Borrower shall contain any exclusion for terrorism, terrorist activities or similar activities, provided, however, such coverage for terrorism, terrorist acts or similar activities, shall not be required if such coverage cannot be obtained by Borrower or for Borrower at commercially reasonable rates or is not customarily carried by institutional owners or tenants of facilities similar to the Mortgaged Property.

(v) Commercial General Liability. Commercial General Liability Insurance, including, but not limited to, Owned (if any), Hired and Non Owned Auto Liability, and Umbrella Liability coverage for Personal Injury, Bodily Injury, Death, Accident and Property Damage providing in combination no less than $10,000,000 per occurrence and in the annual aggregate.

(vi) Worker's Compensation. If applicable, worker's compensation insurance covering Borrower and its employees at the site to the extent required, and in the amounts required by applicable Laws.

(vii) Employers Liability. If applicable in the amount of $1,000,000 per accident; $1,000,000 per illness, per employee; and $1,000,000 per illness, in the aggregate.

(viii) Storage Tank Pollution Liability Insurance. In connection with any storage tanks located on the Mortgaged Property and any additional fuel storage tanks installed on the Mortgaged Property as approved in writing by Lender, Borrower shall, at all times during the term of the Loan, if required by Lender, obtain and keep in force or reimburse Lender for the cost of Storage Tank Pollution Liability Insurance in the amount of $1,000,000 per claim and $1,000,000 in the aggregate for the storage tanks existing at the Mortgaged Property as of the date hereof. For each new additional storage tank installed, other than the four storage tanks scheduled to be located on the Mortgaged Property, Borrower shall increase the aggregate limit by $500,000.

(ix) Other. Such other insurance coverages as may be reasonably requested by Lender.

(C) **General Requirements of Insurance Policies**.

(i) All insurance policies shall be issued by an insurer or insurers with an A.M. Best rating of A: IX or better or a Standard and Poor's rating of "A+," or equivalent rating from another agency acceptable to Lender and be authorized in the state where the Project is located.

(ii) The Builder's Risk insurance policies and the All Risk policies shall name Borrower as the insured and shall also name Lender as Additional Insured, Loss Payee and Mortgagee, under a non-contributing standard mortgagee clause.

(iii) The Commercial General Liability, Auto Liability and Employer's Liability and Contractors Liability shall name Lender, its subsidiaries, successors, assigns, directors, officers, and employees as Additional Insured.

(iv) Intentionally Omitted.

(v) The amount of any deductible under any insurance policy must be reasonably acceptable to Lender.

(vi) Borrower shall pay the premiums for the insurance policies as the same become due and payable. Borrower shall deliver copies of the insurance policies required to be maintained or certificate of such insurance in form and substance or other evidence of insurance acceptable to Lender evidencing the insurance required hereunder on the closing date, together with confirmation that premiums have been paid. Prior to the renewal date Borrower shall deliver to Lender a certificate of insurance evidencing renewal of coverage as required herein. Within thirty (30) days after such renewal, Borrower shall deliver to Lender evidence of payment of premium satisfactory to Lender. Not later than ninety (90) days after the renewal of each of the insurance policies, Borrower shall deliver to Lender a copy or certificate of insurance (as required pursuant to this Section 5.4) of a renewal policy or policies

(vii) Each insurance policy shall contain a provision whereby the insurer agrees that so long as the Loan is outstanding, such policy shall not be canceled or fail to be renewed (except in such cases where a replacement policy has been obtained), lapsed or materially changed without in each case, at least thirty (30) days prior written notice to Lender, except ten (10) days for non-payment of premium.

(viii) In the event any insurance policy (except for general and other liability and Workers Compensation insurance) shall contain breach of warranty provisions, such policy shall provide that with respect to the interest of Lender, such insurance policy shall not be invalidated by and shall insure Lender regardless of; (A) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such policy by any named insured; (B) the occupancy or use of the property for purposes more hazardous than permitted by the terms thereof; or (C) any foreclosure or other action or proceeding taken by Lender pursuant to any provision of this Agreement.

(ix) Any insurance maintained pursuant to this Agreement may be evidenced by blanket insurance policies covering the premises and other properties or assets of Borrower or its affiliates; provided that any such policy shall in all other respects comply with the requirements of this Section 5.4. Lender, in its reasonable discretion, shall determine whether such blanket policies contain sufficient limits of insurance.

(x) Any insurance carried by Lender shall be for its sole benefit and shall not inure to the benefit of Borrower and insurance required from Borrower shall be primary to any available, if any, to Lender.

(xi) All required policies, other than professional liability, shall provide that insurers have waived rights of subrogation against Lender. The required insurance shall be primary without right of contribution from any insurance, which may be carried by Lender.

(xii) The required limits listed above are minimum limits established by Lender and nothing contained herein shall be construed to mean the required limits are adequate or appropriate to protect Borrower from greater loss.

5.5 <u>Tax Reserve and Insurance Reserve</u>. At any time after the occurrence and during the continuance of an Event of Default, Lender may require the implementation of the following in its sole and absolute discretion: Borrower shall deposit (or cause to be deposited) with Lender (or such agent of Lender as Lender may designate in writing to Borrower from time to time), monthly, on each Payment Date, 1/12th of (i) the annual charges (as estimated by Lender) for all Impositions relating to the Mortgaged Property as a reserve ("**Tax Reserve**") for the payment of Impositions and (ii) the annual insurance premiums with respect to the insurance required pursuant to Section 5.4 as a reserve ("**Insurance Reserve**") for the payment of such insurance premiums. Borrower shall, after the occurrence and during the continuance of an Event of Default, also deposit (to be held as part of the applicable Reserve) with Lender, simultaneously with such monthly deposits to the extent required by the immediately preceding sentence, a sum of money which, together with such monthly deposits, will be sufficient to make the payment of each such charge or premium at least thirty (30) days prior to the date finally delinquent. Should such charges or premiums not be ascertainable at the time any deposit is required to be made, the deposit shall be made on the basis of Lender's estimate. When the charges or premiums are fixed for the then current year or period, Borrower shall deposit with Lender any deficiency within fifteen (15) days following Lender's demand. Should an Event of Default occur, the funds maintained in such Reserves may be applied in payment of the charges for which such funds shall have been deposited or to the payment of the Obligations or any other charges affecting the Mortgaged Property as Lender in its sole and absolute discretion may determine, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender as herein provided. Borrower shall provide Lender with bills and all other documents necessary for the payment of the foregoing charges at least ten (10) days prior to the date on which each payment thereof shall first become delinquent. So long as (i) no Event of Default exists, (ii) Borrower has provided Lender with the foregoing bills and other documents in a timely manner, and (iii) sufficient funds are held in the applicable Reserve by Lender for the payment of the Impositions and insurance premiums relating to the Mortgaged Property, as applicable, Lender shall pay said items or allow such funds to be used to pay said items. All refunds of Impositions and insurance premiums shall be deposited into the applicable Reserve.

5.6 <u>Maintenance of Mortgaged Property</u>. Borrower will maintain or cause the Mortgaged Property to be maintained in compliance with all Legal Requirements and in good repair, working order and condition and will make or cause to be made all appropriate repairs, renewals and replacements thereof. Without regard as to whether Proceeds are made available to Borrower for such purposes, Borrower will promptly restore and repair all loss or damage occasioned by (i) any casualty which has occurred to at least the condition existing prior to any such casualty or (ii) any condemnation to an economically and structurally integrated unit. Borrower will prevent any act or thing which might materially impair the value or usefulness of the Mortgaged Property. Borrower will not commit or permit any waste of the Mortgaged Property or any part thereof.

5.7 Inspection; Lender Meeting. Borrower shall, upon request from Lender (such request not to be made more frequently than four (4) times per calendar year unless an Event of Default shall have occurred and is continuing), permit (and cause to be permitted) Lender's designated representatives to (a) visit, examine, audit, photograph the exterior of and inspect the Mortgaged Property, (b) examine, audit, inspect, copy, duplicate and abstract Borrower's financial, accounting and other books and records, and (c) discuss Borrower's and the Mortgaged Property's affairs, finances and business with Borrower's officers, senior management, representatives, independent public accountants and agents (including the Manager). Borrower shall cause its books and records to be maintained at Borrower's principal offices located at the Mortgaged Property or at any other reasonable location which Lender is notified. Borrower will not change its principal offices or the location where its books and records are kept without giving at least thirty (30) days' advance notice to Lender. Borrower shall pay Lender's costs and expenses incurred in connection with such audit if an Event of Default has occurred or if any audit reveals any material discrepancy, in Lender's reasonable judgment, in the financial information provided by Borrower. All audits, inspections and reports shall be made for the sole benefit of Lender. Neither Lender nor Lender's auditors, inspectors, representatives, agents or contractors assumes any responsibility or liability (except to Lender) by reason of such audits, inspections or reports. Borrower will not rely upon any of such audits, inspections or reports. The performance of such audits, inspections and reports will not constitute a waiver of any of the provisions of the Loans Documents. Neither Lender nor any other of Lender's inspectors, representatives, agents or contractors, shall be responsible for any matters related to design or construction of any Construction. Borrower shall cooperate, from time to time, with Lender and use reasonable efforts to assist Lender in obtaining an appraisal of the Mortgaged Property. Such cooperation and assistance from Borrower shall include reasonable access to the Mortgaged Property and books and records pertaining to the Mortgaged Property for Lender and its appraiser. The appraiser performing any such appraisal shall be engaged by Lender. Borrower shall not be responsible for the expenses of any such appraisal provided, however, Borrower shall pay the fees of such appraiser in connection with one appraisal of the Mortgaged Property during the term of the Loan and any such appraisal when conducted following the occurrence of an Event of Default. Borrower shall cooperate with Lender with respect to any proceedings before any Governmental Authority which may in any way affect the rights of Lender under any of the Loan Documents and, in connection therewith, not prohibit Lender, at its election, from participating in any such proceedings.

5.8 Environmental Compliance. Borrower shall: (a) comply (or use commercially reasonable efforts to cause compliance) at all times with all applicable Environmental Laws with respect to the Mortgaged Property in all material respects, and (b) promptly take, or cause to be taken, any and all necessary remedial actions upon obtaining knowledge of the presence, storage, use, disposal, transportation, release or discharge of any Hazardous Materials on, under or about the Mortgaged Property in any manner which could reasonably be expected to have a Material Adverse Effect or is in violation of any Environmental Laws. Borrower shall cause all remedial action with respect to Hazardous Material on, under or about the Mortgaged Property, to comply with all applicable Environmental Laws and the applicable policies, orders and directives of all Governmental Authorities. If Lender at any time has a reasonable basis to believe that there may be a violation of any Environmental Law by, or any liability arising thereunder of, Borrower or relating to the Mortgaged Property, Borrower shall, upon request from Lender, provide Lender with such reports, certificates, engineering studies and other written material or data as Lender

may reasonably require so as to satisfy Lender that Borrower and the Mortgaged Property are in compliance with all applicable Environmental Laws. Borrower shall permit Lender, its authorized representatives, consultants or other Persons retained by Lender, upon five (5) Business Days prior written notice to Borrower so that Borrower will have an opportunity to send a representative to accompany Lender, unless in the case of emergency to comply with Environmental Laws, to enter upon, examine, test and inspect the Mortgaged Property with regard to compliance with Environmental Laws, the presence of Hazardous Materials and the environmental condition of the Mortgaged Property and properties adjacent to the Land, provided, however, such inspection is not to be made more frequently than once per calendar year unless an Event of Default shall have occurred and is continuing. Such entry, examination, testing and inspecting and reporting shall be at the expense of Borrower if (x) an Event of Default has occurred and is continuing or (y) Lender has reasonably determined that there may be a violation of Environmental Law or any liability arising under Environmental Law, which expense shall be paid by Borrower to Lender within fifteen (15) days after written demand.

5.9 Environmental Disclosure. Borrower shall immediately upon becoming aware thereof advise Lender in writing and in reasonable detail of: (1) any release, disposal or discharge of any Hazardous Material at the Mortgaged Property required to be reported to any Governmental Authority under applicable Environmental Laws; (2) any and all written communications sent or received by Borrower or its agents with respect to any Environmental Claims or any release, disposal, existence or discharge of Hazardous Material required to be reported to any Governmental Authority; (3) any remedial action taken by Borrower or any other Person in response to any Hazardous Material on, under or about the Mortgaged Property, the existence of which could reasonably be expected to result in an Environmental Claim; (4) the discovery by Borrower or its agents of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could reasonably be expected to cause such real property or any part thereof to be classified as "border-zone property" or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws; and (5) any request for information from any Governmental Authority that indicates such Governmental Authority is investigating whether Borrower may be potentially responsible for a release, disposal or discharge of Hazardous Materials from any of the Mortgaged Property. Borrower shall promptly notify Lender of any proposed action to be taken by Borrower to commence any operations that could reasonably be expected to subject Borrower to additional laws, rules or regulations, including laws, rules and regulations requiring additional or amended environmental permits or licenses. Borrower shall, at its own expense, provide copies of such documents or information as Lender may reasonably request in relation to any matters disclosed pursuant to this Section 5.9.

5.10 Compliance with Laws, Employee Benefit Plans and Contractual Obligations. Borrower will promptly and faithfully (A) comply and cause the Mortgaged Property to comply, in all material respects, with the requirements of all Legal Requirements including the Prescribed Laws, and the orders and requirements of any Governmental Authority in all jurisdictions in which it is now doing business or may hereafter be doing business and of every board of fire underwriters or similar body exercising similar functions, (B) maintain all licenses, certificates of occupancy, permits and Proprietary Rights now held or hereafter acquired by it or with respect to which a Material Adverse Effect will result if same are not existing and held by Borrower and (C) perform, observe, comply and fulfill all of its obligations, covenants and conditions

contained in the Loan Documents, the Master Lease and the Material Contracts. Borrower shall: (i) promptly notify Lender of any claim made against Borrower that Borrower is in default under any Material Contract or that any other party is in default under any Material Contract; (ii) not terminate, or permit termination of, any Material Contract, and (iii) not enter into, amend or modify any Material Contract without first obtaining the prior written approval (not to be unreasonably withheld, conditioned or delayed (other than with respect to the Master Lease which shall be subject to Lender's sole and absolute discretion)) of Lender except to the extent otherwise permitted in this Agreement. Except for the plans described in **Schedule 4.10,** Borrower is not a party to, and will not establish, any Employee Benefit Plan. Except for the plans described in **Schedule 4.10,** Borrower will not commence making contributions to (or obligate itself to make contributions to) any Employee Benefit Plan.

5.11 Further Assurances. Borrower shall, from time to time, at its sole cost and expense, execute and/or deliver, or cause execution and/or delivery of, such documents, agreements and reports, and perform such acts as Lender at any time may reasonably request to carry out the purposes and otherwise implement the terms and provisions provided for in the Loan Documents. Borrower shall execute any documents and take any other actions necessary to provide Lender with a first priority, perfected security interest in the Reserves and the other Collateral. Borrower shall, at Borrower's sole cost and expense: (i) upon Lender's request therefore given from time to time (but not more frequently than once every three years unless an Event of Default then exists) pay for (a) current reports of UCC, federal tax lien, state tax lien, judgment and pending litigation searches with respect to Borrower and Borrower Representative, (b) current good standing and existence certificates with respect to Borrower and Borrower Representative and (c) current searches of title to the Mortgaged Property, each such search to be conducted by search firms reasonably designated by Lender in each of the locations reasonably designated by Lender; (ii) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished pursuant to the terms of the Loan Documents; and (iii) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary, to evidence, preserve and/or protect the Loan Account Collateral and the other Collateral at any time securing or intended to secure the Obligations, as Lender may require in Lender's reasonable discretion. Borrower shall promptly execute, acknowledge, deliver, file or do, at its sole cost and expense, all acts, assignments, notices, agreements or other instruments as Lender may reasonably require in order to effectuate, assure, convey, secure, assign, transfer and convey unto Lender any of the rights granted by this Agreement and to more fully perfect and protect any assignment, pledge, lien and security interest confirmed or purported to be created under the Loan Documents or to enable Lender to exercise and enforce its rights and remedies hereunder, in respect of the Collateral.

5.12 Intentionally Omitted.

5.13 Intentionally Omitted.

5.14 Intentionally Omitted.

5.15 Intentionally Omitted.

5.16 Intentionally Omitted.

5.17 Intentionally Omitted.

5.18 Management. Borrower shall provide competent, responsible management for the Mortgaged Property. All management agreements (if any) must contain subordination and termination provisions and must be otherwise satisfactory to Lender. Borrower shall cause management subordination agreements in form and substance satisfactory to Lender to be executed by any Affiliate manager under any management agreement.

5.19 Construction Matters. Without limitation of Lender's rights and Borrower's Obligations set forth elsewhere in the Loan Documents, Borrower shall: (1) subject to Force Majeure delays, cause any Restoration and all other Construction to proceed with reasonable diligence and continuously, with sufficient workers employed and sufficient materials supplied for that purpose so that the applicable Construction is substantially completed by the applicable Required Completion Date, or, if no Required Completion Date is applicable, as promptly as reasonably practicable or, in the case of Restoration, the Restoration is Substantially Completed prior to the Required Restoration Date; (2) cause all Construction to be performed in accordance with the applicable Plans and Specifications or plans and specifications for the work in question, in substantial conformity with the Legal Requirements, the requirements of all insurers and fire underwriters, and with the requirements set forth herein and in the other Loan Documents, in compliance with the Master Lease and Material Contracts and in a good, safe and workmanlike manner; (3) cause all materials acquired or furnished in connection with the Construction and Restoration to be new and stored under adequate safeguards to minimize the possibility of loss, theft, damage or commingling with other materials or projects; (4) utilize, or permit utilization of, only contractors approved by Lender (such approval not to be unreasonably withheld, conditioned or delayed); (5) not permit any material revision of the Plans and Specifications without the consent of Lender (not to be unreasonably withheld, conditioned or delayed); and (6) from time to time upon the reasonable request of Lender deliver to Lender such certificates and other documentation confirming the matters set forth in the preceding clauses (1) through (5). Promptly upon the giving or receipt of such notice, Borrower shall forward to Lender copies of all material written notices given or received by, or on behalf of, Borrower with respect to the Construction to or from: (x) Contractor or any subcontractor or material supplier, or any of the design professionals (including notices relating to any nonconforming construction, any refusal or inability to pay or perform pursuant to the terms of any contract or other agreement or any delay, default or change order) or (y) any claim of default, or relating to any work stoppage, notice of violation or cease and desist order, stop order, construction liens, strike, claim, litigation, damage, loss or any other materially adverse condition, circumstance or event. Borrower shall pay and discharge or cause to be paid and discharged in accordance with the requirements of the applicable agreements payments due for labor, materials and supplies unless the same shall be contested by Borrower in accordance with Section 5.3(B). Borrower shall make available for inspection at all times by Lender and its representatives copies of all contracts for Construction and all Architect's Agreements, to the extent available to or reasonably obtained by Borrower, entered into by Contractor and design professionals relating to the Construction. Within ninety (90) days after Substantial Completion of applicable Construction activities, Borrower shall (i) complete, or cause to be completed, all Punch-List Items, (ii) deliver to Lender two (2) copies of the as-built Plans and Specifications and such other as-built surveys and plans

and specifications as Lender may reasonably require and (iii) obtain all final permits and approvals required for the normal use and occupancy of the Improvements in question (including a permanent certificate of occupancy if required for occupancy under applicable laws or its equivalent for the Improvements in question) provided, however, to the extent that the Master Lease or Legal Requirements require satisfaction of items (i), (ii) or (iii) prior to the expiration of such sixty (60) day period, such items must be satisfied within the earlier time frame.

5.20 Rate Cap/Swap. To the extent applicable, the term of the Rate Cap/Swap Agreement shall terminate no earlier than the Initial Maturity Date. The Rate Cap/Swap Agreement shall be pledged to Lender pursuant to the Rate Cap/Swap Pledge Agreement. The Rate Cap/Swap Agreement shall direct payment from the Rate Cap/Swap Counterparty directly to the Lender upon the occurrence and during the continuance of an Event of Default. If requested by Lender, Borrower shall, at its sole cost and expense, cause the Rate Cap/Swap Agreement to be accompanied by an opinion of Rate Cap/Swap Counterparty's counsel, in form and substance reasonably satisfactory to Lender. The notional amount of the Rate Cap/Swap Agreement shall be at least 70% of the outstanding principal balance of the Loan. If the Maturity Date is extended pursuant to the condition set forth herein, Borrower shall not be required to obtain a Rate Cap/Swap Agreement for such extension period.

5.21 Intentionally Omitted.

5.22 Name. Borrower will conduct its businesses only under the name: "CHI 3, LLC."

5.23 Intentionally Omitted.

5.24 Intentionally Omitted.

5.25 Intentionally Omitted.

5.26 Protection of Collateral; Assessments; Reimbursement. All Insurance Premiums and all expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping the Collateral, any and all Impositions on any of the Collateral or in respect of the sale or other disposal thereof shall be borne and paid by Borrower or Borrower shall cause any manager retained by it to pay the same. Borrower shall promptly pay, as the same become due and payable, its share of all Insurance Premiums, expenses and Impositions. Except as otherwise permitted in this Agreement, if Borrower shall fail to pay, or cause to be paid, any such Insurance Premiums, expenses and/or Impositions, Lender may, at Borrower's expense, pay the same. If, by reason of any suit or proceeding of any kind, nature or description against Borrower, or by Borrower, or by reason of any other material facts or circumstances, which in Lender's reasonable discretion makes it advisable for Lender to seek counsel for the protection and preservation of the Collateral, or to defend its own interest, such expenses and reasonable counsel fees actually incurred shall be allowed to Lender and borne and paid by Borrower.

5.27 Lender's Verification of Subcontracts. From time to time during the period of Construction of the Project, Lender may forward to all contractors, subcontractors, material suppliers, Architects, engineers and other parties listed on the sworn statement, a contract verification to ascertain the correctness of the amount of the contract for each contractor, subcontractor, material supplier, Architect, engineer and any other party as contained on the

statement. In the event of any discrepancy between the amounts as shown by the executed copies of the contracts, the sworn statement, and the verification of contract forms, Lender shall have the right to require that such discrepancies be resolved to its reasonable satisfaction.

5.28 Lender Responsibility. Lender shall not be (a) obligated or responsible for, the payment of any of the amounts or sums referred to in this Section 5, or (b) liable or responsible in any way for the safekeeping of any of the Collateral or for any loss or damage thereto.

5.29 Intentionally Omitted.

SECTION 6
ACCOUNTS/CASH MANAGEMENT

6.1 Establishment of Accounts and Cash Management Procedures. Upon the occurrence and during the continuance of an Event of Default, Lender in its sole and absolute discretion, may require that all income received by Borrower be deposited into a collection account established by Borrower but controlled by Lender, which funds will then be disbursed by Lender and applied towards the payment of taxes, insurance, debt service, capital improvements and operating expenses in accordance with the terms of this Agreement in such order as Lender may determine in its sole and absolute discretion. In such event, Lender may require Borrower to deposit all security deposits received into an account controlled by Lender

6.2 Intentionally Omitted.

6.3 Intentionally Omitted.

6.4 Rate Cap/Swap Agreement Payments. To the extent applicable, upon the occurrence, and during the continuance of an Event of Default, Borrower shall cause all amounts payable by the Rate Cap/Swap Counterparty under the Rate Cap/Swap Agreement to be to be paid directly to Lender during the term of the Loan.

6.5 Intentionally Omitted.

6.6 Intentionally Omitted.

6.7 Accounts. Borrower shall not, without the prior written consent of Lender, change the account location of any Loan Account and, as a condition precedent to any such change, the bank to which Borrower proposes to relocate such Loan Account shall have executed an appropriate acknowledgment letter, in accordance with the provisions set forth above. With respect to the Loan Account Collateral, Lender shall not be liable for any acts, omissions, errors in judgment or mistakes of fact or law, except for those arising as a result of Lender's gross negligence or willful misconduct in the investment of such Loan Account Collateral. Funds in the Borrower Account shall not be disbursed in violation of any provision of this Agreement.

6.8 Intentionally Omitted.

6.9 Creation of Security Interest in Accounts. Borrower hereby pledges, transfers and assigns to Lender, and grants to Lender, as additional security for the Obligations, a continuing

perfected first priority security interest in and to, and a first lien upon, effective upon the establishment of one or more Loan Accounts: (i) the Loan Accounts and all amounts which may from time to time be on deposit in each of the Loan Accounts; (ii) all of Borrower's right, title and interest in and to all cash, property or rights transferred to or deposited in each of the Loan Accounts from time to time; (iii) all certificates and instruments, if any, from time to time representing or evidencing any such Loan Account or any amount on deposit in any thereof, or any value received as a consequence of possession thereof, including all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the Loan Accounts; (iv) all monies, chattel paper, checks, notes, bills of exchange, negotiable instruments, documents of title, money orders, commercial paper, and other security instruments, documents, deposits and credits from time to time in the possession of Lender representing or evidencing such Loan Accounts; (v) all other property, held in, credited to, or constituting part of any of the Loan Accounts; (vi) all earnings and investments held in any Loan Account in accordance with this Agreement; and (vii) to the extent not described above, any and all proceeds of the foregoing, (collectively, the "**Loan Account Collateral**"). This Agreement and the pledge, assignment and grant of security interest made hereby secures payment of all Obligations in accordance with the provisions set forth herein. This Agreement shall be deemed a security agreement within the meaning of the UCC.

6.10 Intentionally Omitted.

6.11 Intentionally Omitted.

6.12 Covenants Regarding Loan Account Collateral. Borrower will not, without the prior consent of Lender, (a) sell, assign (by operation of law or otherwise), pledge, or grant any option with respect to, any of the Gross Revenues or any interest in any Loan Account Collateral or (b) create or permit to exist any assignment, lien, security interest, option or other charge or encumbrance upon or with respect to any of the Gross Revenues or any Loan Account Collateral, except for the Liens in favor of Lender under this Agreement and the other Loan Documents. Borrower will give Lender not less than thirty (30) days' prior written notice of any change in the address of its chief executive office or its principal office. Borrower agrees that all records of Borrower with respect to any Loan Account Collateral will be kept at Borrower's principal office and will not be removed from such addresses without the prior written consent of Lender. Borrower will not without the consent of Lender make or consent to any amendment or other modification or waiver with respect to any Loan Account Collateral, or enter into any agreement, or permit to exist any restriction, with respect to any Loan Account Collateral. Borrower will, at its expense, defend Lender's right, title and security interest in and to the Loan Account Collateral against the claims of any Person. Borrower will not take any action which would in any manner impair the enforceability of this Agreement or the security interests created hereby. Borrower will not enter into any credit agreement or other borrowing facility including a line of credit with Bank. Nothing contained in this Section 6 shall impair or otherwise limit Borrower's obligations to timely make the payments (including interest and principal) required by the Note and the other Loan Documents, it being understood that such payments shall be so timely made in accordance with the Loan Documents, regardless of the amounts on deposit in any Account. Lender may, from time to time, at its sole option, perform any act which Borrower agrees hereunder to perform which Borrower shall fail to perform after being requested in writing to so perform and Lender may from time to time take any other action which Lender deems necessary

for the maintenance, preservation or protection of any of the rights granted to Lender hereunder. With respect to the powers conferred on Lender hereunder, Lender shall not have any duty as to the Accounts or any other Loan Account Collateral, or any responsibility for (i) ascertaining or taking action with respect to any matters relative to the Accounts or any other Loan Account Collateral, whether or not Lender has or is deemed to have knowledge of such matters or (ii) taking any necessary steps to preserve rights against prior parties or any other rights pertaining to the Accounts or any other Loan Account Collateral.

6.13 Intentionally Omitted.

SECTION 7
NEGATIVE COVENANTS

Borrower covenants and agrees that from the date hereof and so long as this Agreement shall remain in effect or the Note remains outstanding, Borrower shall comply with all covenants and agreements in this Section 7.

7.1 Indebtedness. Borrower will not directly or indirectly create, incur, assume, guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness except Permitted Indebtedness.

7.2 Liens and Related Matters. Borrower will not directly or indirectly create, incur, assume or permit to exist any Lien on or with respect to the Mortgaged Property or other Collateral whether now owned or hereafter acquired, or any income or profits therefrom, except Permitted Encumbrances. Borrower shall have the right to contest any such Lien securing Claims in accordance with Section 5.3(B).

7.3 Material Rights. Without Lender's consent, Borrower shall not (a) amend, modify or waive the performance of material obligations with regard to the Material Contracts, (b) request a waiver or consent from, any party to, or issuer of any of the Material Contracts or (c) terminate or permit termination of any Material Contracts.

7.4 Restriction on Fundamental Changes. None of Borrower or any intermediate Special Purpose Bankruptcy Remote Entity imposed for purposes of, or in connection with a Securitization ("Intermediate Borrower Entity"), to the extent such Intermediate Borrower Entity is consented to by the Borrower (which consent shall not be unreasonably withheld, conditioned or delayed), will: (1) amend, modify or waive in any material respect any term or provision of its Organizational Documents, (2) liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution); or (3) acquire by purchase or otherwise all or any part of the business or assets of, or stock or other evidence of beneficial ownership of, any Person. None of Borrower or Intermediate Borrower Entity will issue, sell, assign, pledge, convey, dispose or otherwise encumber any partnership, stock, membership, beneficial or other ownership interests or grant any options, warrants, purchase rights or other similar agreements or understandings with respect thereto. Borrower will not establish any Subsidiaries. Borrower will not make any Investments in any other Person.

7.5 Restriction on Leases.

(A) Borrower shall not hereafter enter into, modify, amend or terminate any Lease, Capital Lease with respect to the Mortgaged Property or any portion thereof without Lender's prior written consent which consent shall be subject to Lender's sole discretion. Lender hereby consents to Borrower entering into the Master Lease on the date hereof

(B) Borrower shall perform and comply, in all material respects, with all of the landlord's obligations under the Master Lease and each other Lease and Capital Lease and shall not suffer or permit any material breach or default on the part of the landlord to occur thereunder.

7.6 Transactions with Affiliates. Other than the Master Lease, Borrower shall not directly or indirectly enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any director, officer, employee or Affiliate of Borrower, Borrower Representative or Carveout Guarantor, except (i) transactions in the ordinary course of and pursuant to the reasonable requirements of the business of Borrower and upon fair and reasonable terms which are fully disclosed to Lender and are no less favorable to Borrower than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate, director, officer or employee of Borrower and (ii) as otherwise expressly contemplated by this Agreement. Each such agreement with any Affiliate, director, officer or employee of Borrower shall provide that the same may be terminated by Lender at its option if an Event of Default exists and Lender reasonably determines that such agreement does not comply with the requirements of this Section 7.6. Borrower shall not pay any management, consulting, director or similar fees to any director, officer, employee or Affiliate of Borrower or Carveout Guarantor, except upon fair and reasonable terms which are fully disclosed to Lender and are no less favorable to Borrower than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate, director, officer or employee of Borrower and so long as such Affiliate subordinates its fees to the payment of all amounts then due and payable under the Loan and such agreement is terminable immediately upon the occurrence of an Event of Default.

7.7 Intentionally Omitted.

7.8 Management Fees and Compensation; Contracts. Borrower will not enter into or become obligated under any management (property and asset), brokerage or other such similar agreement, whether with an Affiliate or any other Person, with respect to the Mortgaged Property, unless the same may be terminated, without cause and without payment of a penalty or fee, on not more than thirty (30) days' prior written notice.

7.9 Conduct of Business. From and after the Closing Date, Borrower will not engage in any business other than the ownership and operation of the Mortgaged Property. Borrower shall not use the Mortgaged Property or any part thereof, other than for the construction, alteration and repair of the improvements on, and the use of, the Mortgaged Property as an Internet Business Exchange (IBX) collocation facilities and data centers (collectively "IBX Centers") in accordance with the Plans and Specifications, and ancillary administrative or other support services or any facility that as a result of technological changes is substantially equivalent, or a technological successor, to a data center and IBX collocation facility, so long as such change

does not have any material impact on the value of the Mortgaged Property, or for any unlawful purpose, or in violation of any certificate of occupancy or other permit or certificate, or any Legal Requirement. Borrower will not suffer any act to be done or any condition to exist on the Mortgaged Property or any part thereof or any article to be brought thereon, which may be dangerous (unless safeguarded as required by Legal Requirement) or which may constitute a nuisance, public or private, or which may void or make voidable any insurance then in force with respect thereto. Subject to Section 12.3, no tract map, parcel map, condominium plan, condominium declaration, or plat of subdivision (or analogous document) will be recorded with respect to the Mortgaged Property without Lender's consent. The Mortgaged Property shall not be converted to the condominium or "cooperative" form of ownership. Borrower will not initiate or consent to any change in the zoning of the Mortgaged Property. Borrower shall at all times maintain good and marketable fee title to the Mortgaged Property free and clear of any encumbrances other than the Permitted Encumbrances. Borrower shall not change its fiscal year without giving advance notice thereof to Lender.

7.10 **Use of Lender's Name**. Borrower shall not use the names of Lender or any of Lender's Subsidiaries or Affiliates in connection with the development, marketing, leasing, use and operation of the Mortgaged Property. Borrower shall not disclose or permit any Affiliate, officer, director, partner, manager, member or employee of Borrower to disclose (other than to its Affiliates, or Borrower's and its Affiliate's attorneys, agents, consultants, accountants and existing and prospective lenders and investors, but only to the extent they are in turn also bound to maintain such confidentiality – it being understood that a breach of this provision by any of the foregoing Persons shall be deemed a breach of this Section 7.10 by Borrower) any of the terms and conditions of the Loan to any Person except (a) to the extent disclosed in the Mortgage and the Financing Statements, (b) to the extent such disclosure is required pursuant to the Loan Documents or applicable legal process, (c) to the extent required by applicable securities laws or (d) to the extent Lender consents to such disclosure.

7.11 **Compliance with ERISA**. Borrower shall not adopt, modify or terminate any Employee Benefit Plans except as described in **Schedule 4.10**. Borrower shall not fail to maintain and operate each existing Employee Benefit Plan in compliance in all material respects with the provisions of ERISA, the Code and all other applicable laws and the regulations and interpretations thereof. Borrower shall not engage in any transaction which would cause the Obligations or any action taken or to be taken under this Agreement or the other Loan Documents or otherwise (or the exercise by Lender of any of its rights under the Loan Documents) to be a non-exempt prohibited transaction under ERISA. Borrower shall not become an "employee benefit plan" (within the meaning of Section 3(3) of ERISA) to which ERISA applies and Borrower shall not permit its assets to be plan assets.

7.12 **Due on Sale or Encumbrance**. Except for a Transfer of the Release Property upon the satisfaction of the Subdivision and Partial Release Requirements, without Lender's consent, which consent may be given or withheld in the sole discretion of Lender, neither Borrower nor any other Person directly or indirectly holding any direct or indirect legal, beneficial, equitable or other interest in Borrower (at each and every tier or level of ownership) shall, or permit other Persons to, Transfer (whether or not for consideration or of record) all or any portion of the Mortgaged Property or any direct or indirect legal, equitable, beneficial or other interest (1) in all or any portion of the Mortgaged Property; (2) in Borrower; or (3) at each and every tier or level

of ownership, in Borrower's direct or indirect partners, members, shareholders, beneficial or constituent owners including Borrower Representative, any owners of Borrower Representative (or the direct or indirect owners of any direct or indirect interests in any such constituent owners), including (a) an installment sales agreement for a price to be paid in installments; (b) any Leases (other than as permitted by Section 7.5) or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (c) any direct or indirect voluntary or involuntary sale of any ownership interest in Borrower or other Person directly or indirectly owning any direct or indirect interest in Borrower; (d) the creation, issuance or redemption of direct or indirect ownership interests by Borrower or any Person owning a direct or indirect interest in Borrower (at each every tier or level of ownership); (e) any merger, consolidation, dissolution or liquidation; and (f) without limitation of any of the foregoing, any direct or indirect voluntary or involuntary Transfer by any Person which indirectly controls Borrower (by operation of law or otherwise) of its direct or indirect controlling interests in Borrower. Notwithstanding the foregoing, the following shall not be deemed to be prohibited under this Section 7.12: (i) Transfers to a Family Member or trust for the benefit of a Family Member by devise or descent or by operation of law, (ii) a Transfer of an indirect ownership interest in Borrower, by the current owner thereof to a Family Member of such current owner (or a trust for the benefit of any such Family Members), (iii) the Master Lease and Transfers by the Master Lessee to the extent permitted under the Master Lease, (iv) Transfers of ownership interests in a Person whose stock is listed or quoted on the New York Stock Exchange, the American Stock Exchange or NASDAQ and (v) a Transfer or series of related Transfers, or the creation or issuance of direct or indirect ownership interests in Carveout Guarantor, in connection with the merger, consolidation or reorganization of Carveout Guarantor, so long as, in the case of any transactions described in clauses (i) through (v) above, either of the following is true: (x) no such transaction results in any Person or Group acquiring, directly or indirectly, more than a forty-nine percent (49%) direct or indirect interest in Borrower (if such Person or Group did not, prior to such transaction, own at least forty-nine percent (49%) of the direct or indirect ownership interests in Borrower); or (y) after giving effect to such transaction, both of the following conditions are satisfied: (I) the Tenant under the Master Lease is either Equinix or an entity that succeeds to the obligations of Equinix under the Master Lease (by assignment, operation of law or otherwise) and satisfies (or whose obligations under the Master Lease are guarantied by an entity that satisfies) the Investment Grade Criteria or the Financial Strength Criteria and (II) either Equinix (or another entity that succeeds to the obligations of Equinix and satisfies the Investment Grade Criteria or the Financial Strength Criteria) remains obligated with respect to the Carveout Guaranty, the Environmental Indemnity Agreement and the Completion Guaranty or another entity that satisfies the Investment Grade Criteria or the Financial Strength Criteria assumes the obligations of Carveout Guarantor under the Carveout Guaranty, the Environmental Indemnity Agreement and the Completion Guaranty and executes such documents assuming the Carveout Guaranty, the Environmental Indemnity Agreement and the Completion Guaranty in form and substance reasonably acceptable to Lender. Notwithstanding the foregoing, Borrower may without Lender's prior written approval, (i) grant or modify standard utility and telecommunication easements serving the Land, (ii) grant to one or more of its tenants or any third party the right to use on commercially reasonable terms the capacity of the fiber ring located on the Mortgaged Property, provided that such additional use does not impair or reduce the capacity required for the operation of data centers or IBX collocation facilities on any portion of the Mortgaged Property, or (iii) sell Inventory in the

ordinary course of business and transfer or dispose of tangible personal property to Persons that are not Borrower's Affiliates, which tangible personal property is immediately replaced by an article of equivalent suitability and value or which is no longer necessary in connection with the operation of the Mortgaged Property provided that such transfer or disposal will (i) not have a Material Adverse Effect, (ii) not materially impair the utility of the Mortgaged Property, and (iii) not result in a reduction or abatement of, or right of offset against, the Gross Revenues payable under any Lease or otherwise, and provided that any tangible personal property acquired by Borrower (and not so disposed of) shall be subject to the Lien of the Mortgage. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and, as applicable, its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Mortgaged Property in agreeing to make the Loan and will continue to rely on such ownership of the Mortgaged Property and Borrower as a means of maintaining the value of the Mortgaged Property as security for repayment of the Loan and the performance of the other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Borrower default in the repayment of the Loan or the performance of the other Obligations, Lender can recover the Loan by a sale of the Mortgaged Property. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Loan immediately due and payable upon any Default under this Section 7.12. Notwithstanding anything to the foregoing contained herein, other than transfers of stock in Carveout Guarantor, in no event shall the Mortgaged Property or any direct or indirect interest in Borrower be transferred to an Embargoed Person.

7.13 Payments; Distributions. Borrower shall not pay any distributions, dividends or other payments or return any capital to any of its respective partners, members, owners or shareholders or any other Affiliate or make any distribution of assets, rights, options, obligations or securities to any of its respective partners, members, shareholders or owners or any other Affiliate (individually, or collectively, a "**Distribution**") unless (a) on the date of the proposed Distribution, and after giving effect to such Distribution, no Default or Event of Default exists; (b) funds are not then required to be deposited into any Loan Account, including any amounts required to be deposited with Lender; and (c) Borrower is not "insolvent" (as defined in the Bankruptcy Code) and will not be rendered insolvent by virtue of such Distribution.

7.14 Single Purpose Bankruptcy Remote Entities. Borrower hereby represents, warrants, agrees and covenants that Borrower has, at all times, from its formation, been, and, at all times will be, a Special Purpose Bankruptcy Remote Entity as defined in **Schedule 7.14**. Borrower will not directly or indirectly, make any change, amendment or modification to its Organizational Documents or otherwise take any action which could result in Borrower not being a Special Purpose Bankruptcy Remote Entity.

7.15 Alterations. Following the Completion of Construction of the Initial Project, Borrower shall not alter, remove or demolish or permit the Alteration, removal or demolition of, any Improvement except as the same may be necessary in connection with (i) a Restoration in connection with a taking or casualty in accordance with the terms and conditions of the Agreement, (ii) Approved Capital Improvements in accordance with the terms and conditions of the Agreement and (iii) other Alterations permitted in accordance with the terms and conditions of this Section 7.15. Following the Completion of Construction of the Initial Project, if no Event

of Default exists, Borrower may undertake any Alteration, improvement, demolition or removal of Improvements or any portion thereof (any such alteration, improvement, demolition or removal, an "**Alteration**") so long as (i) Borrower provides Lender with at least thirty (30) days' prior notice of any such Alteration, (ii) such Alteration is undertaken in accordance with the applicable provisions of this Agreement, is not prohibited by, and is in full compliance with, and does not violate, any Material Contracts, Leases or Legal Requirements and does not, during Construction and upon completion, have a Material Adverse Effect, (iii) Borrower provides Lender with evidence, satisfactory to Lender, that Borrower has sufficient funds, through a combination of Reserves, Loan proceeds, Proceeds, funds deposited with Lender or otherwise to complete and pay all of the costs of the Alterations, (iv) such Alteration is in the nature of (a) an Approved Capital Improvements permitted under this Agreement or a Restoration required or permitted under the Agreement or (b) has been consented to by Lender (such consent will not be unreasonably withheld conditioned or delayed) and (v) prior to commencement and from time to time upon request from Lender, Borrower delivers an Officer's Certificate certifying that conditions (i)–(iv), inclusive, have been satisfied. All Alterations shall, unless Lender otherwise approves be made in conformance with Section 3 and Section 5.18. Notwithstanding anything to the contrary in this Section 7.15, without the necessity of complying with conditions (i), (iii), (iv) and (v) above, Borrower shall have the right, without having obtained the prior written consent of Lender and provided no Event of Default exists, (w) to make any improvements, alterations or modifications to the Mortgaged Property the cost of which is less than Two Hundred and Fifty Thousand Dollars ($250,000) (so long as such improvements do not devalue the Mortgaged Property or increase Lender's obligations or liability, if any), (x) to make non-structural Alterations which are reasonably required or desirable for the operation of the Mortgaged Property and which are not visible from the exterior of the Improvements, (y) to install or replace any Fixtures and Personality in the Improvements or accessions to any Fixtures and Personalty, or (z) to construct and perform the Phase II Build-Out.

7.16 Master Lease. The Master Lease and the Master Lease Guaranty must remain in full force and effect during the term of the Loan. Until the Loan has been repaid in full, the Master Lease and the Master Lease Guaranty may not be terminated, cancelled, amended, modified or assigned in any manner whatsoever without Lender's prior written consent. Borrower may not give its consent to or approve any request by Master Lessee for Borrower's consent or approval of any matter requiring such consent or approval under the Master Lease without Lender's prior written consent. Borrower shall enforce all of the terms of the Master Lease and shall exercise all available remedies thereunder (other than termination of the Master Lease which shall require Lender's prior written consent).

SECTION 8
CASUALTY AND CONDEMNATION

8.1 Restoration Following Casualty or Condemnation. After the happening of any casualty or condemnation to the Mortgaged Property or any part thereof, Borrower shall give prompt notice thereof to Lender.

(A) In the event of any damage or destruction of all or any part of the Mortgaged Property, all Proceeds shall be payable to Lender. Borrower hereby authorizes and directs any affected insurance company or condemning Governmental Authority or other Persons to make

payment of such proceeds directly to Lender. Borrower shall obtain Lender's approval prior to any settlement, adjustment or compromise of any claims for loss, damage or destruction under any policy or policies of insurance or with respect to any condemnation, and Lender shall have the right to participate with Borrower in negotiation of any such settlement, adjustment or compromise provided, however, Borrower shall be permitted, so long as no Event of Default exists, to settle insurance claims of $2,500,000 or less without Lender's approval (but with reasonable advance notice to Lender) and utilize any such funds for Restoration. Lender shall also have the right to appear with Borrower in any action against an insurer based on a claim for loss, damage or destruction under any policy or policies of insurance.

(B) All compensation, proceeds, damages, claims, insurance recoveries, rights of action and payments which Borrower may receive or to which Borrower may become entitled with respect to the Mortgaged Property or any part thereof as a result of any casualty or condemnation, except as set forth below in this Section 8.1 (the "**Proceeds**"), shall be paid over to Lender and shall be applied first toward reimbursement of all costs and expenses of Lender in connection with recovery of the same, and then, except as set forth below in this Section 8.1, shall be applied in the sole and absolute discretion of Lender, without regard to the adequacy of Lender's security hereunder, to the payment or prepayment of the Obligations in such order as Lender may determine, and any amounts so applied shall reduce the Obligations *pro tanto* (without any Prepayment Premium due in connection therewith). Any application of the Proceeds or any portion thereof to the Obligations shall not be construed to cure or waive any Default or Event of Default or invalidate any act done pursuant to any such Default or Event of Default.

(C) Subject to the other provisions of this Section 8.1, and provided that (i) all Proceeds have been deposited with Lender; (ii) no Event of Default shall exist; (iii) a Total Loss with respect to the Property shall not have occurred; (iv) the Restoration is capable, as reasonably determined by Lender, of being completed before the earlier (the "**Required Restoration Date**") to occur of (x) the date which is six (6) months prior to the Maturity Date, (y) the date on which the insurance carried by Borrower pursuant to Section 5.4, with respect to the Mortgaged Property shall expire and (z) twelve (12) months after the occurrence of the casualty or condemnation in question; (v) Lender shall have been furnished all information related to the Restoration as was required by Section 3 for the Initial Project; (vi) the Improvements so restored or rebuilt shall be of at least equal value and substantially the same character as prior to the damage or destruction and appropriate for the purposes for which they were originally erected (and, if requested by Lender, Borrower will furnish, at its expense, an appraisal confirming such valuation); (vii) if the estimated cost of the Restoration exceeds the Proceeds available, Borrower shall have deposited with Lender such sums or other security as may be necessary, in Lender's reasonable judgment, to pay such excess costs; (viii) to the extent in effect upon Completion of Construction, the Master Lease shall remain in force and effect; and (ix) Lender shall have received notice reasonably promptly of the fire or other hazard or of the condemnation proceedings specifying the date of such fire or other hazard or the date the notice of condemnation proceedings was received and the request to Lender to make said Proceeds available to Borrower; then the Proceeds, less the actual costs, fees and expenses, if any, incurred in connection with adjustment of loss and Lender's reasonable administrative expenses relating to such loss and the disbursement of the Proceeds shall be applied by Lender to the payment of all the costs of the aforesaid restoration, repairs, replacement, rebuilding or

Alterations, including the cost of temporary repairs or for the protection of property pending the completion of permanent restoration, repairs, replacements, rebuilding or Alterations (all of which temporary repairs, protection of property and permanent restoration, repairs, replacement, rebuilding or Alterations are hereinafter collectively referred to as the "**Restoration**"), and shall be paid out from time to time as such Restoration progresses upon the same terms and conditions as disbursements of the Loan were made for the Initial Project as set forth in Section 3.

(D) Nothing herein contained shall be deemed to excuse Borrower from repairing or maintaining the Mortgaged Property as provided in this Agreement or restoring all damage or destruction to the Mortgaged Property, regardless of whether or not there are insurance proceeds available or whether any such Proceeds are sufficient in amount, and the application or release by Lender of any Proceeds shall not cure or waive any Default or Event of Default or invalidate any other act done by Lender to exercise its remedies under this Agreement or the other Loan Documents.

SECTION 9
DEFAULT, RIGHTS AND REMEDIES

9.1 **Event of Default**. "**Event of Default**" means the occurrence or existence of any one or more of the following:

(A) **Payment**. Failure of Borrower to pay (i) on the Maturity Date, the outstanding principal of, accrued interest in, and other Indebtedness owing pursuant to this Agreement, the Note and the other Loan Documents, (ii) within five (5) Business Days after the due date, any installment of principal or interest due under the Note; provided, however, the aforesaid five (5) Business Day grace period may be utilized by Borrower no more than once in any consecutive twelve (12) Loan Month period, or (iii) within five (5) Business Days after the respective due date, any other amount due under the other Loan Documents, provided, however, the aforesaid five (5) Business Day grace period may be utilized by Borrower no more than once in any consecutive twelve (12) Loan Month period.

(B) **Breach of Certain Provisions**. Failure of Borrower to perform or comply with any term, agreement, covenant, representation, warranty or condition contained in Sections 5.1, 5.4, 7.1, 7.4 or 7.12.

(C) **Breach of Representation and Warranty**. Any representation, warranty, certification or other statement made by Borrower or Carveout Guarantor in any Loan Document or in any statement or certificate at any time given in writing pursuant or in connection with any Loan Document (other than occurrences described in other provisions of this Section 9.1 for which a different grace or cure period is specified or which constitute immediate Events of Default) is false in any material respect on the date made which remains uncured for five (5) Business Days after notice, but no grace or curative period will apply if the representation, warranty, certification or other statement was known by Borrower or Carveout Guarantor to be false when made or deemed made.

(D) **Other Defaults Under Loan Documents**. A default by Borrower shall occur in the performance of or compliance with any term contained in this Agreement or the other Loan

Documents and such default is not remedied or waived within thirty (30) days after receipt by Borrower of notice from Lender of such default (other than occurrences described in other provisions of this Section 9.1 for which a different grace or cure period is specified or which constitute immediate Events of Default); provided, however, that (i) if such default cannot be remedied with reasonably diligent effort within a period of thirty (30) days, but is susceptible to cure within a period of one hundred twenty (120) days and (ii) the continued default in performance will not have a Material Adverse Effect, such longer period, not to exceed ninety (90) additional days, as Borrower may need to remedy such default, if Borrower is proceeding with diligent effort to remedy such default throughout said one hundred twenty (120)-day period. The rights to notice and cure periods granted herein shall not be cumulative with any other rights to notice or a cure period in any other Loan Document and the giving of notice or a cure period pursuant to this section shall satisfy any and all obligations of Lender to grant any such notice or cure period pursuant to any of the Loan Documents.

(E) **Involuntary Bankruptcy; Appointment of Receiver, etc.** (1) A court enters a decree or order for relief with respect to Borrower, Carveout Guarantor or Borrower Representative in an involuntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, which decree or order is not stayed or other similar relief is not granted under any applicable federal or state law; or (2) the continuance of any of the following events for sixty (60) days unless dismissed, bonded or discharged: (a) an involuntary case is commenced against Borrower, Borrower Representative or Carveout Guarantor under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or (b) a decree or order of a court for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Borrower, Borrower Representative or Carveout Guarantor or over all or a substantial part of its property, is entered; or (c) an interim receiver, trustee or other custodian is appointed without the consent of Borrower, Borrower Representative or Carveout Guarantor for all or a substantial part of the property of Borrower, Borrower Representative or Carveout Guarantor; or

(F) **Voluntary Bankruptcy; Appointment of Receiver, etc.** (1) An order for relief is entered with respect to and at the request of Borrower, Borrower Representative or Carveout Guarantor or Borrower, Borrower Representative or Carveout Guarantor commences a voluntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case under any such law or consents to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or (2) Borrower, Borrower Representative or Carveout Guarantor makes any assignment for the benefit of creditors; or (3) partners, shareholders, or members in Borrower, Borrower Representative or Carveout Guarantor adopts any resolution or otherwise authorizes action to approve any of the actions referred to in this Section 9.1(F); or

(G) **Governmental Liens**. Any lien, levy or assessment is filed or recorded with respect to or otherwise imposed upon all or any part of the Mortgaged Property by any Governmental Authority (other than Permitted Encumbrances) and such lien, levy or assessment is not stayed, vacated, paid, discharged or insured or bonded over within thirty (30) days;

(H) **Judgment and Attachments**. Any money judgment, writ or warrant of attachment, or similar process (other than those described in Section 9.1(G)) involving (1) an amount in any individual case in excess of $500,000 or (2) an amount in the aggregate at any time in excess of $500,000 (in either case not adequately covered by insurance as to which the insurance company has acknowledged coverage) is entered or filed against Borrower or Borrower Representative and remains undischarged, unvacated, unbonded, uninsured or unstayed for a period of thirty (30) days or in any event later than five (5) days prior to the date of any proposed sale thereunder;

(I) **Dissolution**. Any order, judgment or decree is entered against Borrower, Borrower Representative or Carveout Guarantor decreeing the dissolution or split up of Borrower, Borrower Representative or Carveout Guarantor and such order remains undischarged or unstayed for a period in excess of twenty (20) days; or

(J) **Injunction**. Either (i) Borrower, Borrower Representative or Carveout Guarantor is enjoined, restrained or in any way prevented by the order of any court or any administrative or regulatory agency from conducting all or any material part of its business relating to the Mortgaged Property and such order continues for more than thirty (30) days; or (ii) any order or decree is entered by any court of competent jurisdiction directly or indirectly enjoining or prohibiting Lender, Borrower, Borrower Representative or Carveout Guarantor from performing any of their obligations under this Agreement or any of the other Loan Documents; or

(K) **Invalidity of Loan Documents**. Any of the Loan Documents for any reason, other than a partial or full release in accordance with the terms of the Loan Documents, ceases to be in full force and effect or is declared to be null and void by a court of competent jurisdiction, or any of Borrower or Carveout Guarantor denies that it has any further liability under any Loan Documents to which it is party, or gives notice to such effect; or

(L) **Master Lease**. The Master Lease is terminated, cancelled, amended, modified or assigned without Lender's prior written consent; or

(M) **Master Lease Default**. A default by Borrower or Borrower Representative under the Master Lease, which default continues beyond any applicable grace or cure period provided thereunder; or

(N) **Event of Default**. The occurrence of an Event of Default specified elsewhere in this Agreement or in any of the other Loan Documents or the occurrence of a Default by Carveout Guarantor under the Carveout Guaranty and Master Lease Guaranty; or

(O) **Cross-Default**. With respect to Borrower, Borrower Representative or Carveout Guarantor: the occurrence of (i) the acceleration of any Permitted Indebtedness in the aggregate amount of $10,000,000 or more; or the occurrence of a default or breach under any Material Contracts not cured within any applicable grace period or the loss or termination of any Proprietary Rights which could have a Material Adverse Effect; or

(P) **Intentionally Omitted**.

(Q) **Intentionally Omitted**.

(R) **Single Purpose Entity**. Any violation of the covenants contained in Section 7.14 hereof; or

(S) **Intentionally Omitted**.

(T) **Zoning**. The Land and Improvements or any portion thereof are rezoned voluntarily by Borrower, so as to no longer permit the Land and Improvements or any portion thereof to be used for the uses set forth in Section 7.9 hereof or

(U) **Prescribed Laws**. If the Borrower or Mortgaged Property fails to comply with any covenants, with respect to Prescribed Laws as provided in Section 5.10; or

(V) **Intentionally Omitted**.

(W) **Intentionally Omitted**.

(X) **Construction**. The occurrence of a Default under Sections 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8 or 3.9, including, without limitation, failure to achieve Completion of Construction on or prior to the Required Completion Date subject to Force Majeure.

(Y) **Cessation of Construction**. Cessation of all or any material portion of the Construction for ten (10) or more consecutive Business Days or thirty (30) or more Business Days (in the aggregate) not resulting from Force Majeure.

9.2 Acceleration and Remedies. Upon the occurrence of any Event of Default specified in Sections 9.1(E) and 9.1(F), payment of all Obligations shall be accelerated without notice, presentment, demand, protest or notice of protest and shall be immediately due and payable and, in addition, Lender may in addition to any other rights and remedies available to Lender at law or in equity or under any other Loan Documents, exercise one of more of the following rights and remedies as it, in its sole discretion, deems necessary or advisable. Upon the occurrence of any Event of Default (other than Events of Default specified in Sections 9.1(E) and 9.1(F)), Lender, in addition to any other rights or remedies available to Lender at law or in equity, or under any of the other Loan Documents, may exercise any one or more of the following rights and remedies as it, in its sole discretion, deems necessary or desirable:

(A) **Acceleration**. Declare immediately due and payable, without further notice, protest, presentment, notice of protest or demand, all Obligations including all monies advanced under this Agreement, the Note, the Mortgage and/or any of the Loan Documents which are then unpaid, together with all interest then accrued thereon and all other amounts then owing (including any Default Interest, or Prepayment Premium owed as a result of such acceleration). If payment of the Obligations is accelerated, Lender may, in its sole discretion, exercise all rights and remedies hereunder and under the Note, the Mortgage and/or any of the other Loan Documents at law, in equity or otherwise.

(B) **Possession**. Enter upon and take possession of the Mortgaged Property and proceed in the name of Lender or Borrower as the attorney-in-fact of Borrower (which authority is hereby granted by Borrower, is coupled with an interest, and is irrevocable), as Lender shall elect. If Lender elects to so enter upon and take possession of the Mortgaged Property, Lender

(i) may enforce or cancel all contracts entered into by Borrower or make other contracts which are in Lender's sole opinion advisable, and (ii) shall be reimbursed by Borrower upon demand any reasonable amount or amounts expended by Lender for such performance together with any reasonable costs, charges, or expenses incident thereto or otherwise incurred or expended by Lender or its representatives (including an appraisal) on behalf of Borrower in connection with the Mortgaged Property, and the amounts so expended shall be considered part of the Loan evidenced by the Note and secured by the Loan Documents and shall bear interest at the Default Rate.

(C) **Intentionally Omitted**.

(D) **Injunctive Relief**. Institute appropriate proceedings for injunctive relief (including specific performance of the obligations of Borrower).

(E) **Accounts**. Release all funds contained in the Accounts to be applied to Borrower's Obligations in accordance with the terms of this Agreement.

(F) **Construction**. Enter upon and take possession of the Mortgaged Property and all material, equipment and supplies thereon and do anything necessary or desirable to complete the Construction and to fulfill the obligations of Borrower hereunder and to sell, manage, maintain, repair and protect the Mortgaged Property. Without limiting the generality of the foregoing and for the purposes aforesaid, Borrower hereby appoints and constitutes Lender its lawful attorney-in-fact with full power of substitution to (i) use any funds of Borrower, including any Loan balance which might not have been disbursed for the purpose of completing the development, design and Construction, (ii) make such changes to the Plans and Specifications for the Construction as Lender may deem desirable to complete the Construction, (iii) execute all applications and certificates in the name of Borrower which may be required to carry out the intent and purpose hereof and (iv) employ such contractors, subcontractors, Architects and others as Lender may deem appropriate.

(G) **Cessation of Loan Funding**. Cease disbursement of Loan proceeds.

9.3 Remedies Cumulative; Waivers; Reasonable Charges. All of the remedies given to Lender in the Loan Documents or otherwise available at law or in equity to Lender shall be cumulative and may be exercised separately, successively or concurrently. Failure to exercise any one of the remedies herein provided shall not constitute a waiver thereof by Lender, nor shall the use of any such remedies prevent the subsequent or concurrent resort to any other remedy or remedies vested in Lender by the Loan Documents or at law or in equity. To be effective, any waiver by Lender must be in writing and such waiver shall be limited in its effect to the condition or default specified therein, and no such waiver shall extend to any subsequent condition or default. It is agreed that (i) the actual costs and damages that Lender would suffer by reason of an Event of Default (exclusive of the attorneys' fees and other costs incurred in connection with enforcement of Lender's rights under the Loan Documents) or a prepayment would be difficult and needlessly expensive to calculate and establish, and (ii) the amounts of the Default Rate, the Late Charge, payments to be made pursuant to Section 2.4(C)(ii) and the Prepayment Premium are reasonable, taking into consideration the circumstances known to the parties at this time, and (iii) the Default Rate, the Late Charges and Lender's reasonable

attorneys' fees and other costs and expenses incurred in connection with enforcement of Lender's rights under the Loan Documents shall be due and payable as provided herein, and (iv) the Default Rate, Late Charges, Prepayment Premium, the payments to be made pursuant to Section 2.4(C)(ii) and the obligation to pay Lender's reasonable attorneys' fees and other enforcement costs do not, individually or collectively, constitute a penalty.

SECTION 10
SECONDARY MARKET TRANSACTION

10.1 **Secondary Market Transaction**. (a) Borrower agrees that Lender has the absolute right to securitize, syndicate, grant participations in, or otherwise Transfer all or any portion of the Loan and/or the Note (each such transaction, a "**Securitization**"). Lender may determine to Transfer some or all of the Loan or retain title to some or all of the Loan as part of a Securitization. Borrower further agrees that Lender may delegate any or all of Lender's rights, powers and privileges to a servicer ("**Servicer**") at no cost to Borrower and Borrower shall, upon notice from Lender, recognize the Servicer as the agent of Lender. In the event this Loan becomes or is designated by Lender to become an asset of a Securitization, upon Lender's request, Borrower shall meet, from time to time, with representatives of the Rating Agencies in connection with such a Securitization to discuss the business and operations of the Mortgaged Property and, in that regard, agrees to cooperate with the reasonable requests of the Rating Agencies including delivering any existing environmental materials relating to the Mortgaged Property in Borrower's possession. Lender at its sole cost and expense may retain the Rating Agencies to provide rating surveillance services on any certificates issued in a Securitization. In no event shall Borrower be required to pay any Servicer fees, Securitization trustee fees or other Securitization administrative expenses except as may be expressly provided in this Agreement. Borrower shall, upon request from Lender, from time to time, cooperate, and Borrower shall, cause Carveout Guarantor and Borrower Representative to cooperate, in all reasonable respects in connection with a Securitization. Such cooperation may, in Lender's discretion, include documentation changes, changes in organizational documents, changes in Accounts, Reserves, Payment Dates, interest accrual periods, insurance endorsement changes, tenant payment direction changes, site inspections, updated appraisals, preparation and delivery of financial information or other diligence requested by Lender and/or any Rating Agency, execution of one or more promissory notes and the creation of Liens securing such notes of differing priority and/or the creation of mezzanine debt secured by pledges of all of the membership interests in the Borrower so long as the principal amount, interest rate, payment terms and other monetary terms of the Loan do not, in the aggregate change so long as none of the foregoing shall materially and adversely impact the financial position, operations of Borrower, Borrower Representative or Carveout Guarantor (in which case Borrower's refusal to cooperate with any of the foregoing shall be deemed reasonable). None of Borrower, Carveout Guarantor or Borrower Representative will be required to incur more than *de minimis* expenses or costs pursuant to this Section 10.1, except to the extent Borrower is otherwise obligated under the Loan Documents to pay such costs and expenses. Borrower will, upon request from Lender, in connection with a Securitization, enter into such acknowledgments and confirmations of the applicable assignments as Lender may reasonably request. Borrower shall, subject to the terms and provisions of this Section 10.1, use reasonable efforts to satisfy the market standards which Lender determines are reasonably required in the marketplace or by the Rating Agencies in connection with a Securitization. Borrower will not, pursuant to any of the provisions of this

Section 10.1, incur, suffer or accept (except to a *de minimis* extent) (i) any lesser rights or greater obligations as are currently set forth in the Loan Documents or Borrower's Organizational Documents (unless Borrower is made whole by the holder of the Note) or (ii) subject to Section 11.13 hereof, any personal liability other than as set forth in the Loan Documents. Borrower will also, if requested by Lender and to the extent such an opinion letter can be reasonably issued by counsel reasonably acceptable to Borrower and Lender, cause independent counsel to render opinions customary in securitization transactions with respect to the Mortgaged Property and Borrower and its Affiliates (but not a true sale or 10b-5 opinion), including a Nonconsolidation Opinion, at Lender's sole cost and expense, which counsel and opinions shall be reasonably satisfactory to Lender and the Rating Agencies and which shall be addressed to such Persons as shall be reasonably designated by the holder of the Note. Borrower's failure to deliver the opinions (to the extent within its control) required hereby within ten (10) Business Days after written request therefore shall constitute an Event of Default hereunder. If requested by Lender, Borrower's cooperation will also include (but subject to Section 11.13) certifications and agreements pursuant to which Borrower will certify that it has examined the portion of applicable preliminary and final private placement memorandum or preliminary, final and supplement or prospectus specified by Lender as pertaining to Borrower, the Loan, Carveout Guarantor, Borrower's Affiliates, and the Mortgaged Property, and that each such designated portion, as it relates to Borrower, Carveout Guarantor, Borrower's Affiliates, the Mortgaged Property and all other aspects of the Loan, does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. Such agreement may, if requested by Lender, require Borrower to indemnify, defend, protect and hold harmless Lender and other Persons designated by Lender from and against any losses, claims, damages, liabilities, costs and expenses that arise out of or are based upon any untrue statement of any material fact contained in the reviewed portions of the documents or other information or documents prepared by Borrower, Carveout Guarantor or their Affiliates and provided to Lender or in any representation or warranty of Borrower or Carveout Guarantor contained in the Loan Documents or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated in such information or necessary in order to make the statements in such information not materially misleading. Notwithstanding anything in the foregoing to the contrary, at Lender's request in connection with a Securitization, Borrower shall, take all reasonable efforts to, (i) to ensure that its organizational structure and organizations documents are reasonably satisfactory to the Rating Agents (including, without limitation, the addition of industry standard bankruptcy remote covenants in the organizational documents of Borrower and an Intermediate Borrower Entity, including, without limitation, the addition of two (2) independent directors at the Borrower and/or Intermediate Borrower Entity level); and (ii) commence delivering its financial statements for Borrower and any Special Purpose Bankruptcy Remote Entity, including, without limitation, any Intermediate Borrower Entity, on a non-consolidated basis. Any change in such structure, including, without limitation, the introduction of an Intermediate Borrower Entity, shall be subject to Borrower's reasonable approval, taking into account the overall structure of the Carveout Guarantor and its subsidiaries and other obligations that may be applicable to such entities. If an Intermediate Borrower Entity is requested by Lender to serve as the corporate member of Borrower in connection with a Securitization, Borrower shall promptly make all reasonable efforts to implement such request, which Intermediate Borrower Entity shall from that point forward comply with then current Rating Agency requirements.

(b) Notwithstanding anything in the foregoing to the contrary, Borrower acknowledges that as of the date hereof that (i) the Note consists of four separate promissory notes (Promissory Note-One, Promissory Note-Two, Promissory Note-Three and Promissory Note-Four), (ii) SFT I, Inc. will be the Lender for purposes of enforcing and performing Lender's rights and obligations under this Agreement and the other Loan Documents and will act as agent for each of the Note holders, (iii) the Lender as of the date of this Agreement, shall remain responsible and liable for all Development Advances under the Loan, (iv) all payments due under the Note and the Loan shall be tendered and remitted to Lender, (v) all notices shall be sent to Lender in accordance with the notice provisions set forth herein, and (vi) any consent or approval of Lender required hereunder shall only be directed to and/or given by Lender and such consent or approval of Lender shall be deemed conclusive evidence of the consent or approval of each of the Note holders. In performing its functions and duties under this Agreement, Lender shall act solely as agent of each of the Note holders and does not assume, and shall not be deemed to have assumed, any obligations toward or relationship of agency or trust with or for the Borrower. All notices from, acts of and communications by Lender, on behalf of itself and as agent for the Note holders, shall be deemed legally conclusive and binding; and Borrower or any third party (including any court) shall rely on any and all communications or acts of Lender with respect to the issuance of any notice, the exercise of any rights or the granting of any consent, waiver or approval on behalf of Lender and the Note holders in all circumstances where an action by Lender is required or permitted pursuant to this Agreement or the provisions of any other Loan Document or by applicable law without the right or necessity of making any inquiry of any individual Note holder as to the authority of Lender with respect to such matter (provided that nothing herein shall, as between Lender and the Note holders, waive any obligation of Lender under the Co-Lending Agreement between Lender and each of the Note holders dated as of even date herewith).

SECTION 11
MISCELLANEOUS

11.1 **Expenses and Attorneys' Fees**. Whether or not the transactions contemplated hereby shall be consummated, Borrower agrees to promptly pay all fees, costs and expenses (including reasonable attorneys' fees, court costs, cost of appeal and the reasonable fees, costs and expenses of other professionals retained by Lender) incurred by Lender in connection with the following, and all such fees, costs and expenses shall be part of the Obligations, payable on demand: (A) the examination, review, due diligence investigation, documentation and closing of the financing arrangements evidenced by the Loan Documents including fees and costs for the Environmental Report and the Physical Conditions Report; (B) the giving or withholding of any consents, approvals, or permissions, disbursements of the Loan and disbursements from the Accounts and in connection with any amendments, modifications and waivers relating to the Loan Documents requested by Borrower; (C) the review, documentation, negotiation and closing of any subordination or intercreditor agreements, Lease reviews, and subordination, nondisturbance and attornment agreements; (D) Lender's consultants including Lender's Construction Consultant; and (E) enforcement of this Agreement or the other Loan Documents, the collection of any payments due from Borrower or Carveout Guarantor under the Loan Documents or any refinancing or restructuring of the credit arrangements provided under the Loan Document, whether in the nature of a "workout" or in connection with any insolvency or bankruptcy proceedings or otherwise.

11.2 <u>Certain Lender Matters</u>. Lender may, in accordance with Lender' customary practices, destroy or otherwise dispose of all documents, schedules, invoices or other papers, delivered by Borrower to Lender unless Borrower requests, at the time of delivery, in writing that same be returned. Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Mortgaged Property other than that of mortgagee, beneficiary or lender. No provision in this Agreement or in any of the other Loan Documents and no course of dealing between the parties shall be deemed to create any fiduciary duty by Lender to Borrower or any other Person. All attorneys, accountants, appraisers, and other professional Persons and consultants retained by Lender shall have the right to act exclusively in the interest of Lender and shall have no duty of loyalty, duty of care or any other duty to Borrower or any of Borrower's partners, shareholders, members, managers, Affiliates or any other Person. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to the Loan Documents, Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect hereto or thereto by Lender. Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender or their respective attorneys, advisors, accountants, officers, representatives, directors, employees, partners, shareholders, trustees, members or managers. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates. LENDER SHALL HAVE NO LIABILITY HEREUNDER FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower or Borrower Representative or Carveout Guarantor, or their respective creditors or property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire secured Obligations at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower after such date. Lender shall have the right from time to time to designate, appoint and replace one or more servicers at Lender's sole cost and expense and to allow such servicers to exercise any and all rights of Lender under the Loan Documents. All documents and other matters required by any of the provisions of this Agreement to be submitted or provided to Lender shall be in form and

substance satisfactory to Lender. Borrower shall not be entitled to (and does hereby waive any and all rights to receive) any notices of any nature whatsoever from Lender except with respect to matters for which Legal Requirements or the Loan Documents expressly provide for the giving of notice by Lender to Borrower. In any action or proceeding brought by Borrower against Lender claiming or based upon an allegation that Lender unreasonably withheld its consent to or approval of a proposed act by Borrower which requires Lender's consent hereunder, Borrower's sole and exclusive remedy in said action or proceeding shall be declaratory judgment, injunctive relief or specific performance requiring Lender to grant such consent or approval.

11.3 Indemnity. In addition to the payment of expenses pursuant to Section 11.1 and the indemnification obligations set forth in other portions of this Agreement, the Environmental Indemnification Agreement or the other Loan Documents, whether or not the transactions contemplated hereby shall be consummated, Borrower agrees to indemnify, pay, defend and hold Lender, its officers, directors, members, partners, shareholders, participants, beneficiaries, trustees, employees, agents, successors and assigns, any subsequent holder of the Note, any trustee, fiscal agent, Servicer, underwriter and placement agent, (collectively, the "**Indemnitees**") harmless from and against any and all liabilities (except for income taxes, or franchise taxes imposed in lieu of income taxes, imposed generally by federal, state or local taxing authorities with respect to interest or commitment or other fees payable hereunder or changes in the rate of interest or tax on the overall income of Lender, taxes that are not directly attributable to the Loan and any "doing business" taxes, however denominated, charged by any Governmental Authority, as set forth in Section 2.6), obligations, losses, damages, penalties, actions, judgments, causes of action, suits, claims, tax liabilities, broker's or finders fees, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnitee shall be designated a party thereto) that may be imposed on, incurred by, or asserted against that Indemnitee, based upon any third party claims against such Indemnitees in any manner related to or arising out of (A) any breach by Borrower or Carveout Guarantor of any representation, warranty, covenant, or other agreement contained in any of the Loan Documents or certificates provided pursuant to the Loan Documents, (B) the actual or threatened presence, release, disposal, spill, escape, leakage, transportation, migration, seepage, discharge, removal, or cleanup of any Hazardous Material located on, about, within, under, affecting, from or onto the Mortgaged Property or any violation of any applicable Environmental Law by Borrower or the Mortgaged Property, or (C) the use or intended use of the proceeds of any of the Loan (the foregoing liabilities herein collectively referred to as the "**Indemnified Liabilities**"); provided that Borrower shall have no obligation to an Indemnitee hereunder with respect to Indemnified Liabilities arising from the gross negligence or willful misconduct of that Indemnitee as determined in a final order by a court of competent jurisdiction. Borrower shall be relieved of its obligation under clause (B) of this Section 11.3 with respect to Hazardous Materials first introduced to the Land and Improvements after either (1) the foreclosure of the Mortgage or (2) the delivery by Borrower to, and acceptance by, Lender or its designee of a deed-in-lieu of foreclosure with respect to the Mortgaged Property. To the extent that the undertaking to indemnify, pay, defend and hold harmless set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and

satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. If any such action or other proceeding shall be brought against Lender, upon written notice from Borrower to Lender (given reasonably promptly following Lender's notice to Borrower of such action or proceeding), Borrower shall be entitled to assume the defense thereof, at Borrower's expense, with counsel reasonably acceptable to Lender; provided, however, Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Borrower expressly retains. Notwithstanding the foregoing, each Indemnitee shall, following notice to and consultation with Borrower, have the right to employ separate counsel at Borrower's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnitee and Borrower that would make such separate representation advisable. Borrower shall have no obligation to indemnify an Indemnitee for damage or loss resulting from such Indemnitee's gross negligence or willful misconduct.

11.4 Amendments and Waivers. Except as otherwise provided herein, no amendment, modification, termination or waiver of any provision of this Agreement, the Note or any other Loan Document, or consent to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by Lender (and, with respect to any amendment or modification, unless also signed by Borrower). Each amendment, modification, termination or waiver shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Borrower in any case shall entitle Borrower, or any other Person to any other or further notice or demand in similar or other circumstances. To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners or members and others with interests in Borrower, and of the Mortgaged Property, or to a sale in inverse order of alienation in the event of foreclosure of all or any of the Mortgage, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Mortgaged Property for the collection of the obligations without any prior or different resort for collection or of the right of Lender to the payment of the obligations owing Lender on account of the Loan Documents out of the net proceeds of the Mortgaged Property in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of the Mortgage, any equitable right otherwise available to Borrower which would require the separate sale of any of any portion of the Mortgaged Property or require Lender to exhaust its remedies against any portion of the Mortgaged Property or any combination of the Mortgaged Property before proceeding against any other portion; and further in the event of such foreclosure, Borrower expressly consents to and authorizes, at the option of Lender, the foreclosure and sale either separately of all or any portion of the Mortgaged Property. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents. No failure or delay on the part of Lender or any holder of any Note in the exercise of any power, right or privilege hereunder or under the Note or any other Loan Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. All rights and remedies existing under this Agreement, the Note and the other Loan Documents are cumulative to, and not exclusive of,

any rights or remedies otherwise available. Lender shall not be under any obligation to marshal any assets in favor of any Person or against or in payment of any or all of the Obligations. To the extent that any Person makes a payment or payments to Lender, or Lender enforces its remedies or exercise its rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, if any, rights and remedies therefore, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred. Borrower agrees (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury or other law wherever enacted, now or at any time hereafter in force, which would prohibit or forgive Borrower from paying all or any portion of the principal of, premium, if any, or interest on Loan contemplated herein or in any of the other Loan Documents or which may affect the covenants or the performance of this Agreement; and Borrower (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the holders, but will suffer and permit the execution of every such power as though no such law had been enacted.

11.5 Notices. Unless otherwise specifically provided herein, any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied (with request for confirmation) or sent by overnight courier service or United States registered mail return receipt requested, postage prepaid. Any notice so given shall be deemed effective upon delivery or on refusal or failure of delivery during normal business hours.

Notices shall be addressed to the parties at the addresses as follows:

If to Borrower:

CHI 3, LLC
c/o Equinix Inc.
301 Velocity Way, 5th Floor
Foster City, CA 94404
Attn: Director of Real Estate and General Counsel
E-mail: shettema@equinix.com and
bgalvin@equinix.com
Telephone: (650) 513-7000
Fax No.: (650) 513-7913

with a copy to:

Orrick, Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, CA 94105
Attn: William G. Murray, Jr.
E-mail: wmurray@orrick.com
Telephone: (415) 773-5807
Fax No.: (415) 773-5759

If to Lender:	SFT I, Inc. 1114 Avenue of the Americas, 27th Floor New York, NY 10036 Attention: Chief Operating Officer Reference : Loan No. 1364:01 Telephone: (212) 930-9400 Fax No.: (212) 930-9494
With a copy to:	iStar Financial Inc. 1114 Avenue of the Americas, 27th Floor New York, New York 10036 Attn: Nina B. Matis, Esq./General Counsel Reference : Loan No. 1364:01 E-Mail: nmatis@istarfinancial.com Telephone: (212) 930-9406 Fax No.: (212) 930-9492
With a copy to:	iStar Asset Services Inc. 180 Glastonbury Blvd., Suite 201 Glastonbury, Connecticut 06033 Attn: President Reference: Loan No. 1364:01 Telephone: (860) 815-5900 Facsimile: (860) 815-5901
with a copy to:	Katten Muchin Rosenman LLP 1025 Thomas Jefferson Street, N.W. East Lobby – Suite 700 Washington, D.C. 20007 Attention: John D. Muir, Jr., Esq. Telephone: (202) 625-3839 Fax No.: (202) 339-6054

11.6 **Survival of Warranties and Certain Agreements**. All agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement, the making of the Loan hereunder and the execution and delivery of the Note. Notwithstanding anything in this Agreement or implied by law to the contrary, the provisions of Sections 2.6, 5.8, 11.1, 11.2, 11.3, 11.13 and 11.15 shall survive the payment of the Loan and the termination of this Agreement. Subject to this Section 11.6, all other representations, warranties and agreements of Borrower and Lender set forth in this Agreement shall terminate upon indefeasible payment in full of the Loan and the termination of this Agreement.

11.7 **Miscellaneous**. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. All covenants and agreements hereunder shall be given in any jurisdiction independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within

the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists. The invalidity, illegality or unenforceability in any jurisdiction of any provision in or obligation under this Agreement, the Note or other Loan Documents shall not affect or impair the validity, legality or enforceability of the remaining provisions or obligations under this Agreement, the Note or other Loan Documents or of such provision or obligation in any other jurisdiction. This Agreement is made for the sole benefit of Borrower and Lender and, solely to the extent set forth in Section 11.12, Carveout Guarantor, and no other Person shall be deemed to have any privity of contract hereunder nor any right to rely hereon to any extent or for any purpose whatsoever, nor shall any other person have any right of action of any kind hereon or be deemed to be a third party beneficiary hereunder. This Agreement, the Note, and the other Loan Documents referred to herein embody the final, entire agreement among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. There are no oral agreements among the parties hereto. Borrower and Lender acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement and the other Loan Documents with its legal counsel and that this Agreement and the other Loan Documents shall be construed as if jointly drafted by Borrower and Lender. If any term, condition or provision of this Agreement shall be inconsistent with any term, condition or provision of any other Loan Document, this Agreement shall control. This Agreement and any amendments, waivers, consents, or supplements may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto. Upon indefeasible payment and performance in full of the Borrower's Obligations, the Lender shall, at the sole cost and expense of the Borrower, release the Mortgage and the other Liens securing the Borrower's Obligations.

11.8 Applicable Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

11.9 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns except that Borrower may not assign its rights or obligations hereunder or under any of the other Loan Documents without the written consent of Lender. Any assignee of Lender's interest in the Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to the Loan Documents which Borrower may otherwise have against any assignor of the Loan Documents.

11.10 Consent to Jurisdiction and Service of Process. BORROWER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK AND IRREVOCABLY AGREES THAT, SUBJECT TO LENDER'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN

SUCH COURTS. BORROWER ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS MORTGAGED PROPERTY, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF *FORUM NON CONVENIENS,* **AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT, THE NOTE, SUCH OTHER LOAN DOCUMENTS OR SUCH OBLIGATION.**

11.11 Waiver of Jury Trial. BORROWER AND LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, ANY OF THE LOAN DOCUMENTS, OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION AND LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. BORROWER AND LENDER ALSO WAIVE ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF BORROWER OR LENDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. BORROWER AND LENDER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. BORROWER AND LENDER FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, THE LOAN DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOAN. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

11.12 Publicity. Lender (and Lender's Affiliates) may and Borrower does hereby authorize Lender (and its Affiliates) to, refer, in its sole discretion, to the Loan from time to time, in tombstone and other advertisements, offering memoranda in connection with Securitizations, press releases and other releases of information to members of the public, reports to investors and in other media, which references, may include a description of the Loan (including the stated principal amount) and use of Borrower's name and the logo of Borrower, Carveout Guarantor, Borrower Representative and/or their Affiliates and which references may be reproduced and distributed, electronically or otherwise, from time to time. Lender hereby agrees that, without the prior written consent of Borrower, any written information (or oral information to the extent it is described as confidential at the time of disclosure) relating to Borrower which is provided to

Lender in connection with the making of the Loan which is either confidential, proprietary, or otherwise not generally available to the public (but excluding information Lender has obtained independently from third-party sources without Lender's knowledge that the source has violated any fiduciary or other duty not to disclose such information) and which has been expressly designated as such by notice to Lender from Borrower (the "**Confidential Information**"), will be kept confidential by Lender, using the same standard of care in safeguarding the Confidential Information as Lender employs in protecting its own proprietary information which Lender desires not to disseminate or publish. Notwithstanding the foregoing, Confidential Information may be disseminated (a) pursuant to the requirements of applicable law, (b) pursuant to judicial process, administrative agency process or order of Governmental Authority, (c) in connection with litigation, arbitration proceedings or administrative proceedings before or by any Governmental Authority or stock exchange, (d) to Lender's attorneys, accountants, advisors and actual or prospective financing sources who will be instructed to comply with this Section 11.12, (e) to the Rating Agencies, who will be requested to comply with this Section 11.12, (f) to actual or prospective trustees, assignees, pledgees, participants, agents, Servicers, or securities holders in a Securitization, who shall be instructed to comply with this Section 11.12, and (g) pursuant to the requirements or rules of a stock exchange or stock trading system on which the Securities of Lender or its Affiliates may be listed or traded. Notwithstanding the foregoing, in each of the cases set forth in Sections 11.12(a) through (g) above, Lender shall endeavor to use its best efforts to notify all parties of the confidential nature of the information and instruct such parties to maintain the confidentiality of such information. In addition, notwithstanding any other provision, any party (and its employee, representative or other agent) may disclose to any and all persons, without limitation of any kind, any information with respect to the tax treatment and tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to such tax treatment and tax structure. Lender acknowledges and agrees that Carveout Guarantor and Borrower Representative are third party beneficiaries of Lender's agreement with respect to Confidential Information set forth in this Section. For purposes of this Section 11.12, Confidential Information will not be deemed to include the Loan amount and the other terms, conditions and provisions of the Loan Documents (except that all exhibits shall be deemed Confidential Information), the name of Borrower, Carveout Guarantor and Borrower Representative, the logo of Borrower, Carveout Guarantor, Borrower Representative and/or their Affiliates. Borrower, Carveout Guarantor and Borrower Representative hereby grant Lender a non-exclusive license to use Borrower's, Carveout Guarantor's and Borrower Representative's logo solely for the purpose specified in this Section 11.12. Borrower agrees that Lender's (and Lender's Affiliates') use, reproduction and dissemination of Borrower's name and logo in connection with disclosures required by the Loan Documents shall not cause any copyright infringements.

11.13 Borrower Recourse Liability.

(A) Except as provided in the Environmental Indemnity Agreement and the Carveout Guaranty, Borrower shall not have any personal recourse liability for Obligations incurred under this Agreement, the Note or any of the other Loan Documents and no deficiency judgment therefore shall be enforced against the personal assets of Borrower other than the Mortgaged Property, the other Collateral and the proceeds of the Mortgaged Property and other Collateral. Notwithstanding the foregoing, a judgment may be sought, obtained, entered and enforced against Borrower to the extent necessary to preserve or enforce the rights and remedies of Lender

in, to or against the collateral and security provided under the Loan Documents, and nothing contained in this Section 11.13 shall be construed to limit, prejudice or impair the rights of Lender to enforce its rights and remedies against any real and personal property mortgaged, pledged, encumbered, assigned or granted to secure payment or performance under this Agreement, the Note and/or the other Loan Documents. Notwithstanding anything to the contrary herein or elsewhere, the foregoing limitation on personal liability shall be null, void and of no force and effect, and Borrower shall be personally liable for payment and performance of the Obligations in the event of the occurrence of any of the following: (a) Borrower or Borrower Representative shall file or institute any petition, case or proceeding under the Bankruptcy Code; (b) Carveout Guarantor, Borrower Representative or any Affiliate of Borrower shall file or initiate any involuntary petition, case or proceeding against Borrower or Borrower Representative under the Bankruptcy Code; (c) Borrower, Carveout Guarantor, Borrower Representative or any Affiliate of Borrower shall arrange, solicit, induce, finance or collude with others in the filing of any involuntary petition, case or proceeding against Borrower or Borrower Representative under the Bankruptcy Code; (d) an involuntary petition, case or proceeding is filed against Borrower under the Bankruptcy Code and Borrower fails to file a motion to dismiss (together with any ancillary filings or briefs customarily filed therewith) such proceeding within ninety (90) days after the commencement of the proceeding; or (e) the occurrence of any Default with respect to Section 7.12.

(B) Nothing in this Agreement or the other Loan Documents shall be construed or deemed to release any Person from liability arising out of such Person's fraud or to limit the rights and remedies of Lender, either at law or in equity, for (1) injunctive or declaratory relief, (2) rights to recover on account of fraudulent conveyances, fraudulent transfers, preferences, or other laws which would operate to protect Lender against Borrower's or any other Person's dissipation of assets to avoid obligations under the Loan Documents (whether under the Bankruptcy Code or other applicable laws), (3) rights to seek penalties or sanctions under applicable judicial rules and statutes governing the conduct of litigation, and (4) rights and remedies for criminal conduct in relation to Lender, the Loan or the security for the Loan. Notwithstanding Section 11.13 (A), Borrower shall be personally liable for and does hereby agree to pay, protect, defend and save Lender harmless from and against, and hereby indemnifies Lender from and against any and all liabilities, obligations, losses, damages, costs and expenses (including reasonable attorneys' fees, court costs and costs of appeal), causes of action, suits, claims, demands and judgments of any nature of description whatsoever which may at any time be imposed upon, incurred or suffered by or awarded against Lender as a result of: (a) Proceeds paid to, or upon the order of, Borrower or its Affiliates under any insurance policies (or paid as a result of any other claim or cause of action against any person or entity) by reason of damage, loss or destruction to all or any portion of the Mortgaged Property, to the full extent of such Proceeds not previously delivered to Lender, but which, under the terms of the Loan Documents, should have been delivered to Lender; (b) Proceeds resulting from the condemnation or other taking in lieu of condemnation of all or any portion of the Mortgaged Property, or any of them, to the full extent of such Proceeds paid to, or upon the order of, Borrower or its Affiliates and not previously delivered to Lender, but which, under the terms of the Loan Documents, should have been delivered to Lender; (c) tenant security deposits or other refundable deposits or letters of credit paid to or held by Borrower, its Affiliates or its members, partners, officers and agents in connection with Leases of all or any portion of the Mortgaged Property which are not applied in accordance with the terms of the applicable Lease or other agreement or paid to, or upon the

order of, Lender; (d) Gross Revenues and other payments received from the Master Lessee under the Master Lease paid more than one (1) month in advance; (e) Gross Revenues of all or any portion of the Mortgaged Property (to the extent received by Borrower or its Affiliates) received during or applicable to a period after any written notice of default is given to Borrower from Lender under the Loan Documents in the event of any default by Borrower thereunder which are not either applied to the ordinary and necessary expenses of owning and operating the Mortgaged Property or paid to Lender in accordance with the Loan Documents; (f) damage to the Mortgaged Property as a result of the intentional misconduct or gross negligence of Borrower, its Affiliates or any of their officers, directors, members, managers, or general partners, or any agent, employee or other Person authorized or apparently authorized to act on behalf of Borrower or such persons, or any removal of any of the Mortgaged Property in violation of the terms of the Loan Documents; (g) until such time as Borrower has transferred actual possession and control of the Mortgaged Property to Lender, to a duly appointed receiver of the Mortgaged Property, to a purchaser at a foreclosure sale or to a transferee in lieu of foreclosure, for Borrower's failure to pay (or deposit into reserves held by Lender funds sufficient to pay) any valid taxes, assessments, mechanics' liens, materialmen's liens or other obligations which could create Liens on any portion of the Mortgaged Property which would be superior to the Lien of the Mortgage or the other Loan Documents, to the full extent of the lesser of (i) the amount claimed by any such claimant and (ii) Gross Revenues after (x) with respect to any such taxes or assessments, the commencement of the period covered by such taxes or assessments, and (y) with respect to any such mechanic's liens, materialmen's liens or other Liens, the date of filing thereof, and in the case of clauses (x) and (y) above, not applied to debt service on the Loan or the ordinary and necessary expenses of owning and operating the Mortgaged Property or paid to Lender; (h) failure by Borrower to comply with any obligations and indemnities of Borrower under the Loan Documents relating to Hazardous Materials or Environmental Laws to the full extent of any losses or damages (including those resulting from diminution in value of the Mortgaged Property to the extent actually incurred by Lender) incurred by Lender; (i) fraud or material misrepresentation by Borrower, Borrower Representative or Carveout Guarantor or any of their respective officers, board members, members, managers or partners to the full extent of any losses, damages and expenses of Lender on account thereof; (j) for any amounts paid to Borrower under Leases containing early lease termination options or otherwise paid by tenants in consideration of an early termination of any lease and not delivered to Lender to be held in accordance with the other Loan Documents; (k) for waste to the Mortgaged Property; (l) any judicial, administrative or other action by Borrower, Carveout Guarantor or any of their Affiliates that delays, impairs or interferes with the exercise of Lender's rights and remedies under the Loan Documents; (m) any criminal activity by Borrower or Carveout Guarantor or their respective agents, employees or officer; (n) the occurrence of a Default with respect to Sections 5.4, 7.4, 7.11, 7.13, 7.14 or 7.16; (o) the Master Lease, the collateral assignment of the Master Lease or the Master Lease Guaranty is not enforceable by Lender following an Event of Default; or (p) Master Lessee, Borrower or Carveout Guarantor challenges any enforcement of Lender's remedies in connection therewith or under the Master Lease and/or the Master Lease Guaranty.

11.14 **<u>Performance by Lender/Attorney-in-Fact</u>**. In the event that Borrower shall at any time fail to duly and punctually pay, perform, observe or comply with any of its covenants and agreements hereunder or under the other Loan Documents or if any Event of Default hereunder shall exist, then Lender may (but shall in no event be required to) make any such payment or

perform any such term, provision, condition, covenant or agreement or cure any such Event of Default. Lender shall not take action under this Section 11.14 prior to the occurrence of an Event of Default unless in Lender's good faith judgment reasonably exercised, such action is necessary or appropriate in order to preserve the value of the Collateral, to protect Persons or property, or Borrower has abandoned the Mortgaged Property or any portion thereof. Lender shall not be obligated to continue any such action having commenced the same and may cease the same without notice to Borrower. Any amounts expended by Lender in connection with such action shall constitute additional advances hereunder, the payment of which is additional Indebtedness, secured by the Loan Documents and shall become due and payable upon demand by Lender, with interest at the Default Rate from the date of disbursement thereof until fully paid. No further direction or authorization from Borrower shall be necessary for such disbursements. The execution of this Agreement by Borrower shall and hereby does constitute an irrevocable direction and authorization to Lender to so disburse such funds. Borrower hereby irrevocably appoints Lender, as its attorney-in-fact, coupled with an interest, with full authority in the place and stead of Borrower and in the name of Borrower or otherwise (A) during the existence of an Event of Default in the discretion of Lender, to take any action and to execute any instrument which Lender may deem necessary to accomplish the purpose of this Agreement or any other Loan Document, including the following: (i) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for monies due and to become due under or in respect of the Accounts and/or any of the Loan Account Collateral; (ii) to receive, endorse, and collect (A) any Gross Revenues, (B) any instruments made payable to Borrower representing any dividend, payment of principal, interest, redemption price, purchase price or other distribution or payment in respect of any Loan Account Collateral, or (C) any other instruments, documents and chattel paper received in connection with this Agreement or any other Loan Document; and (iii) to file any claims, or take any action or institute any proceedings which Lender shall deem necessary or desirable for the collection of any Gross Revenues in the event that Borrower shall fail to do so, or otherwise to enforce the rights of Lender with respect to this Agreement; (B) to execute and/or file, without the signature of Borrower, any Financing Statements, continuation statements, or other filing, and any amendment thereof, relating to the Loan Account Collateral; (C) to give notice to any third parties which may be required to perfect Lender's security interest in the Loan Account Collateral; and (D) during the existence of an Event of Default, to register, purchase, sell, assign, transfer, pledge or take any other action with respect to any Loan Account Collateral in accordance with this Agreement or any Loan Document. Lender shall notify Borrower of Lender's taking of any action as attorney-in-fact, or otherwise in Borrower's name, pursuant to the provisions of this Section.

11.15 **Brokerage Claims**. Borrower shall protect, defend, indemnify and hold Lender harmless from and against all loss, cost, liability and expense incurred as a result of any claim for a broker's or finder's fee against Lender or any Person, in connection with the transaction herein contemplated, provided such claim is made by or arises through or under Borrower or is based in whole or in part upon alleged acts or omissions of Borrower. Lender shall protect, defend, indemnify and hold Borrower harmless from and against all loss, cost, liability and expense incurred as a result of any claim for a broker's or finder's fee against Borrower or any other Person in connection with the transaction herein contemplated other than Broker, provided such claim is made by or arises through or under Lender or is based in whole or in part upon alleged acts or omissions of Lender.

11.16 Agreement. THE RIGHTS AND OBLIGATIONS OF BORROWER AND LENDER SHALL BE DETERMINED SOLELY FROM THIS WRITTEN LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS, AND ANY PRIOR ORAL OR WRITTEN AGREEMENTS BETWEEN LENDER AND BORROWER CONCERNING THE SUBJECT MATTER HEREOF AND OF THE OTHER LOAN DOCUMENTS ARE SUPERSEDED BY AND MERGED INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS MAY NOT BE VARIED BY ANY ORAL AGREEMENTS OR DISCUSSIONS THAT OCCUR BEFORE, CONTEMPORANEOUSLY WITH, OR SUBSEQUENT TO THE EXECUTION OF THIS LOAN AGREEMENT OR THE LOAN DOCUMENTS. THIS WRITTEN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENTS BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

SECTION 12
ADDITIONAL MASTER LEASE PROVISIONS

12.1 Representations, Warranties and Covenants of Master Lessee. Master Lessee is a corporation duly organized and validly existing under the laws of the State of Delaware, and is qualified to do business in the State where the Mortgaged Property is located. Master Lessee has full power and authority to enter into and carry out the terms of the Master Lease. Master Lessee is in good standing under the laws of the State of Delaware. A true and complete copy of all organizational documents creating or governing Master Lessee has been delivered to Lender.

12.2 Satisfaction of Borrower Obligations by Master Lessee. Except for transfers which are expressly pre-approved under the terms of the Master Lease and are not subject to Borrower’s consent, as Master Lessor, the Master Lessee shall not transfer, assign or pledge the Master Lease without Lender’s prior written consent (not to be unreasonably withheld, conditions or delayed). In addition, any and all of the covenants set forth in the Loan Documents may be satisfied by either Master Lessee or Borrower; provided, however, that if such covenant is one that can be complied with by both Master Lessee and Borrower then either Master Lessee or Borrower shall be permitted to satisfy any such covenant. Further, any factual representations made by Borrower under the Loan Documents shall be deemed correct if such representation would be correct if made by Master Lessee but only to the extent consistent with the transactions contemplated in this Loan Agreement. A Default or Event of Default caused by the Master Lessee shall constitute a Default or Event of Default by Borrower.

12.3 Subordination of Master Lease.

(A) The Master Lease and all right, title and interest of Master Lessee thereunder and in and to the Mortgaged Property or any portion thereof, if any, are and shall be subject and subordinate to the lien of the Mortgage, including, without limitation, any and all fees and reimbursable expenses and other sums payable to Master Lessee under the Master Lease. Master Lessee hereby acknowledges that all provisions of the Master Lease relating to the application of insurance proceeds and condemnation awards are subject to and junior and inferior to the terms

and provisions of the Mortgage and the other Loan Documents, and the terms and provisions of the Mortgage and the other Loan Documents shall govern and control in the event of any conflict.

(B) Master Lessee agrees that, upon a foreclosure of the Mortgage, provided that the Master Lease has not expired or otherwise been earlier terminated in accordance with its terms for reasons other than such foreclosure, Master Lessee shall attorn to any Subsequent Owner and shall remain bound by all of the terms, covenants and conditions of the Master Lease, for the balance of the remaining term thereof (and any renewals thereof which may be effected in accordance with the Master Lease) with the same force and effect as if such Subsequent Owner were the landlord under the Master Lease and without the payment by such Subsequent Owner of any fees arising from such succession to the interests of such landlord. Such attornment shall be effective and self-operative as an agreement between Master Lessee and Subsequent Owner without the execution of any further instruments on the part of any party; provided, however, that at Lender's request, Master Lessee shall execute a commercially reasonable instrument confirming such attornment. If any Subsequent Owner shall elect, for any reason whatsoever, to succeed to the interest of Borrower under the Master Lease, without terminating the Master Lease, such Subsequent Owner shall not be (i) liable for any act or omission of any prior landlord (including Borrower), (ii) subject to any offsets or defenses which Master Lessee might have against any prior landlord (including Borrower), (iii) liable for or bound by any fees, commissions, rent, security deposit, additional rent or other sums or deposits which Master Lessee might have paid to any prior landlord (including Borrower) unless actually received by Subsequent Owner, or (iv) bound by any amendment or modification of the Master Lease made without the Lender's or such Subsequent Owner's express written consent if required hereunder.

(C) Upon a foreclosure of the Mortgage, notwithstanding the rights of Subsequent Owner under (B) above, unless Subsequent Owner, in its sole and absolute discretion, elects otherwise, such foreclosure of the Mortgage shall terminate the Master Lease, without payment of any termination fees, liquidated damages or other fees and charges under the Master Lease. Master Lessee expressly agrees that it shall not, in any event, cause or permit any lien, claim of lien, encumbrance or other charge to be placed or asserted against the Mortgaged Property or any portion thereof. Upon any such termination of the Master Lease by Lender or other Subsequent Owner, Master Lessee shall promptly remit and deliver to Lender or other Subsequent Owner an accounting of, all property, leases, rents, contracts and collateral then held by or under the control of Master Lessee (collectively, "**Master Lessee's Property**"). Upon any such termination, Master Lessee shall afford to Lender or other Subsequent Owner all rights and benefits provided to Master Lessor under the Master Lease, including, without limitation, cooperating and assisting Lender or Subsequent Owner to effect a smooth transition of ownership, assigning to Lender or such Subsequent Owner all operating licenses and permits for the IBX Centers then issued in Master Lessee's name as landlord of such IBX Centers (to the extent assignable) and delivering to Lender (or its designee) or such Subsequent Owner, all keys, locks and safe combinations, ledgers, bank statements for the Mortgaged Property accounts, books and records, insurance policies, and other documents and agreements required for the ownership of the Mortgaged Property as maintained by Master Lessee. If such assignment of licenses and permits is not permitted by the Legal Requirements, Master Lessee shall cooperate with, and provide reasonable assistance to, Lender or such Subsequent Owner in its efforts to obtain such licenses and permits for the normal use and operation of the Mortgaged Property.

Upon the written request of Lender or other Subsequent Owner, Master Lessee shall periodically execute and deliver a statement, in a form reasonably satisfactory to Lender or such Subsequent Owner, reaffirming Master Lessee's obligation to attorn as set forth in this Section 12.

12.4 **Master Lease Guaranty**. As additional security for the Loan, Carveout Guarantor will enter into a guaranty of the Master Lease (the "**Master Lease Guaranty**") on terms and conditions acceptable to Lender.

12.5 **Representations, Warranties and Covenants of Carveout Guarantor with respect to the Master Lease**. Carveout Guarantor is a corporation duly organized and validly existing under the laws of the State of Delaware, and is qualified to do business in the State where the Mortgaged Property is located. Carveout Guarantor has full power and authority to enter into and carry out the terms of the Master Lease Guaranty. Carveout Guarantor is in good standing under the laws of the State of Delaware. A true and complete copy of all organizational documents creating or governing Carveout Guarantor has been delivered to Lender. Carveout Guarantor hereby acknowledges and agrees that the Master Lease Guaranty shall be assigned to Lender in connection with the Loan.

SECTION 13
SUBDIVISION AND PARTIAL RELEASE

13.1 **Conditions to Subdivision and Partial Release**. Borrower shall be permitted to subdivide the Land into two separate legal parcels (the '**Subdivision**") and create reciprocal easements subject to Lender's reasonable consent, and upon said Subdivision, be entitled to a partial release (the "**Partial Release**") of that certain portion of the Mortgaged Property shown on **Exhibit F** (the "**Release Property"**) resulting from the Subdivision, subject to the satisfaction of following conditions precedent in a manner satisfactory to the Lender in its sole and absolute discretion (the "**Subdivision and Partial Release Requirements"**):

(A) Lender reasonably approves of all subdivision documents, including, without limitation, any plats or plans relating thereto and any documents establishing cross-easements or restrictive covenants, including, without limitation, Lender's receipt and approval of all easements necessary to allow each of the subdivided parcels access and cost sharing and use of shared facilities;

(B) The Subdivision complies with, and the Mortgaged Property after giving effect to the Subdivision will comply with, all Laws and Legal Requirements

(C) Delivery to the Lender of not less than thirty (30) days prior written notice of the proposed release requesting that the Lender release the Release Property and providing such additional documentation and information as may be necessary for the Lender to consider such request;

(D) No Default or Event of Default shall have occurred and be continuing;

(E) The Borrower shall have delivered to the Lender a certificate executed by an authorized officer of the Borrower certifying in form acceptable to the Lender that each of the representations and warranties of the Borrower, Carveout Guarantor and Borrower Representative contained in the Loan Documents is true, complete and correct in all material respects as of the effective date of the partial release;

(F) The Carveout Guarantor shall have executed and delivered to the Lender a reaffirmation of its obligations under the Carveout Guaranty and the Master Lease in form acceptable to the Lender affirming that the Obligations of the Carveout Guarantor under the Carveout Guaranty and the Master Lease are and shall continue to be in full force and effect;

(G) No event, circumstances or state of facts shall have occurred or exist, or will be likely to occur or exist after the release of the Release Property, resulting in a Material Adverse Effect;

(H) The Transfer and release of the Release Property from the lien of the Mortgage will not violate, and the Remaining Mortgaged Property after the release will not be in violation of, any Legal Requirements, including, without limitation, zoning and subdivision laws and Borrower shall provide Lender with evidence of compliance of each of the subdivided parcels with such Legal Requirements;

(I) The Release Property will constitute one or more tax lots separate and distinct from the tax lot or lots applicable to the Remaining Mortgaged Property encumbered by the lien of the Mortgage, and shall constitute a separate subdivided parcel;

(J) The Lender shall have received an updated Survey reflecting the Subdivision and the Partial Release in form and substance satisfactory to Lender;

(K) At Borrower's sole cost and expense, the Title Company issues to Lender an updated title insurance policy or date-down endorsement to the Title Policy, in form and substance acceptable to the Lender, (i) insuring Lender's first priority lien on the Mortgaged Property is not impaired by the Subdivision or Partial Release, (ii) reflecting the Partial Release, and (iii) disclosing no additional exceptions or encumbrances affecting the Mortgaged Property except for the Permitted Exceptions, and updates to existing endorsements of the Title Policy, if applicable, or new endorsements as Lender may reasonably require, including, without limitation, a subdivision endorsement in form and substance acceptable to Lender;

(L) All necessary easements and shared facility agreements reasonably required by Lender with respect to the Remaining Mortgaged Property are in place;

(M) Borrower, Borrower Representative and/or Carveout Guarantor shall execute and deliver such documentation in connection with the Subdivision and the Partial Release as Lender may reasonably request to effectuate the Subdivision and/or the Partial Release, including, without limitation, such modifications to the Loan Documents as Lender, its counsel or title agent may request, and updated legal opinions (such opinions shall be in form, scope and substance satisfactory to the Lender and the Lender's counsel in their reasonable discretion);

(N) The Lender shall have received such other documents, certificates, instruments, opinions or assurances as the Lender may reasonably request;

(O) The Borrower shall pay all of the Lender's reasonable out-of-pocket costs and expenses incurred by the Lender in connection with such request for such Subdivision and/or Partial Release, including, without limitation, all recording costs, transfer taxes, title premiums and reasonable legal fees, regardless of whether or not such Subdivision or Partial Release is consummated; and

(P) The Release Property may be Transferred to an Affiliate of Borrower subject to the additional condition that the Release Property shall not at any time thereafter during the term of the Loan, while under the ownership of an Affiliate of Borrower, be used in a manner which could result in a Material Adverse Effect, including without limitation, diminishing the value of the Remaining Mortgaged Property in any way, or directly or indirectly compete with the IBX Center located on the Remaining Mortgaged Property (the breach of such additional condition shall result in an Event of Default hereunder in the event such breach is not cured within the notice and cure periods set forth in Section 9.1(D) hereof).

13.2 Partial Release. Upon satisfaction of the Subdivision and Partial Release Requirements, the Lender shall release the Lien of the Mortgage with respect to the Release Property and deliver to the Borrower a duly executed release or reconveyance in recordable form, a UCC-3 release of security interest and other such documents as may be reasonably required to release the Release Property from the Lien of the Mortgage.

Witness the due execution hereof by the undersigned as of the date first written above.

BORROWER:

CHI 3, LLC,
a Delaware limited liability company

By: /s/ Keith D. Taylor
Name: Keith D. Taylor
Its: Manager

LENDER:

SFT I, INC.,
a Delaware corporation

By: /s/ Barclay G. Jones, III
Name: Barclay G. Jones, III
Its: Executive Vice President

[Joiner by Master Lessee/Borrower Representative
and Carveout Guarantor on Following Page]

JOINDER BY MASTER LESSEE/ BORROWER REPRESENTATIVE AND CARVEOUT GUARANTOR: Master Lessee/Borrower Representative and Carveout Guarantor hereby acknowledge and agree to the terms and conditions set forth in Sections 11.12 and 12 of this Agreement.

MASTER LESSEE AND BORROWER REPRESENTATIVE:

EQUINIX OPERATING CO., INC.,
a Delaware corporation

By: /s/ Keith D. Taylor
Name: Keith D. Taylor
Its: CFO

CARVEOUT GUARANTOR:

EQUINIX, INC.,
a Delaware corporation

By: /s/ Keith D. Taylor
Name: Keith D. Taylor
Its: CFO

PROMISSORY NOTE - ONE

$90,000,000.00 as of February 2, 2007

FOR VALUE RECEIVED, **CHI 3, LLC**, a Delaware limited liability company ("**Borrower**"), promises to pay to the order of **SFT I, INC.**, a Delaware corporation ("**Holder**") at 1114 Avenue of the Americas, 27th Floor, New York, New York 10036, or at such other place as Holder may from time to time in writing designate, in lawful money of the United States of America, the principal sum of **NINETY MILLION AND NO/100 DOLLARS** ($90,000,000.00) or such other sum as may be the total amount outstanding pursuant to this Note (the "**Loan**"), payable at such rates and at such times as are provided in the Loan Agreement (as hereinafter defined).

Payments of both principal and interest are to be made in lawful money of the United States of America.

This Promissory Note-One (this "**Note**") evidences Indebtedness incurred under, and is subject to the terms and provisions of, that certain Development Loan and Security Agreement of even date herewith, by and among the Borrower and the Holder (herein, as the same may be further amended, modified or supplemented from time to time, called the "**Loan Agreement**"). The Loan Agreement, to which reference is hereby made, sets forth said terms and provisions, including those under which this Note may or must be paid prior to its due date or may have its due date accelerated or extended. The Loan Agreement also contains provisions for the payment of late charges and interest at the Default Rate, all as more specifically set forth therein. Repayment of the Indebtedness evidenced by this Note is secured by the Mortgage and the other Loan Documents referred to in the Loan Agreement, and reference is made thereto for a statement of terms and provisions.

Terms used but not otherwise defined herein are used herein as defined in the Loan Agreement.

This Note may only be prepaid in whole or in part in accordance with the terms of Section 2.4 of the Loan Agreement (or as otherwise expressly provided elsewhere in the Loan Agreement or the other Loan Documents). Any payments of the outstanding principal balance of the Loan evidenced by this Note, whether voluntary or involuntary, shall be accompanied by interest accrued to the date of prepayment and the Prepayment Premium, to the extent, if any, provided in Section 2.4 of the Loan Agreement (except to the extent any other provision of the Loan Agreement expressly provides otherwise).

EXCEPT AS OTHERWISE EXPRESSLY PERMITTED IN THIS NOTE OR THE OTHER LOAN DOCUMENTS, BORROWER HEREBY EXPRESSLY (i) WAIVES ANY RIGHTS IT MAY HAVE UNDER LAW TO PREPAY THIS NOTE, IN WHOLE OR IN PART, WITHOUT PENALTY, UPON ACCELERATION OF THE MATURITY DATE, AND (ii) AGREES THAT IF, FOR ANY REASON, A PREPAYMENT OF ALL OR ANY PORTION OF THE PRINCIPAL AMOUNT OF THIS NOTE IS MADE, INCLUDING, WITHOUT LIMITATION, UPON OR FOLLOWING ANY ACCELERATION OF THE MATURITY DATE BY HOLDER ON ACCOUNT OF ANY DEFAULT BY BORROWER,

INCLUDING, WITHOUT LIMITATION, ANY TRANSFER, DISPOSITION, OR FURTHER ENCUMBRANCE PROHIBITED OR RESTRICTED BY THE LOAN AGREEMENT, THEN BORROWER SHALL BE OBLIGATED TO PAY CONCURRENTLY WITH SUCH PREPAYMENT THE PREPAYMENT PREMIUM TO THE EXTENT REQUIRED UNDER SECTION 2.4 OF THE LOAN AGREEMENT. BY INITIALING THIS PROVISION IN THE SPACE PROVIDED BELOW, BORROWER HEREBY DECLARES THAT (1) EACH OF THE MATTERS SET FORTH IN THIS PARAGRAPH IS TRUE AND CORRECT, (2) HOLDER’S AGREEMENT TO MAKE THE LOAN EVIDENCED BY THIS NOTE AT THE INTEREST RATES SET FORTH IN THE LOAN AGREEMENT AND FOR THE TERM SET FORTH IN THIS NOTE CONSTITUTES ADEQUATE CONSIDERATION FOR THIS WAIVER AND AGREEMENT, AND HAS BEEN GIVEN INDIVIDUAL WEIGHT BY BORROWER AND HOLDER, (3) BORROWER IS A SOPHISTICATED AND KNOWLEDGEABLE REAL ESTATE INVESTOR WITH COMPETENT AND INDEPENDENT LEGAL COUNSEL, AND (4) BORROWER FULLY UNDERSTANDS THE EFFECT OF THIS WAIVER AND AGREEMENT.

/s/ KT

On behalf of the Borrower

The remedies of Holder, as provided in this Note, the Loan Agreement and the other Loan Documents, shall be cumulative and concurrent and may be pursued singularly, successively or together, at the sole discretion of Holder, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof. In any action, sale of collateral, or other proceedings to enforce this Note, the Loan Agreement or any other Loan Document, Holder need not file or produce the original of this Note, but only need file or produce a photocopy of this Note certified by Holder to be a true and correct copy of this Note.

In the event of any dispute, action or lawsuit regarding the terms hereof, subject to the provisions of the Loan Agreement, the prevailing party will have the right to recover from the other party all court costs and reasonable attorneys’ fees and disbursements incurred with respect thereto, in addition to all other applicable damages and costs.

BORROWER AND ANY GUARANTOR OF THIS NOTE WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, DILIGENCE, PRESENTMENT FOR PAYMENT, DEMAND, NOTICE OF DEMAND, NOTICE OF PROTEST, NOTICE OF NONPAYMENT OR DISHONOR, NOTICE OF INTENTION TO ACCELERATE, NOTICE OF ACCELERATION, PROTEST AND NOTICE OF PROTEST OF THIS NOTE, AND ALL OTHER NOTICES (OTHER THAN AS EXPRESSLY PROVIDED IN THE LOAN AGREEMENT OR OTHER LOAN DOCUMENTS) IN CONNECTION WITH THE DELIVERY, ACCEPTANCE, PERFORMANCE, DEFAULT OR ENFORCEMENT OF THE PAYMENT OF THIS NOTE. BORROWER FURTHER WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL VALUATION AND APPRAISEMENT PRIVILEGES, CLAIMS OF LACK OF DILIGENCE OR DELAYS IN COLLECTION OR ENFORCEMENT OF THIS NOTE, THE RELEASE OF ANY PARTY LIABLE, THE RELEASE OF ANY SECURITY FOR THE DEBT, THE TAKING OF ANY ADDITIONAL SECURITY AND ANY OTHER INDULGENCE OF FORBEARANCE.

Holder shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by Holder, and then only to the extent specifically set forth in the writing. The acceptance by Holder of any payment hereunder which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing options at that time or at any subsequent time or nullify any prior exercise of any such option without the express consent of Holder, except as and to the extent otherwise provided by law. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

PURSUANT TO SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, BORROWER AND ANY GUARANTOR OF THIS NOTE AGREE THAT THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES OF AMERICA AND THE LAWS OF THE STATE OF NEW YORK. IN ACCORDANCE WITH SECTION 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, BORROWER AGREES THAT ANY ACTION TO ENFORCE THE TERMS OF THIS NOTE MAY BE COMMENCED IN ANY COURT LOCATED IN THE STATE OF NEW YORK. BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE, AND BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING.

Whenever used, the singular number shall include the plural, the plural shall include the singular, and the words “Holder” and “Borrower” shall be deemed to include their respective heirs, executors, successors and assigns.

All notices which Holder or Borrower may be required or permitted to give hereunder shall be made in the same manner as set forth in Section 11.5 of the Loan Agreement.

In the event any one or more of the provisions hereof shall be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions hereof shall be in no way affected, prejudiced or disturbed thereby.

Borrower acknowledges that Holder may, in its sole discretion, sell all or any part of its interest in the Loan evidenced by this Note, including, without limitation, for purposes of effecting a Securitization.

Notwithstanding anything to the contrary contained in this Note or any other Loan Documents, to the fullest extent permitted by applicable law, the Holder’s rights hereunder shall be reinstated and revived, and the enforceability of this Note and the other Loan Documents shall continue, with respect to any amount at any time paid on account of the Loan which thereafter shall be required to be restored by Holder pursuant to a court order or judgment (whether or not final or non-appealable), as though such amount had not been paid. The rights of Holder created

or granted herein and the enforceability of the Loan Documents at all times shall, to the fullest extent permitted by applicable law, remain effective to cover the full amount of the Loan even though the Loan, including any part thereof or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against any other party and whether or not any other party shall have any personal liability with respect thereto.

Borrower and Holder, by acceptance of this Note, hereby agree that the Loan Documents supersede any prior oral or written agreements of the parties; without limiting the generality of the foregoing, in the event of conflict between the terms of this Note and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail.

Time is of the essence for the performance of each and every covenant of the parties hereunder or under the other Loan Documents. No excuse, delay, act of God, or other reason, whether or not within the control of Borrower or Holder (as the case may be), shall operate to defer, reduce or waive Borrower's or Holder's (as the case may be) performance of any such covenant or obligation.

This Note shall be subject to the limitation of liability set forth in Section 11.13 of the Loan Agreement, the terms of which are incorporated herein by reference.

[EXECUTION ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has duly executed this Note the day and year first above written.

BORROWER:

CHI 3, LLC
a Delaware limited liability company

By: /s/ Keith D. Taylor
Name: Keith D. Taylor
Manager

PROMISSORY NOTE - TWO

$9,500,000.00 as of February 2, 2007

FOR VALUE RECEIVED, **CHI 3, LLC**, a Delaware limited liability company ("**Borrower**"), promises to pay to the order of **OAK HILL CREDIT ALPHA FINANCE I (Offshore), LTD.** ("**Holder**") at c/o SFT I, Inc. ("**SFT I**"), 1114 Avenue of the Americas, 27th Floor, New York, New York 10036, or at such other place as SFT I may from time to time in writing designate, in lawful money of the United States of America, the principal sum of **NINE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS** ($9,500,000.00) or such other sum as may be the total amount outstanding pursuant to this Note (the "**Loan**"), payable at such rates and at such times as are provided in the Loan Agreement (as hereinafter defined).

Payments of both principal and interest are to be made in lawful money of the United States of America.

This Promissory Note-Two (this "**Note**") evidences Indebtedness incurred under, and is subject to the terms and provisions of, that certain Development Loan and Security Agreement of even date herewith, by and among the Borrower and SFT I (herein, as the same may be further amended, modified or supplemented from time to time, called the "**Loan Agreement**"). The Loan Agreement, to which reference is hereby made, sets forth said terms and provisions, including those under which this Note may or must be paid prior to its due date or may have its due date accelerated or extended. The Loan Agreement also contains provisions for the payment of late charges and interest at the Default Rate, all as more specifically set forth therein. Repayment of the Indebtedness evidenced by this Note is secured by the Mortgage and the other Loan Documents referred to in the Loan Agreement, and reference is made thereto for a statement of terms and provisions.

Terms used but not otherwise defined herein are used herein as defined in the Loan Agreement.

This Note may only be prepaid in whole or in part in accordance with the terms of Section 2.4 of the Loan Agreement (or as otherwise expressly provided elsewhere in the Loan Agreement or the other Loan Documents). Any payments of the outstanding principal balance of the Loan evidenced by this Note, whether voluntary or involuntary, shall be accompanied by interest accrued to the date of prepayment and the Prepayment Premium, to the extent, if any, provided in Section 2.4 of the Loan Agreement (except to the extent any other provision of the Loan Agreement expressly provides otherwise).

EXCEPT AS OTHERWISE EXPRESSLY PERMITTED IN THIS NOTE OR THE OTHER LOAN DOCUMENTS, BORROWER HEREBY EXPRESSLY (i) WAIVES ANY RIGHTS IT MAY HAVE UNDER LAW TO PREPAY THIS NOTE, IN WHOLE OR IN PART, WITHOUT PENALTY, UPON ACCELERATION OF THE MATURITY DATE, AND (ii) AGREES THAT IF, FOR ANY REASON, A PREPAYMENT OF ALL OR ANY PORTION OF THE PRINCIPAL AMOUNT OF THIS NOTE IS MADE, INCLUDING,

WITHOUT LIMITATION, UPON OR FOLLOWING ANY ACCELERATION OF THE MATURITY DATE BY HOLDER ON ACCOUNT OF ANY DEFAULT BY BORROWER, INCLUDING, WITHOUT LIMITATION, ANY TRANSFER, DISPOSITION, OR FURTHER ENCUMBRANCE PROHIBITED OR RESTRICTED BY THE LOAN AGREEMENT, THEN BORROWER SHALL BE OBLIGATED TO PAY CONCURRENTLY WITH SUCH PREPAYMENT THE PREPAYMENT PREMIUM TO THE EXTENT REQUIRED UNDER SECTION 2.4 OF THE LOAN AGREEMENT. BY INITIALING THIS PROVISION IN THE SPACE PROVIDED BELOW, BORROWER HEREBY DECLARES THAT (1) EACH OF THE MATTERS SET FORTH IN THIS PARAGRAPH IS TRUE AND CORRECT, (2) HOLDER'S AGREEMENT TO MAKE THE LOAN EVIDENCED BY THIS NOTE AT THE INTEREST RATES SET FORTH IN THE LOAN AGREEMENT AND FOR THE TERM SET FORTH IN THIS NOTE CONSTITUTES ADEQUATE CONSIDERATION FOR THIS WAIVER AND AGREEMENT, AND HAS BEEN GIVEN INDIVIDUAL WEIGHT BY BORROWER AND HOLDER, (3) BORROWER IS A SOPHISTICATED AND KNOWLEDGEABLE REAL ESTATE INVESTOR WITH COMPETENT AND INDEPENDENT LEGAL COUNSEL, AND (4) BORROWER FULLY UNDERSTANDS THE EFFECT OF THIS WAIVER AND AGREEMENT.

/s/ KT

On behalf of the Borrower

The remedies of Holder, as provided in this Note, the Loan Agreement and the other Loan Documents, shall be cumulative and concurrent and may be pursued singularly, successively or together, at the sole discretion of Holder, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof. In any action, sale of collateral, or other proceedings to enforce this Note, the Loan Agreement or any other Loan Document, Holder need not file or produce the original of this Note, but only need file or produce a photocopy of this Note certified by Holder to be a true and correct copy of this Note.

In the event of any dispute, action or lawsuit regarding the terms hereof, subject to the provisions of the Loan Agreement, the prevailing party will have the right to recover from the other party all court costs and reasonable attorneys' fees and disbursements incurred with respect thereto, in addition to all other applicable damages and costs.

BORROWER AND ANY GUARANTOR OF THIS NOTE WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, DILIGENCE, PRESENTMENT FOR PAYMENT, DEMAND, NOTICE OF DEMAND, NOTICE OF PROTEST, NOTICE OF NONPAYMENT OR DISHONOR, NOTICE OF INTENTION TO ACCELERATE, NOTICE OF ACCELERATION, PROTEST AND NOTICE OF PROTEST OF THIS NOTE, AND ALL OTHER NOTICES (OTHER THAN AS EXPRESSLY PROVIDED IN THE LOAN AGREEMENT OR OTHER LOAN DOCUMENTS) IN CONNECTION WITH THE DELIVERY, ACCEPTANCE, PERFORMANCE, DEFAULT OR ENFORCEMENT OF THE PAYMENT OF THIS NOTE. BORROWER FURTHER WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL VALUATION AND APPRAISEMENT PRIVILEGES, CLAIMS OF LACK OF DILIGENCE OR DELAYS IN COLLECTION OR ENFORCEMENT OF THIS NOTE, THE RELEASE OF ANY PARTY LIABLE, THE RELEASE OF ANY SECURITY FOR THE DEBT, THE TAKING OF ANY ADDITIONAL SECURITY AND ANY OTHER INDULGENCE OF FORBEARANCE.

Holder shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by Holder, and then only to the extent specifically set forth in the writing. The acceptance by Holder of any payment hereunder which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing options at that time or at any subsequent time or nullify any prior exercise of any such option without the express consent of Holder, except as and to the extent otherwise provided by law. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

PURSUANT TO SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, BORROWER AND ANY GUARANTOR OF THIS NOTE AGREE THAT THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES OF AMERICA AND THE LAWS OF THE STATE OF NEW YORK. IN ACCORDANCE WITH SECTION 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, BORROWER AGREES THAT ANY ACTION TO ENFORCE THE TERMS OF THIS NOTE MAY BE COMMENCED IN ANY COURT LOCATED IN THE STATE OF NEW YORK. BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE, AND BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING.

Whenever used, the singular number shall include the plural, the plural shall include the singular, and the words “Holder” and “Borrower” shall be deemed to include their respective heirs, executors, successors and assigns.

All notices which Holder or Borrower may be required or permitted to give hereunder shall be made in the same manner as set forth in Section 11.5 of the Loan Agreement.

In the event any one or more of the provisions hereof shall be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions hereof shall be in no way affected, prejudiced or disturbed thereby.

Borrower acknowledges that Holder may, in its sole discretion, sell all or any part of its interest in the Loan evidenced by this Note, including, without limitation, for purposes of effecting a Securitization.

Notwithstanding anything to the contrary contained in this Note or any other Loan Documents, to the fullest extent permitted by applicable law, the Holder’s rights hereunder shall be reinstated and revived, and the enforceability of this Note and the other Loan Documents shall

continue, with respect to any amount at any time paid on account of the Loan which thereafter shall be required to be restored by Holder pursuant to a court order or judgment (whether or not final or non-appealable), as though such amount had not been paid. The rights of Holder created or granted herein and the enforceability of the Loan Documents at all times shall, to the fullest extent permitted by applicable law, remain effective to cover the full amount of the Loan even though the Loan, including any part thereof or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against any other party and whether or not any other party shall have any personal liability with respect thereto.

Borrower and Holder, by acceptance of this Note, hereby agree that the Loan Documents supersede any prior oral or written agreements of the parties; without limiting the generality of the foregoing, in the event of conflict between the terms of this Note and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail.

Time is of the essence for the performance of each and every covenant of the parties hereunder or under the other Loan Documents. No excuse, delay, act of God, or other reason, whether or not within the control of Borrower or Holder (as the case may be), shall operate to defer, reduce or waive Borrower's or Holder's (as the case may be) performance of any such covenant or obligation.

This Note shall be subject to the limitation of liability set forth in Section 11.13 of the Loan Agreement, the terms of which are incorporated herein by reference.

[EXECUTION ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has duly executed this Note the day and year first above written.

BORROWER:

CHI 3, LLC
a Delaware limited liability company

By: /s/ Keith D. Taylor
Name: Keith D. Taylor
Manager

PROMISSORY NOTE - THREE

$8,000,000.00 as of February 2, 2007

FOR VALUE RECEIVED, **CHI 3, LLC**, a Delaware limited liability company ("**Borrower**"), promises to pay to the order of **OAK HILL CREDIT OPPORTUNITIES FINANCING, LTD.** ("**Holder**") at c/o SFT I, Inc. ("**SFT I**"), 1114 Avenue of the Americas, 27th Floor, New York, New York 10036, or at such other place as SFT I may from time to time in writing designate, in lawful money of the United States of America, the principal sum of **EIGHT MILLION AND NO/100 DOLLARS** ($8,000,000.00) or such other sum as may be the total amount outstanding pursuant to this Note (the "**Loan**"), payable at such rates and at such times as are provided in the Loan Agreement (as hereinafter defined).

Payments of both principal and interest are to be made in lawful money of the United States of America.

This Promissory Note-Three (this "**Note**") evidences Indebtedness incurred under, and is subject to the terms and provisions of, that certain Development Loan and Security Agreement of even date herewith, by and among the Borrower and SFT I (herein, as the same may be further amended, modified or supplemented from time to time, called the "**Loan Agreement**"). The Loan Agreement, to which reference is hereby made, sets forth said terms and provisions, including those under which this Note may or must be paid prior to its due date or may have its due date accelerated or extended. The Loan Agreement also contains provisions for the payment of late charges and interest at the Default Rate, all as more specifically set forth therein. Repayment of the Indebtedness evidenced by this Note is secured by the Mortgage and the other Loan Documents referred to in the Loan Agreement, and reference is made thereto for a statement of terms and provisions.

Terms used but not otherwise defined herein are used herein as defined in the Loan Agreement.

This Note may only be prepaid in whole or in part in accordance with the terms of Section 2.4 of the Loan Agreement (or as otherwise expressly provided elsewhere in the Loan Agreement or the other Loan Documents). Any payments of the outstanding principal balance of the Loan evidenced by this Note, whether voluntary or involuntary, shall be accompanied by interest accrued to the date of prepayment and the Prepayment Premium, to the extent, if any, provided in Section 2.4 of the Loan Agreement (except to the extent any other provision of the Loan Agreement expressly provides otherwise).

EXCEPT AS OTHERWISE EXPRESSLY PERMITTED IN THIS NOTE OR THE OTHER LOAN DOCUMENTS, BORROWER HEREBY EXPRESSLY (i) WAIVES ANY RIGHTS IT MAY HAVE UNDER LAW TO PREPAY THIS NOTE, IN WHOLE OR IN PART, WITHOUT PENALTY, UPON ACCELERATION OF THE MATURITY DATE, AND (ii) AGREES THAT IF, FOR ANY REASON, A PREPAYMENT OF ALL OR ANY PORTION OF THE PRINCIPAL AMOUNT OF THIS NOTE IS MADE, INCLUDING, WITHOUT LIMITATION, UPON OR FOLLOWING ANY ACCELERATION OF THE

MATURITY DATE BY HOLDER ON ACCOUNT OF ANY DEFAULT BY BORROWER, INCLUDING, WITHOUT LIMITATION, ANY TRANSFER, DISPOSITION, OR FURTHER ENCUMBRANCE PROHIBITED OR RESTRICTED BY THE LOAN AGREEMENT, THEN BORROWER SHALL BE OBLIGATED TO PAY CONCURRENTLY WITH SUCH PREPAYMENT THE PREPAYMENT PREMIUM TO THE EXTENT REQUIRED UNDER SECTION 2.4 OF THE LOAN AGREEMENT. BY INITIALING THIS PROVISION IN THE SPACE PROVIDED BELOW, BORROWER HEREBY DECLARES THAT (1) EACH OF THE MATTERS SET FORTH IN THIS PARAGRAPH IS TRUE AND CORRECT, (2) HOLDER'S AGREEMENT TO MAKE THE LOAN EVIDENCED BY THIS NOTE AT THE INTEREST RATES SET FORTH IN THE LOAN AGREEMENT AND FOR THE TERM SET FORTH IN THIS NOTE CONSTITUTES ADEQUATE CONSIDERATION FOR THIS WAIVER AND AGREEMENT, AND HAS BEEN GIVEN INDIVIDUAL WEIGHT BY BORROWER AND HOLDER, (3) BORROWER IS A SOPHISTICATED AND KNOWLEDGEABLE REAL ESTATE INVESTOR WITH COMPETENT AND INDEPENDENT LEGAL COUNSEL, AND (4) BORROWER FULLY UNDERSTANDS THE EFFECT OF THIS WAIVER AND AGREEMENT.

/s/ KT

On behalf of the Borrower

The remedies of Holder, as provided in this Note, the Loan Agreement and the other Loan Documents, shall be cumulative and concurrent and may be pursued singularly, successively or together, at the sole discretion of Holder, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof. In any action, sale of collateral, or other proceedings to enforce this Note, the Loan Agreement or any other Loan Document, Holder need not file or produce the original of this Note, but only need file or produce a photocopy of this Note certified by Holder to be a true and correct copy of this Note.

In the event of any dispute, action or lawsuit regarding the terms hereof, subject to the provisions of the Loan Agreement, the prevailing party will have the right to recover from the other party all court costs and reasonable attorneys' fees and disbursements incurred with respect thereto, in addition to all other applicable damages and costs.

BORROWER AND ANY GUARANTOR OF THIS NOTE WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, DILIGENCE, PRESENTMENT FOR PAYMENT, DEMAND, NOTICE OF DEMAND, NOTICE OF PROTEST, NOTICE OF NONPAYMENT OR DISHONOR, NOTICE OF INTENTION TO ACCELERATE, NOTICE OF ACCELERATION, PROTEST AND NOTICE OF PROTEST OF THIS NOTE, AND ALL OTHER NOTICES (OTHER THAN AS EXPRESSLY PROVIDED IN THE LOAN AGREEMENT OR OTHER LOAN DOCUMENTS) IN CONNECTION WITH THE DELIVERY, ACCEPTANCE, PERFORMANCE, DEFAULT OR ENFORCEMENT OF THE PAYMENT OF THIS NOTE. BORROWER FURTHER WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL VALUATION AND APPRAISEMENT PRIVILEGES, CLAIMS OF LACK OF DILIGENCE OR DELAYS IN COLLECTION OR ENFORCEMENT OF THIS NOTE, THE RELEASE OF ANY PARTY LIABLE, THE RELEASE OF ANY SECURITY FOR THE DEBT, THE TAKING OF ANY ADDITIONAL SECURITY AND ANY OTHER INDULGENCE OF FORBEARANCE.

Holder shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by Holder, and then only to the extent specifically set forth in the writing. The acceptance by Holder of any payment hereunder which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing options at that time or at any subsequent time or nullify any prior exercise of any such option without the express consent of Holder, except as and to the extent otherwise provided by law. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

PURSUANT TO SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, BORROWER AND ANY GUARANTOR OF THIS NOTE AGREE THAT THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES OF AMERICA AND THE LAWS OF THE STATE OF NEW YORK. IN ACCORDANCE WITH SECTION 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, BORROWER AGREES THAT ANY ACTION TO ENFORCE THE TERMS OF THIS NOTE MAY BE COMMENCED IN ANY COURT LOCATED IN THE STATE OF NEW YORK. BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE, AND BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING.

Whenever used, the singular number shall include the plural, the plural shall include the singular, and the words “Holder” and “Borrower” shall be deemed to include their respective heirs, executors, successors and assigns.

All notices which Holder or Borrower may be required or permitted to give hereunder shall be made in the same manner as set forth in Section 11.5 of the Loan Agreement.

In the event any one or more of the provisions hereof shall be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions hereof shall be in no way affected, prejudiced or disturbed thereby.

Borrower acknowledges that Holder may, in its sole discretion, sell all or any part of its interest in the Loan evidenced by this Note, including, without limitation, for purposes of effecting a Securitization.

Notwithstanding anything to the contrary contained in this Note or any other Loan Documents, to the fullest extent permitted by applicable law, the Holder’s rights hereunder shall be reinstated and revived, and the enforceability of this Note and the other Loan Documents shall

continue, with respect to any amount at any time paid on account of the Loan which thereafter shall be required to be restored by Holder pursuant to a court order or judgment (whether or not final or non-appealable), as though such amount had not been paid. The rights of Holder created or granted herein and the enforceability of the Loan Documents at all times shall, to the fullest extent permitted by applicable law, remain effective to cover the full amount of the Loan even though the Loan, including any part thereof or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against any other party and whether or not any other party shall have any personal liability with respect thereto.

Borrower and Holder, by acceptance of this Note, hereby agree that the Loan Documents supersede any prior oral or written agreements of the parties; without limiting the generality of the foregoing, in the event of conflict between the terms of this Note and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail.

Time is of the essence for the performance of each and every covenant of the parties hereunder or under the other Loan Documents. No excuse, delay, act of God, or other reason, whether or not within the control of Borrower or Holder (as the case may be), shall operate to defer, reduce or waive Borrower’s or Holder’s (as the case may be) performance of any such covenant or obligation.

This Note shall be subject to the limitation of liability set forth in Section 11.13 of the Loan Agreement, the terms of which are incorporated herein by reference.

[EXECUTION ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has duly executed this Note the day and year first above written.

BORROWER:

CHI 3, LLC
a Delaware limited liability company

By: /s/ Keith D. Taylor
Name: Keith D. Taylor
Manager

PROMISSORY NOTE - FOUR

$2,500,000.00 as of February 2, 2007

FOR VALUE RECEIVED, **CHI 3, LLC**, a Delaware limited liability company ("**Borrower**"), promises to pay to the order of **OAK HILL CREDIT ALPHA FINANCE I, LLC** ("**Holder**") at c/o SFT I, Inc. ("**SFT I**"), 1114 Avenue of the Americas, 27th Floor, New York, New York 10036, or at such other place as SFT I may from time to time in writing designate, in lawful money of the United States of America, the principal sum of **TWO MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS** ($2,500,000.00) or such other sum as may be the total amount outstanding pursuant to this Note (the "**Loan**"), payable at such rates and at such times as are provided in the Loan Agreement (as hereinafter defined).

Payments of both principal and interest are to be made in lawful money of the United States of America.

This Promissory Note-Four (this "**Note**") evidences Indebtedness incurred under, and is subject to the terms and provisions of, that certain Development Loan and Security Agreement of even date herewith, by and among the Borrower and SFT I (herein, as the same may be further amended, modified or supplemented from time to time, called the "**Loan Agreement**"). The Loan Agreement, to which reference is hereby made, sets forth said terms and provisions, including those under which this Note may or must be paid prior to its due date or may have its due date accelerated or extended. The Loan Agreement also contains provisions for the payment of late charges and interest at the Default Rate, all as more specifically set forth therein. Repayment of the Indebtedness evidenced by this Note is secured by the Mortgage and the other Loan Documents referred to in the Loan Agreement, and reference is made thereto for a statement of terms and provisions.

Terms used but not otherwise defined herein are used herein as defined in the Loan Agreement.

This Note may only be prepaid in whole or in part in accordance with the terms of Section 2.4 of the Loan Agreement (or as otherwise expressly provided elsewhere in the Loan Agreement or the other Loan Documents). Any payments of the outstanding principal balance of the Loan evidenced by this Note, whether voluntary or involuntary, shall be accompanied by interest accrued to the date of prepayment and the Prepayment Premium, to the extent, if any, provided in Section 2.4 of the Loan Agreement (except to the extent any other provision of the Loan Agreement expressly provides otherwise).

EXCEPT AS OTHERWISE EXPRESSLY PERMITTED IN THIS NOTE OR THE OTHER LOAN DOCUMENTS, BORROWER HEREBY EXPRESSLY (i) WAIVES ANY RIGHTS IT MAY HAVE UNDER LAW TO PREPAY THIS NOTE, IN WHOLE OR IN PART, WITHOUT PENALTY, UPON ACCELERATION OF THE MATURITY DATE, AND (ii) AGREES THAT IF, FOR ANY REASON, A PREPAYMENT OF ALL OR ANY PORTION OF THE PRINCIPAL AMOUNT OF THIS NOTE IS MADE, INCLUDING,

WITHOUT LIMITATION, UPON OR FOLLOWING ANY ACCELERATION OF THE MATURITY DATE BY HOLDER ON ACCOUNT OF ANY DEFAULT BY BORROWER, INCLUDING, WITHOUT LIMITATION, ANY TRANSFER, DISPOSITION, OR FURTHER ENCUMBRANCE PROHIBITED OR RESTRICTED BY THE LOAN AGREEMENT, THEN BORROWER SHALL BE OBLIGATED TO PAY CONCURRENTLY WITH SUCH PREPAYMENT THE PREPAYMENT PREMIUM TO THE EXTENT REQUIRED UNDER SECTION 2.4 OF THE LOAN AGREEMENT. BY INITIALING THIS PROVISION IN THE SPACE PROVIDED BELOW, BORROWER HEREBY DECLARES THAT (1) EACH OF THE MATTERS SET FORTH IN THIS PARAGRAPH IS TRUE AND CORRECT, (2) HOLDER'S AGREEMENT TO MAKE THE LOAN EVIDENCED BY THIS NOTE AT THE INTEREST RATES SET FORTH IN THE LOAN AGREEMENT AND FOR THE TERM SET FORTH IN THIS NOTE CONSTITUTES ADEQUATE CONSIDERATION FOR THIS WAIVER AND AGREEMENT, AND HAS BEEN GIVEN INDIVIDUAL WEIGHT BY BORROWER AND HOLDER, (3) BORROWER IS A SOPHISTICATED AND KNOWLEDGEABLE REAL ESTATE INVESTOR WITH COMPETENT AND INDEPENDENT LEGAL COUNSEL, AND (4) BORROWER FULLY UNDERSTANDS THE EFFECT OF THIS WAIVER AND AGREEMENT.

/s/ KT

On behalf of the Borrower

The remedies of Holder, as provided in this Note, the Loan Agreement and the other Loan Documents, shall be cumulative and concurrent and may be pursued singularly, successively or together, at the sole discretion of Holder, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof. In any action, sale of collateral, or other proceedings to enforce this Note, the Loan Agreement or any other Loan Document, Holder need not file or produce the original of this Note, but only need file or produce a photocopy of this Note certified by Holder to be a true and correct copy of this Note.

In the event of any dispute, action or lawsuit regarding the terms hereof, subject to the provisions of the Loan Agreement, the prevailing party will have the right to recover from the other party all court costs and reasonable attorneys' fees and disbursements incurred with respect thereto, in addition to all other applicable damages and costs.

BORROWER AND ANY GUARANTOR OF THIS NOTE WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, DILIGENCE, PRESENTMENT FOR PAYMENT, DEMAND, NOTICE OF DEMAND, NOTICE OF PROTEST, NOTICE OF NONPAYMENT OR DISHONOR, NOTICE OF INTENTION TO ACCELERATE, NOTICE OF ACCELERATION, PROTEST AND NOTICE OF PROTEST OF THIS NOTE, AND ALL OTHER NOTICES (OTHER THAN AS EXPRESSLY PROVIDED IN THE LOAN AGREEMENT OR OTHER LOAN DOCUMENTS) IN CONNECTION WITH THE DELIVERY, ACCEPTANCE, PERFORMANCE, DEFAULT OR ENFORCEMENT OF THE PAYMENT OF THIS NOTE. BORROWER FURTHER WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL VALUATION AND APPRAISEMENT PRIVILEGES, CLAIMS OF LACK OF DILIGENCE OR DELAYS IN COLLECTION OR ENFORCEMENT OF THIS NOTE, THE RELEASE OF ANY PARTY LIABLE, THE RELEASE OF ANY SECURITY FOR THE DEBT, THE TAKING OF ANY ADDITIONAL SECURITY AND ANY OTHER INDULGENCE OF FORBEARANCE.

Holder shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by Holder, and then only to the extent specifically set forth in the writing. The acceptance by Holder of any payment hereunder which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing options at that time or at any subsequent time or nullify any prior exercise of any such option without the express consent of Holder, except as and to the extent otherwise provided by law. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

PURSUANT TO SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, BORROWER AND ANY GUARANTOR OF THIS NOTE AGREE THAT THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES OF AMERICA AND THE LAWS OF THE STATE OF NEW YORK. IN ACCORDANCE WITH SECTION 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, BORROWER AGREES THAT ANY ACTION TO ENFORCE THE TERMS OF THIS NOTE MAY BE COMMENCED IN ANY COURT LOCATED IN THE STATE OF NEW YORK. BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE, AND BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING.

Whenever used, the singular number shall include the plural, the plural shall include the singular, and the words “Holder” and “Borrower” shall be deemed to include their respective heirs, executors, successors and assigns.

All notices which Holder or Borrower may be required or permitted to give hereunder shall be made in the same manner as set forth in Section 11.5 of the Loan Agreement.

In the event any one or more of the provisions hereof shall be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions hereof shall be in no way affected, prejudiced or disturbed thereby.

Borrower acknowledges that Holder may, in its sole discretion, sell all or any part of its interest in the Loan evidenced by this Note, including, without limitation, for purposes of effecting a Securitization.

Notwithstanding anything to the contrary contained in this Note or any other Loan Documents, to the fullest extent permitted by applicable law, the Holder’s rights hereunder shall be reinstated and revived, and the enforceability of this Note and the other Loan Documents shall

continue, with respect to any amount at any time paid on account of the Loan which thereafter shall be required to be restored by Holder pursuant to a court order or judgment (whether or not final or non-appealable), as though such amount had not been paid. The rights of Holder created or granted herein and the enforceability of the Loan Documents at all times shall, to the fullest extent permitted by applicable law, remain effective to cover the full amount of the Loan even though the Loan, including any part thereof or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against any other party and whether or not any other party shall have any personal liability with respect thereto.

Borrower and Holder, by acceptance of this Note, hereby agree that the Loan Documents supersede any prior oral or written agreements of the parties; without limiting the generality of the foregoing, in the event of conflict between the terms of this Note and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail.

Time is of the essence for the performance of each and every covenant of the parties hereunder or under the other Loan Documents. No excuse, delay, act of God, or other reason, whether or not within the control of Borrower or Holder (as the case may be), shall operate to defer, reduce or waive Borrower's or Holder's (as the case may be) performance of any such covenant or obligation.

This Note shall be subject to the limitation of liability set forth in Section 11.13 of the Loan Agreement, the terms of which are incorporated herein by reference.

[EXECUTION ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has duly executed this Note the day and year first above written.

BORROWER:

CHI 3, LLC
a Delaware limited liability company

By: /s/ Keith D. Taylor
Name: Keith D. Taylor
Manager

Exhibit 10.38

GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of February 2, 2007, is made and entered into by**EQUINIX, INC**., a Delaware corporation ("**Guarantor**"), in favor of **SFT I, INC.**, a Delaware corporation ("**Lender**").

WHEREAS, **CHI 3, LLC**, a Delaware limited liability company ("**Borrower**"), and Lender have entered into that certain Development Loan and Security Agreement of even date herewith (as the same may be amended, modified, supplemented or restated from time to time, the "**Loan Agreement**").

WHEREAS, Lender has required, as a condition to making the Loan and entering into and executing the Loan Agreement and the other Loan Documents, that Guarantor enter into this Guaranty.

WHEREAS, Guarantor directly or indirectly owns all of the ownership interests in the Borrower and will benefit from the making of the Loan and the financial accommodations extended to Borrower pursuant to the Loan Agreement and the other Loan Documents.

NOW, THEREFORE, in consideration for the extension of credit and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, and to induce Lender to extend credit to Borrower, Guarantor does hereby unconditionally, absolutely, and irrevocably guarantee to Lender, its successors and assigns, the due payment, fulfillment and performance of the Guaranteed Obligations (as hereinafter defined) and shall be liable for the Guaranteed Obligations as a primary obligor. This Guaranty is made upon the following terms and conditions:

1. Definitions. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement. As used herein, the term "**Guaranteed Obligations**" means the full, complete and punctual observance, performance, payment and satisfaction of all of the obligations of Borrower to (a) pay Costs pursuant to Section 11.13(B) of the Loan Agreement, (b) pay and perform the Borrower's Obligations (as defined in the Loan Agreement) in the event of the occurrence of any of the events, conditions, circumstances or occurrences set forth in Sections 11.13(A)(a), 11.13(A)(b), 11.13(A)(c), 11.13(A)(d) or 11.13(A)(e) of the Loan Agreement, and (c) at any time prior to the Initial Maturity Date in the event a Rate Cap/Swap Agreement has not been entered into by Borrower and pledged to Lender pursuant to Section 5.20 of the Loan Agreement, pay the monthly interest payment due on each Payment Date but only on that portion of the interest due to the extent the Base Rate exceeds nine percent (9%) per annum. The failure by Guarantor to pay or perform any Guaranteed Obligations or any other covenant, agreement or obligation of Guarantor under this Guaranty or the inaccuracy when made, or deemed made, of any representations, certifications and warranties of Guarantor in this Guaranty or in any certificate, agreement or document provided by, or on behalf of Guarantor, pursuant to this Guaranty or any of the other Loan Documents shall constitute an "Event of Default" for purposes of this Guaranty and the Loan Agreement.

2. Continuing Guaranty. This is an irrevocable, absolute, continuing guaranty of payment and performance. This Guaranty may not be revoked by Guarantor and shall continue to be effective with respect to the Guaranteed Obligations arising or created after any attempted revocation by Guarantor and after Guarantor's dissolution (in which event this Guaranty shall be binding upon Guarantor's successors and assigns). It is the intent of Guarantor that the obligations and liabilities of Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully, finally and indefeasibly satisfied, such obligations and liabilities shall not be discharged or released in whole or in part, by any act or occurrence which might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of Guarantor. Each and every default in payment of any amounts due or performance of any obligation required under this Guaranty shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises, or, in the discretion of Lender, may be brought as a consolidated suit or suits. This is a guaranty of payment and performance and not of collection.

3. Waivers.

(a) Guarantor hereby assents to all terms and agreements heretofore or hereafter made by Borrower with Lender, and, except as such waiver may be expressly prohibited by law, waives notice of:

(i) Any loans or advances made by Lender to Borrower under the Loan Documents;

(ii) The present existence or future incurring of any of the indebtedness pursuant to the Note or any future modifications thereof or any terms or amounts thereof or any Guaranteed Obligations or any terms or amounts thereof;

(iii) The obtaining or release of any guaranty or surety agreement (in addition to this Guaranty), pledge, assignment, or other security for any of the indebtedness evidenced by the Note, or any Guaranteed Obligations; and

(iv) Notice of protest, default, notice of intent to accelerate and notice of acceleration in relation to any instrument relating to the indebtedness evidenced by the Note or any Guaranteed Obligations.

(b) Guarantor hereby waives any rights and defenses which such Guarantor might have as a result of any representation, warranty or statement made by Lender or its agents to such Guarantor in order to induce Guarantor to execute this Guaranty and further waives any other circumstance that might otherwise constitute a legal or equitable discharge or defense of the Guarantor.

(c) Upon a default by Borrower, Lender in its sole discretion, without prior notice to or consent of Guarantor, may elect to: (i) foreclose either judicially or nonjudicially against any real or personal property security it may hold for the Loan, (ii) accept a transfer of any such security in lieu of foreclosure, (iii) compromise or adjust the Loan or any part of it or make any other accommodation with Borrower or Guarantor, or (iv) exercise any other remedy

against Borrower or any security. No such action by Lender shall release or limit the liability of Guarantor, who shall remain liable under this Guaranty after the action, even if the effect of the action is to deprive Guarantor of any subrogation rights, rights of indemnity, or other rights to collect reimbursement from Borrower for any sums paid to Lender, whether contractual or arising by operation of law or otherwise. Guarantor expressly agrees that under no circumstances shall it be deemed to have any right, title, interest or claim in or to any real or personal property to be held by Lender or any third party after any foreclosure or transfer in lieu of foreclosure of any security for the Loan.

(d) Regardless of whether Guarantor may have made any payments to Lender, until the Loan is indefeasibly paid in full and except as set forth in Section 10 hereof, Guarantor hereby waives: (i) all rights of subrogation, indemnification, contribution and any other rights to collect reimbursement from Borrower or any other party for any sums paid to Lender, whether contractual or arising by operation of law (including the Bankruptcy Code or any successor or similar statute) or otherwise, (ii) all rights to enforce any remedy that Lender may have against Borrower, and (iii) all rights to participate in any security now or later to be held by Lender for the Loan.

(e) Guarantor further waives any defense to the recovery by Lender against Guarantor of any deficiency or otherwise to the enforcement of this Guaranty or any security for this Guaranty based upon Lender's election of any remedy against Guarantor or Borrower, including the defense to enforcement of this Guaranty by virtue of any "anti-deficiency" statutes and their application following a non-judicial foreclosure sale.

(f) Without limiting the foregoing or anything else contained in this Guaranty, Guarantor waives all rights and defenses that Guarantor may have because Borrower's Loan is secured by real property. This means, among other things:

(i) That Lender may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower; and

(ii) If Lender forecloses on any real property collateral pledged by Borrower: (x) the amount of the Guaranteed Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (y) Lender may collect from Guarantor even if Lender, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower.

This subsection 3(f) is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because Borrower's Loan is secured by real property.

(g) Guarantor waives all rights and defenses arising out of an election of remedies by Lender, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guarantied obligation may adversely affect Guarantor's right of subrogation and reimbursement against Borrower.

4. Events and Circumstances Not Reducing or Discharging Guarantor's Obligations. Guarantor hereby consents and agrees to each of the following, and agrees that Guarantor's

obligations under this Guaranty shall not be released, diminished, impaired, reduced or adversely affected by any of the following, and waives any rights and defenses (excluding the rights to notice, if any, as herein provided or as required by law) which Guarantor might have otherwise as a result of or in connection with any of the following:

(a) any and all extensions, modifications, adjustments, indulgences, forbearances or compromises that might be granted or given by Lender to Borrower, including, without limitation, any and all amendments, modifications, supplements, extensions or restatements of any of the Loan Documents;

(b) the insolvency, bankruptcy, rearrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of Borrower or any other party at any time liable for the payment of all or part of the indebtedness evidenced by the Note or any Guaranteed Obligations; or any dissolution, consolidation or merger of Borrower or Guarantor, or any sale, lease or transfer of any or all of the assets of Borrower or Guarantor, or any changes in the ownership, partners or members of Borrower or Guarantor;

(c) the invalidity, illegality or unenforceability of all or any part of the indebtedness evidenced by the Note or any Guaranteed Obligations, or any document or agreement executed in connection with the indebtedness evidenced by the Note or any Guaranteed Obligations, for any reason whatsoever, including, without limitation, the fact that the indebtedness evidenced by the Note, or any part thereof exceeds the amount permitted by law, the act of creating the indebtedness evidenced by the Note or any Guaranteed Obligations or any part thereof is ultra vires, the representatives executing the Note or the other Loan Documents or otherwise creating the indebtedness evidenced by the Note or any Guaranteed Obligations acted in excess of their authority, the indebtedness evidenced by the Note violates applicable usury laws, Borrower has valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the indebtedness evidenced by the Note or any Guaranteed Obligations wholly or partially uncollectible from Borrower, the creation, performance or repayment of the indebtedness evidenced by the Note or any Guaranteed Obligations is illegal, uncollectible, legally impossible or unenforceable, or any of the other Loan Documents pertaining to the indebtedness evidenced by the Note or any Guaranteed Obligations are irregular or not genuine or authentic;

(d) the taking or accepting of any other security, collateral or guaranty, or other assurance of the payment, for all or any of the indebtedness evidenced by the Note or any Guaranteed Obligations;

(e) any release, surrender or exchange of any collateral, property or security, at any time existing in connection with, or assuring or securing payment of, all or any part of the indebtedness evidenced by the Note or the Guaranteed Obligations;

(f) the failure of Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of such collateral, property or security;

(g) the fact that any collateral, security, security interest or lien contemplated or intended to be given, created or granted as security for the repayment of the indebtedness evidenced by the Note or Guaranteed Obligations shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other security interest or lien, it being recognized and agreed by Guarantor that Guarantor is not entering into this Guaranty in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectibility or value of any of the collateral for the indebtedness evidenced by the Note or the Guaranteed Obligations;

(h) any payment by Borrower to Lender is held to constitute a preference under the Bankruptcy Code, or for any reason Lender is required to refund such payment or pay such amounts to such Borrower, or any other Person; or

(i) any other action taken or omitted to be taken with respect to the Mortgage, the Loan Documents, the indebtedness evidenced by the Note or the Guaranteed Obligations, the security and collateral therefor, whether or not such action or omission prejudices Guarantor or increases the likelihood that Guarantor will be required to pay the Guaranteed Obligations.

It is the unambiguous and unequivocal intention of Guarantor that Guarantor shall be obligated to pay and perform the Guaranteed Obligations when due, notwithstanding any occurrence, circumstance, event, action or omission whatsoever, whether contemplated or uncontemplated, and whether or not otherwise or particularly described herein, except for the full and final payment and satisfaction of all Guaranteed Obligations.

5. Payment by Guarantor. If the Guaranteed Obligations, or any part thereof, are not punctually paid or performed, as the case may be, Guarantor shall, immediately on demand and without protest or notice of protest, pay the amount due thereon to Lender, at its address set forth above or as otherwise designated by Lender. Such demand(s) may be made at any time coincident with or after the time for payment or performance of all or part of the Guaranteed Obligations. Such demand shall be deemed made if given in accordance with Section 17 hereof. It shall not be necessary for Lender, in order to enforce such payment or performance by Guarantor, first to institute suit or exhaust its remedies against Borrower, or others liable to pay or perform such Guaranteed Obligations, or to enforce its rights against any security which shall ever have been given to secure the Guaranteed Obligations. Lender shall not be required to mitigate damages or take any other action to reduce, collect or enforce the indebtedness evidenced by the Note or Guaranteed Obligations. No set-off, counterclaim, reduction, or diminution of any obligations, or any defense of any kind or nature which Guarantor has or may hereafter have against Borrower or Lender shall be available hereunder to Guarantor.

6. Indebtedness or Other Obligations of Guarantor. If Guarantor is or becomes liable for any indebtedness owed by Borrower to Lender by endorsement or otherwise than under this Guaranty, such liability shall not be in any manner impaired or affected by this Guaranty, and the rights of Lender hereunder shall be cumulative of any and all other rights that Lender may ever have against Guarantor. The exercise by Lender of any right or remedy hereunder or under any other instrument or at law or in equity shall not preclude the concurrent or subsequent exercise of any other instrument or remedy at law or in equity and shall not preclude the concurrent or subsequent exercise of any other right or remedy. Further, without in any way

diminishing or limiting the generality of the foregoing, it is specifically understood and agreed that this Guaranty is given by Guarantor as an additional guaranty to any and all guarantees hereafter executed and delivered to Lender by Guarantor in favor of Lender relating to the indebtedness and obligations of Borrower to Lender, and nothing herein shall ever be deemed to replace or be in lieu of any other of such previous or subsequent guarantees.

7. Application of Payments. If, at any time, there is any indebtedness or obligations (or any portion thereof) of Borrower to Lender which is not guaranteed by Guarantor, Lender, without in any manner impairing its rights hereunder, may, at its option, apply all amounts realized by Lender from collateral or security held by Lender first to the payment of such unguaranteed indebtedness or obligations, with the remaining amounts, if any, to then be applied to the payment of the indebtedness or obligations guaranteed by Guarantor.

8. Suits, Releases of Settlements with Others. Guarantor agrees that Lender, in its sole discretion, may bring suit against any other guarantor without impairing the rights of Lender or its successors and assigns against Guarantor or any other guarantor of the Guaranteed Obligations; and Lender may settle or compromise with such other guarantor for such sum or sums as Lender may see fit and release such other guarantor from all further liability to Lender, all without impairing its rights against Guarantor.

9. Warranties Representations, Covenants and Agreements.

(a) Guarantor warrants and represents, as follows:

(i) Guarantor has received, or will receive, direct or indirect benefit from the making of this Guaranty, the making of the Loan and the entering into and execution of the Loan Agreement and the Loan Documents in connection therewith;

(ii) Guarantor is familiar with, and has independently reviewed the financial condition of the Borrower and is familiar with the value of any and all collateral intended to be created as security for the payment and performance of the indebtedness evidenced by the Note and the Guaranteed Obligations, and Guarantor assumes full responsibility for keeping fully informed as to such matters in the future; however, Guarantor is not relying on such financial condition or the collateral as an inducement to enter into this Guaranty; and

(iii) All financial statements concerning Guarantor which have been or will hereafter be furnished by Guarantor or Borrower to Lender pursuant to the Loan Documents, have been or will be (A) prepared in accordance with GAAP consistently applied (except as disclosed therein, to the extent Lender approves such disclosure and in the case of clauses (A) and (B) with respect to any unaudited quarterly financial statements, subject to the absence of footnotes and normal year-end adjustments) and, (B) in all material respects, present fairly the financial condition of the Persons covered thereby as at the dates thereof and the results of their operations for the periods then ended.

(iv) No ERISA Affiliate of Guarantor maintains or contributes to, or has any obligation under, any Employee Benefit Plans. Guarantor is not an "employee benefit

plan" (within the meaning of section 3(3) of ERISA) to which ERISA applies and Guarantor's assets do not constitute plan assets. No actions, suits or claims under any laws and regulations promulgated pursuant to ERISA are pending or, to Guarantor's knowledge, threatened against Guarantor. Guarantor has no knowledge of any material liability incurred by Guarantor which remains unsatisfied for any taxes or penalties with respect to any Employee Benefit Plan or any Multiemployer Plan, or of any lien which has been imposed on Guarantor's assets pursuant to section 412 of the Code or sections 302 or 4068 of ERISA. The Loan, the execution, delivery and performance of the Loan Documents and the transactions contemplated by this Guaranty are not a non-exempt prohibited transaction under ERISA. Guarantor is an "operating company" as defined in ERISA.

(v) As of the date hereof, and after giving effect to this Guaranty and the contingent obligations evidenced hereby, Guarantor is and expects to be solvent at all times, and has and expects to have assets at all times which, fairly valued, exceed his or its obligations, liabilities and debts, and has and expects to have property and assets at all times sufficient to satisfy and repay his or its obligations and liabilities.

(vi) As of the date hereof, (A) there is no litigation, governmental investigation or arbitration pending or, to Guarantor's knowledge, threatened against Guarantor which seeks to enjoin the consummation of the matters contemplated hereby or, except as set forth on Schedule 4.7 of the Loan Agreement, if adversely determined, could reasonably be expected to have a Material Adverse Effect on Carveout Guarantor; (B) there are no judgments outstanding against Guarantor that could reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect; (C) no petition in bankruptcy, whether voluntary or involuntary, or assignment for the benefit of creditors, or any other action involving debtors' and creditors' rights has ever been filed under the laws of the United States of America or any state thereof, or threatened, by or against Guarantor.

(b) [Intentionally Omitted].

10. Subordination. If, for any reason Borrower is now or hereafter becomes indebted to Guarantor (such indebtedness and all interest thereon being referred to as the "**Affiliated Debt**"), such Affiliated Debt shall, at all times, be subordinate in all respects to the full payment and performance of the obligations evidenced by the Note, and Guarantor shall not be entitled to enforce or receive payment thereof until all of the obligations evidenced by the Note have been fully paid. Guarantor agrees that any liens, mortgages, deeds of trust, security interests, judgment liens, charges or other encumbrances upon Borrower's assets securing payment of the Affiliated Debt shall be and remain subordinate and inferior to any liens, security interests, judgment liens, charge or other encumbrances upon Borrower's assets securing the payment of the obligations evidenced by the Note and Guaranteed Obligations, and without the prior written consent of Lender, Guarantor shall not exercise or enforce any creditor's rights of any nature against Borrower to collect the Affiliated Debt (other than demand payment therefor). In the event of the receivership, bankruptcy, reorganization, arrangement, debtor's relief or other insolvency proceedings involving Borrower as a debtor, Lender shall have the right and authority, either in its own name or as attorney-in-fact for Guarantor, to file such proof of debt claim, petition or other documents and to take such other steps as are necessary to prove its rights hereunder.

11. Waiver of Subrogation. Notwithstanding any other provision of this Guaranty to the contrary, until the Loan is indefeasibly paid in full, Guarantor hereby waives any claim or other rights which Guarantor may now have or hereafter acquire against Borrower or any other guarantor of all or any of the obligations that arise from the existence or performance of Guarantor's obligations under this Guaranty (all such claims and rights are referred to as "**Guarantor's Conditional Rights**"), including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, or indemnification, any right to participate in any claim or remedy of Lender against Borrower or any security or collateral which Lender now has or hereafter acquires, whether or not such claim, remedy or right arises in equity or under contract, statute (including the Bankruptcy Code or any successor or similar statute) or common law, by any payment made hereunder or otherwise, including without limitation, the right to take or receive from Borrower, directly or indirectly, in cash or other property or by setoff or in any other manner, payment or security on account of such claim or other rights. If, notwithstanding the foregoing provisions, any amount shall be paid to Guarantor on account of Guarantor's Conditional Rights and either (i) such amount is paid to Guarantor at any time when the Guaranteed Obligations shall not have been paid or performed in full, or (ii) regardless of when such amount is paid to Guarantor, any payment made by Borrower to Lender is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by Lender or paid over to a trustee, receiver or any other entity, whether under any bankruptcy act or otherwise (such payment, a "**Preferential Payment**"), then such amount paid to Guarantor shall be held in trust for the benefit of Lender and shall forthwith be paid to Lender to be credited and applied upon the Guaranteed Obligations, whether matured or unmatured, in such order as Lender, in its sole and absolute discretion, shall determine. The foregoing waivers shall be effective until the Guaranteed Obligations have been paid and performed in full.

12. Impairment of Subrogation Rights; Waivers of Rights Under the Anti-Deficiency Rules.

(a) Guarantor agrees that upon an Event of Default under the Loan Documents, Lender may elect to foreclose either nonjudicially or judicially against any real or personal property security (including, without limitation, the Mortgaged Property) it holds for the obligations evidenced by the Note or any Guaranteed Obligations, or any part thereof, or accept an assignment of any such security in lieu of foreclosure, or compromise or adjust any part of such obligations, or make any other accommodation with Borrower or Guarantor, or exercise any other remedy against Borrower or any collateral or security. No such action by Lender will release or limit the liability of Guarantor to Lender, who shall remain liable under this Guaranty after the action, even if the effect of that action is to deprive Guarantor of the right to collect reimbursement from Borrower or any other person for any sums paid to Lender or Guarantor's rights of subrogation, contribution, or indemnity against Borrower or any other person. Without limiting the foregoing, it is understood and agreed that on any foreclosure or assignment in lieu of foreclosure of any collateral or security held by Lender, such security will no longer exist and that any right that Guarantor might otherwise have, on full payment of the Guaranteed Obligations by Guarantor to Lender, to participate in any such security or to be subrogated to any

rights of Lender with respect to any such security will be nonexistent; nor shall Guarantor be deemed to have any right, title, interest or claim under any circumstances in or to any real or personal property held by Lender or any third party following any foreclosure or assignment in lieu of foreclosure of any such security.

(b) Guarantor understands and acknowledges that if Lender forecloses judicially or nonjudicially against any real property security for Borrower's obligations, such foreclosure could impair or destroy any right or ability that Guarantor may have to seek reimbursement, contribution, or indemnification for any amounts paid by Guarantor under this Guaranty.

(c) [Intentionally Omitted].

(d) Guarantor intentionally, freely, irrevocably and unconditionally waives and relinquishes all rights which may be available to it under any provision of applicable law to limit the amount of any deficiency judgment or other judgment which may be obtained against Guarantor under this Guaranty to not more than the amount by which the unpaid Guaranteed Obligations plus all other indebtedness due from Borrower under the Loan Documents exceeds the fair market value or fair value of any real or personal property securing said obligations and any other indebtedness due from Borrower under the Loan Documents, including, without limitation, all rights to an appraisement of, judicial or other hearing on, or other determination of the value of said property. Guarantor acknowledges and agrees that, as a result of the foregoing waiver, Lender may be entitled to recover from Guarantor an amount which, when combined with the value of any real or personal property foreclosed upon by Lender (or the proceeds of the sale of which have been received by Lender) and any sums collected by Lender from Borrower or other Persons, might exceed the amount of the Guaranteed Obligations plus all other indebtedness due from Borrower under the Loan Documents.

(e) Guarantor understands and agrees that Lender may have the ability to pursue Guarantor for a judgment on the Guaranteed Obligations without having first foreclosed on the real property security for such Guaranteed Obligations, that Lender may have the ability to sue Guarantor for a deficiency judgment on the Guaranteed Obligations after a non-judicial foreclosure sale or, regardless of any election of remedies by Lender, if the Guaranteed Obligations or any of the other indebtedness of Borrower to Lender under the Loan Documents is considered to have been provided by a vendor to a buyer and to evidence part of the purchase price for the real property security, and that Lender may be able to recover from Borrower an amount which, when combined with the fair market value of the property acquired by Lender in a foreclosure sale or the proceeds of the foreclosure sale received by Lender, might exceed the amount of the Guaranteed Obligations due and owing by Guarantor and the amounts payable under the Loan Documents.

(f) [Intentionally Omitted].

Notwithstanding the foregoing or any provisions of Section 3(c) hereof, nothing contained in this Guaranty shall in any way be deemed to imply that any other state's law other than the law of the State of New York shall govern this Guaranty or any of the Loan Documents in any respect, except as expressly set forth therein, including with respect to the exercise of Lender's remedies under the Loan Documents.

Notwithstanding any other provision herein to the contrary, upon the indefeasible payment in full of the Note, Guarantor shall have all rights of subrogation available at law or in equity.

13. Successors and Assigns. This Guaranty is for the benefit of Lender, its successors and assigns, and in the event of an assignment by Lender, its successors and assigns, of the obligations evidenced by the Note, or any part or parts thereof, the rights and benefits hereunder, to the extent applicable to the obligations so assigned, may be transferred with such obligations. This Guaranty is binding upon the Guarantor and its successors and assigns.

14. No Release if Preference, Refund, Etc. In the event any payment by Borrower to Lender is determined to be a preferential payment under any applicable bankruptcy or insolvency laws, or if for any reason Lender is required to refund part or all of any payment or pay the amount thereof to any other party, such repayment by Lender to Borrower shall not constitute a release of Guarantor from any liability hereunder, and Guarantor agrees to pay such amount to Lender upon demand to the extent such amount constitutes a Guaranteed Obligation.

15. Right of Set-Off. In addition to any other rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon Guarantor's failure to pay the Guaranteed Obligations, after demand by Lender, Lender is hereby authorized at any time and from time to time, without notice to Guarantor or to any other person, to set off and to appropriate and to apply any and all deposits (general or special) and any other indebtedness at any time held or owing by Lender to or for the credit or the account of Guarantor against or on account of the obligations evidenced by the Note.

16. GOVERNING LAW. PURSUANT TO SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, GUARANTOR AGREES THAT THIS GUARANTY AND ALL RIGHTS, OBLIGATIONS AND LIABILITIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

17. Notices. Unless otherwise specifically provided herein, any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied (with request for confirmation) or sent by overnight courier service or United States registered mail return receipt requested, postage prepaid. Any notice so given shall be deemed effective upon delivery or on refusal or failure of delivery during normal business hours. Notices shall be addressed to the parties at the following addresses or to such other address as the party addressed shall have previously designated by written notice to the serving party, given in accordance with this Section 17.

If to Guarantor: Equinix, Inc.
301 Velocity Way, 5th Floor
Foster City, California 94404

	Attn: Director of Real Estate and General Counsel Telephone: (650) 513-7000 Facsimile: (650) 513-7909
With a copy to:	Orrick, Herrington & Sutcliffe LLP 405 Howard Street San Francisco, California 94105 Attn: William G. Murray, Jr., Esq. Telephone: (415) 773-5807 Facsimile: (415) 773-5759
If to Lender:	SFT I, Inc. 1114 Avenue of the Americas, 27th Floor New York, New York 10036 Attn: Chief Operating Officer Telephone: (212) 930-9400 Facsimile: (212) 930-9494
With a copy to:	iStar Financial Inc. 1114 Avenue of the Americas, 27th Floor New York, New York 10036 Attn: Nina B. Matis, Esq./General Counsel Telephone: (212) 930-9406 Facsimile: (212) 930-9492
With a copy to:	iStar Asset Services Inc. 180 Glastonbury Boulevard, Suite 201 Glastonbury, Connecticut 06033 Attn: President Telephone: (860) 815-5900 Facsimile: (860) 815-5901
With a copy to:	Katten Muchin Rosenman LLP 1025 Thomas Jefferson St., NW East Lobby, Suite 700 Washington, DC 20007 Attn: John D. Muir, Jr., Esq. Telephone: (202) 625-3839 Facsimile: (202) 339-6054

Refusal to accept delivery of any notice shall be deemed to constitute receipt of such notice.

18. Consent of Jurisdiction/Service of Process. IN ACCORDANCE WITH SECTION 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, GUARANTOR HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK AND IRREVOCABLY AGREES THAT, SUBJECT TO LENDER'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. GUARANTOR ACCEPTS FOR ITSELF, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS GUARANTY, THE NOTE, SUCH OTHER LOAN DOCUMENTS OR SUCH OBLIGATION. GUARANTOR ACKNOWLEDGES AND AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION, SUIT OR PROCEEDING WILL BE DEEMED EFFECTIVE ON GUARANTOR IF PERSONALLY SERVED OR SERVED IN ACCORDANCE WITH SECTION 17 ABOVE OR AT SUCH OTHER ADDRESS AS SUCH GUARANTOR MAY HAVE FURNISHED AS TO ITSELF TO THE SERVING PARTY BY LIKE NOTICE, OR TO THE LAST KNOWN ADDRESS OF SUCH GUARANTOR PROVIDED THEREUNDER.

19. WAIVER OF JURY TRIAL. GUARANTOR AND LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS GUARANTY, ANY OF THE LOAN DOCUMENTS, OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THE LOAN. GUARANTOR AND LENDER ALSO WAIVE ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF GUARANTOR OR LENDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. GUARANTOR AND LENDER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS GUARANTY AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. GUARANTOR AND LENDER FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS GUARANTY, THE LOAN DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOAN. IN THE EVENT OF LITIGATION, THIS GUARANTY MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

20. Expenses. Guarantor agrees to fully and punctually pay all costs and expenses, including, without limitation, reasonable attorneys' fees, court costs and costs of appeal, which Lender may incur in enforcing and collecting the Guaranteed Obligations.

21. Conflict of Law. If, for whatever reason, a court of competent jurisdiction determines that this Guaranty shall be governed by California law, the provisions set forth on **Exhibit A** hereto shall be deemed incorporated herein by reference as additional provisions hereto, except to the extent that the provisions set forth on **Exhibit A** are inconsistent with the terms of this Guaranty, in which case, the terms set forth in **Exhibit A** shall govern.

22. Recitals. The Recitals set forth above are incorporated herein and made a part hereof.

[Remainder of Page Intentionally Left Blank. Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the day and year first above written.

GUARANTOR:

EQUINIX, INC., a Delaware corporation

By: /s/ Keith D. Taylor
Name: Keith D. Taylor
Title: CFO

Exhibit 10.39

Loan No. 1364:01

COMPLETION AND PAYMENT GUARANTY

THIS COMPLETION AND PAYMENT GUARANTY (this "**Guaranty**") is dated as of the 2nd day of February, 2007 by EQUINIX, INC., a Delaware corporation ("**Guarantor**"), for the benefit of SFT I, INC., a Delaware corporation ("**Lender**").

Background

A. CHI 3, LLC, a Delaware limited liability company ("**Borrower**") and Lender have entered into that certain Development Loan and Security Agreement (as amended, modified, supplemented or restated from time to time, the "**Loan Agreement**"), dated of even date herewith, wherein, among other things, Lender has agreed to make, and Borrower has agreed to accept, a loan in an original maximum principal amount of up to One Hundred Ten Million and No/100 Dollars ($110,000,000.00) (the "**Loan**") upon the terms and conditions set forth in the Loan Agreement.

B. The Loan is evidenced by promissory notes, dated of even date herewith, in the original aggregate principal amount of up to the amount of the Loan (collectively, together with any notes given in substitution or exchange from time to time, as such promissory notes and substitute or exchange notes may, from time to time, be amended, modified, supplemented or restated, collectively the "**Note**"). The Note is secured by, among other things, that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixtures Filing, dated as of even date herewith (as amended, modified, supplemented or restated from time to time, the "**Mortgage**").

C. Guarantor indirectly owns 100% of the equity interests in Borrower and will benefit from the making of the Loan and the financial accommodations extended to Borrower pursuant to the Loan Agreement and the other Loan Documents.

D. It is a condition to the making of the Loan that Guarantor executes and delivers this Guaranty.

NOW, THEREFORE, in consideration of the Loan, and for other good and valuable consideration, the receipt whereof is hereby acknowledged, Guarantor and its respective heirs, executors, successors and assigns, hereby covenants and agrees with Lender for the benefit of Lender, its endorsees, participants, successors and assigns, as follows:

1. Guaranty.

(a) Scope of Guaranty. In order to induce Lender to execute the Loan Agreement and the other Loan Documents and to make the Loan upon the terms and conditions set forth therein, and in consideration thereof, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Guarantor as primary obligor and not

merely as a surety, hereby absolutely, unconditionally and irrevocably guarantees to Lender the prompt and complete payment (and performance, in the case of non-pecuniary obligations) of all of the Guaranteed Obligations (as defined below) in full, when and as the same shall become due, whether on any due date or performance date or at stated maturity thereof, or by declaration, acceleration or required prepayment, or upon demand or otherwise (including amounts and performance that would become due but for the operation of the automatic stay under Section 362(a) of the United States Bankruptcy Code, Title 11, United States Code, as amended (the "**Bankruptcy Code**") (all of the foregoing being hereinafter referred to as the "**Liabilities**").

Guarantor hereby agrees, in furtherance of the foregoing and not in limitation of any other right that Lender may have at law or in equity against Guarantor by virtue hereof, that upon the failure of Borrower to pay or perform any of the Guaranteed Obligations when and as the same shall become due (or, as provided below, would have become due), whether at stated maturity or due date or performance date, as the case may be, by required payment or prepayment, declaration, acceleration, demand or otherwise (including without limitation amounts that would have become due, or could have been accelerated, but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, whether or not Lender has taken any action to enforce or exercise any right or remedy in respect of the Guaranteed Obligations, and interest and fees which, but for the filing of a petition in bankruptcy with respect to Borrower, would have accrued and become due on, or constituting, such Guaranteed Obligations, whether or not a claim is allowed against Borrower for such amounts in any such bankruptcy proceeding), Guarantor will forthwith pay and perform, or cause to be paid and performed, all Guaranteed Obligations then due (or that would have accrued and/or become due but for the filing of a petition in bankruptcy with respect to Borrower) as aforesaid, and all other Guaranteed Obligations then owed to Lender as aforesaid. The failure by Guarantor to pay or perform any Guaranteed Obligations or any other covenant, agreement or obligation of Guarantor under this Guaranty or the inaccuracy when made, or deemed made, of any representations, certifications and warranties of Guarantor in this Guaranty or in any certificate, agreement or document provided by, or on behalf of Guarantor, pursuant to this Guaranty or any of the other Loan Documents shall constitute an "Event of Default" for purposes of this Guaranty and the Loan Agreement.

(b) Obligations Guaranteed. As used in this Guaranty, "**Guaranteed Obligations**" means the payment and performance of all of the obligations, duties and agreements of Borrower under the Loan Agreement and the other Loan Documents relating to the Completion of Construction in accordance with the Plans and Specifications, all applicable Legal Requirements and all provisions of the Loan Documents. Without limiting the generality of the foregoing, Guarantor absolutely, irrevocably and unconditionally guarantees to Lender that:

(i) Borrower shall fully, completely and timely achieve Completion of Construction on or before the Required Completion Date in compliance with the Plans and Specifications, applicable Legal Requirements and the Loan Documents, subject to Force Majeure not to exceed one hundred and twenty (120) days in the aggregate;

(ii) The Borrower shall fully and punctually deposit amounts required to be paid pursuant to the loan balancing provisions of Section 3.2(D) of the Loan Agreement;

(iii) Subject to Borrower's right to contest claims and any cure periods to the extent expressly set forth in the Loan Agreement, Borrower shall fully and punctually pay and discharge any and all costs and expenses and liabilities incurred for or in connection with the Completion of Construction, when and as the same may become due and payable, and also pay and discharge any and all claims and demands for labor and materials used and services rendered for or in connection with the Completion of Construction and/or installation of all items of fixtures, furnishings and equipment and other personalty in connection therewith; and

(iv) Subject to Borrower's right to contest claims and any cure periods to the extent expressly set forth in the Loan Agreement, the Mortgaged Property shall be and remain free and clear of any and all Liens, claims, and demands from any and all Persons furnishing materials, labor or services for or in connection with the Completion of Construction and/or the installation of all items of fixtures, furnishings and equipment and other personalty in connection therewith, provided such Liens may be contested in strict accordance with the Loan Agreement.

(c) Indemnity, Reimbursement and Performance. In the event that Borrower does not fully perform the Guaranteed Obligations, then:

(i) Guarantor shall, upon demand by Lender perform or cause to be performed the Guaranteed Obligations;

(ii) In the event that Guarantor fails to commence performance under the immediately precedingSection 1(c)(i) within ten (10) Business Days after Lender's written demand and to diligently prosecute such performance to completion thereof, and if Lender shall (a) cause any construction, renovation, redevelopment, equipping and furnishing of the Improvements in accordance with the Plans and Specifications, or take any action whatsoever toward Completion of Construction, (b) pay any costs in connection with the construction, renovation, redevelopment, equipping and furnishing of the Improvements in accordance with the Plans and Specifications and/or the Completion of Construction, or (c) cause any Lien, claim or demand to be released or paid, then Guarantor shall promptly reimburse Lender within five (5) Business Days after written demand, for all reasonable sums paid and all costs and expenses incurred by Lender in connection therewith; and

(iii) Guarantor will fully indemnify, defend and save Lender harmless from all costs and damages (including reasonable attorney's fees and all consequential damages, including any diminution in value) that Lender may suffer by reason of Guarantor's failure to promptly and fully perform under the immediately preceding Section 1(c)(i) and 1(c)(ii) above.

(d) Balancing. If, at any time and for any reason, Borrower shall fail to deposit amounts required to be deposited by Section 3.2(D) of the Loan Agreement within the ten (10) Business Day period provided therein for such payment, then Guarantor shall, within five (5) Business Days after a written request by Lender, (i) deposit with Lender cash in an amount sufficient to cover the deficiency not paid by Borrower, (ii) deliver to Lender, with Lender's prior approval (which approval may be given or withheld at Lender's reasonable discretion), financial assurances of Guarantor's ability to complete and fund the cost of the

Construction (which assurances shall be determined by Lender in its reasonable discretion, but which may include, letters of credit, cash or cash equivalent), or (iii) agree to fund, and shall fund, the deficiency from outside sources, with Lender's prior approval (which approval may be given or withheld in Lender's sole discretion), as payments for the costs of the Construction to come due and, until the Loan is in balance, prior to any further disbursements of the Loan. Lender shall hold and apply such deposited cash as provided in the Loan Agreement.

(e) Enforcement Costs. Guarantor further agrees to pay any and all reasonable costs and other expenses (the "**Enforcement Costs**") that may be paid or incurred directly or indirectly by Lender in, or allocable to, collecting any or all of the Guaranteed Obligations and/or preserving and/or enforcing any rights and remedies under this Guaranty and/or in respect of the Guaranteed Obligations (including, without limitation, all reasonable fees and expenses incurred by Lender and its agents and representatives in connection with any default or event of default relating to, or other breach or violation of, this Guaranty and/or Guaranteed Obligation and, to the extent Lender from time to time deem it necessary to employ counsel and/or consultants for any purpose relating to this Guaranty and/or any Guaranteed Obligation, the reasonable fees and expenses of such counsel and/or consultants). For purposes of this paragraph, the term "counsel" includes attorneys who are employees of Lender acting as counsel for Lender, and the terms "costs and expenses" and "fees and expenses" shall include, without limitation, the fees charged by Lender for its in-house counsel provided such fees are within the range of fees charged by attorneys of similar experience at medium to large sized law firms located in the City of New York, New York.

(f) Maximum Amount of Guaranty. Guarantor shall be liable under this Guaranty for the maximum amount of the Guaranteed Obligations that can be hereby incurred without rendering this Guaranty, as it relates to Guarantor, voidable under applicable Legal Requirements relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount.

(g) Continuing Guaranty. This is an irrevocable, absolute, continuing guaranty of payment and performance. This Guaranty may not be revoked by Guarantor and shall continue to be effective with respect to the Guaranteed Obligations arising or created after any attempted revocation by Guarantor and after Guarantor's dissolution (in which event this Guaranty shall be binding upon Guarantor's successors and assigns). It is the intent of Guarantor that the obligations and liabilities of Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully, finally and indefeasibly satisfied, such obligations and liabilities shall not be discharged or released in whole or in part, by any act or occurrence which might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of Guarantor. Each and every default in payment of any amounts due or performance of any obligation required under this Guaranty shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises, or, in the discretion of Lender, may be brought as a consolidated suit or suits. This is a guaranty of payment and performance and not of collection.

2. Waivers.

(a) Guarantor hereby assents to all terms and agreements heretofore or hereafter made by Borrower with Lender, and, except as such waiver may be expressly prohibited by law, waives notice of:

(i) Any loans or advances made by Lender to Borrower under the Loan Documents;

(ii) The present existence or future incurring of any of the indebtedness pursuant to the Note or any future modifications thereof or any terms or amounts thereof or any Guaranteed Obligations or any terms or amounts thereof;

(iii) The obtaining or release of any guaranty or surety agreement (in addition to this Guaranty), pledge, assignment, or other security for any of the indebtedness evidenced by the Note, or any Guaranteed Obligations; and

(iv) Notice of protest, default, notice of intent to accelerate and notice of acceleration in relation to any instrument relating to the indebtedness evidenced by the Note or any Guaranteed Obligations, except to extent expressly set forth herein or in the other Loan Documents.

(b) Guarantor hereby waives any rights and defenses which Guarantor might have as a result of any representation, warranty or statement made by Lender or its agents to Guarantor in order to induce Guarantor to execute this Guaranty and further waives any other circumstance that might otherwise constitute a legal or equitable discharge or defense of Guarantor.

(c) Upon an Event of Default by Borrower, Lender in its sole discretion, without prior notice to or consent of Guarantor, may elect to: (i) foreclose either judicially or nonjudicially against any real or personal property security it may hold for the Loan, (ii) accept a transfer of any such security in lieu of foreclosure, (iii) compromise or adjust the Loan or any part of it or make any other accommodation with Borrower or Guarantor, or (iv) exercise any other remedy against Borrower or any security. No such action by Lender shall release or limit the liability of Guarantor, who shall remain liable under this Guaranty after the action, even if the effect of the action is to deprive Guarantor of any subrogation rights, rights of indemnity, or other rights to collect reimbursement from Borrower for any sums paid to Lender, whether contractual or arising by operation of law or otherwise. Guarantor expressly agrees that under no circumstances shall it be deemed to have any right, title, interest or claim in or to any real or personal property to be held by Lender or any third party after any foreclosure or transfer in lieu of foreclosure of any security for the Loan.

(d) Regardless of whether Guarantor may have made any payments to Lender, until the Loan is indefeasibly paid in full and except as set forth in Section 10 hereof, Guarantor hereby waives: (i) all rights of subrogation, indemnification, contribution and any other rights to collect reimbursement from Borrower or any other party for any sums paid to Lender, whether contractual or arising by operation of law (including the Bankruptcy Code or any successor or similar statute) or otherwise, (ii) all rights to enforce any remedy that Lender may have against Borrower, and (iii) all rights to participate in any security now or later to be held by Lender for the Loan.

(e) Guarantor further waives any defense to the recovery by Lender against Guarantor of any deficiency or otherwise to the enforcement of this Guaranty or any security for this Guaranty based upon Lender's election of any remedy against Guarantor or Borrower, including the defense to enforcement of this Guaranty by virtue of any "anti-deficiency" statutes and their application following a non-judicial foreclosure sale.

(f) Without limiting the foregoing or anything else contained in this Guaranty, Guarantor waives all rights and defenses that Guarantor may have because Borrower's Loan is secured by real property. This means, among other things: (i) that Lender may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower; and (ii) if Lender forecloses on any real property collateral pledged by Borrower: (x) the amount of the Guaranteed Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (y) Lender may collect from Guarantor even if Lender, by foreclosing on the real property collateral, have destroyed any right Guarantor may have to collect from Borrower. This subsection 2(f) is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because Borrower's Loan is secured by real property.

(g) Guarantor waives all rights and defenses arising out of an election of remedies by Lender, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guarantied obligation may adversely affect Guarantor's right of subrogation and reimbursement against Borrower.

3. Events and Circumstances Not Reducing or Discharging Guarantor's Obligations. Guarantor hereby consents and agrees to each of the following, and agrees that Guarantor's obligations under this Guaranty shall not be released, diminished, impaired, reduced or adversely affected by any of the following, and waives any rights and defenses (excluding the rights to notice, if any, as herein provided or as required by law) which Guarantor might have otherwise as a result of or in connection with any of the following:

(a) any and all extensions, modifications, adjustments, indulgences, forbearances or compromises that might be granted or given by Lender to Borrower, including, without limitation, any and all amendments, modifications, supplements, extensions or restatements of any of the Loan Documents;

(b) the insolvency, bankruptcy, rearrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of Borrower or any other party at any time liable for the payment of all or part of the indebtedness evidenced by the Note or any Guaranteed Obligations; or any dissolution, consolidation or merger of Borrower or Guarantor, or any sale, lease or transfer of any or all of the assets of Borrower or Guarantor, or any changes in the ownership, partners or members of Borrower or Guarantor;

(c) the invalidity, illegality or unenforceability of all or any part of the indebtedness evidenced by the Note or any Guaranteed Obligations, or any document or agreement executed in connection with the indebtedness evidenced by the Note or any Guaranteed Obligations, for any reason whatsoever, including, without limitation, the fact that the indebtedness evidenced by the Note, or any part thereof exceeds the amount permitted by law, the act of creating the indebtedness evidenced by the Note or any Guaranteed Obligations or any part thereof is ultra vires, the representatives executing the Note or the other Loan Documents or otherwise creating the indebtedness evidenced by the Note or any Guaranteed Obligations acted in excess of their authority, the indebtedness evidenced by the Note violates applicable usury laws, Borrower has valid defenses, claims or offsets (whether at law, in equity

or by agreement) which render the indebtedness evidenced by the Note or any Guaranteed Obligations wholly or partially uncollectible from Borrower, the creation, performance or repayment of the indebtedness evidenced by the Note or any Guaranteed Obligations is illegal, uncollectible, legally impossible or unenforceable, or any of the other Loan Documents pertaining to the indebtedness evidenced by the Note or any Guaranteed Obligations are irregular or not genuine or authentic;

(d) the taking or accepting of any other security, collateral or guaranty, or other assurance of the payment, for all or any of the indebtedness evidenced by the Note or any Guaranteed Obligations;

(e) any release, surrender or exchange of any collateral, property or security, at any time existing in connection with, or assuring or securing payment of, all or any part of the indebtedness evidenced by the Note or the Guaranteed Obligations;

(f) the failure of Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of such collateral, property or security;

(g) the fact that any collateral, security, security interest or lien contemplated or intended to be given, created or granted as security for the repayment of the indebtedness evidenced by the Note or Guaranteed Obligations shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other security interest or lien, it being recognized and agreed by Guarantor that Guarantor is not entering into this Guaranty in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectibility or value of any of the collateral for the indebtedness evidenced by the Note or the Guaranteed Obligations;

(h) any payment by Borrower to Lender is held to constitute a preference under the Bankruptcy Code, or for any reason Lender is required to refund such payment or pay such amounts to such Borrower, or any other Person; or

(i) any other action taken or omitted to be taken with respect to the Mortgage, the Loan Documents, the indebtedness evidenced by the Note or the Guaranteed Obligations, the security and collateral therefor, whether or not such action or omission prejudices Guarantor or increases the likelihood that Guarantor will be required to pay the Guaranteed Obligations.

It is the unambiguous and unequivocal intention of Guarantor that Guarantor shall be obligated to pay and perform the Guaranteed Obligations when due notwithstanding any occurrence, circumstance, event, action or omission whatsoever, whether contemplated or uncontemplated, and whether or not otherwise or particularly described herein, except for the full and final payment and satisfaction of all Guaranteed Obligations.

4. Payment by Guarantor. If the Guaranteed Obligations, or any part thereof, are not punctually paid or performed, as the case may be, Guarantor shall, immediately on demand and without protest or notice of protest, pay the amount due thereon to Lender, at its address set forth above or as otherwise designated by Lender. Such demand(s) may be made at any time coincident with or after the time for payment or performance of all or part of the Guaranteed Obligations. Such demand shall be deemed made if given in accordance with Section 16 hereof. It shall not be necessary for Lender, in order to enforce such payment or performance by

Guarantor, first to institute suit or exhaust its remedies against Borrower, or others liable to pay or perform such Guaranteed Obligations, or to enforce its rights against any security which shall ever have been given to secure the Guaranteed Obligations. Lender shall not be required to mitigate damages or take any other action to reduce, collect or enforce the indebtedness evidenced by the Note or Guaranteed Obligations. No set-off, counterclaim, reduction, or diminution of any obligations, or any defense of any kind or nature which Guarantor has or may hereafter have against Borrower or Lender shall be available hereunder to Guarantor.

5. Indebtedness or Other Obligations of Guarantor. If Guarantor is or becomes liable for any indebtedness owed by Borrower to Lender by endorsement or otherwise than under this Guaranty, such liability shall not be in any manner impaired or affected by this Guaranty, and the rights of Lender hereunder shall be cumulative of any and all other rights that Lender may ever have against Guarantor. The exercise by Lender of any right or remedy hereunder or under any other instrument or at law or in equity shall not preclude the concurrent or subsequent exercise of any other instrument or remedy at law or in equity and shall not preclude the concurrent or subsequent exercise of any other right or remedy. Further, without in any way diminishing or limiting the generality of the foregoing, it is specifically understood and agreed that this Guaranty is given by Guarantor as an additional guaranty to any and all guarantees hereafter executed and delivered to Lender by Guarantor in favor of Lender relating to the indebtedness and obligations of Borrower to Lender, and nothing herein shall ever be deemed to replace or be in lieu of any other of such previous or subsequent guarantees.

6. Application of Payments. If, at any time, there is any indebtedness or obligations (or any portion thereof) of Borrower to Lender which is not guaranteed by Guarantor, Lender, without in any manner impairing its rights hereunder, may, at their option, apply all amounts realized by Lender from collateral or security held by Lender first to the payment of such unguaranteed indebtedness or obligations, with the remaining amounts, if any, to then be applied to the payment of the indebtedness or obligations guaranteed by Guarantor.

7. Suits, Releases of Settlements with Others. Guarantor agrees that Lender, in its sole discretion, may bring suit against any other guarantor without impairing the rights of Lender against Guarantor or any other guarantor of the Guaranteed Obligations; and Lender may settle or compromise with such other guarantor for such sum or sums as Lender may see fit and release such other guarantor from all further liability to Lender, all without impairing its rights against Guarantor.

8. Warranties and Representations, Covenants and Agreements.

(a) Guarantor warrants and represents, as follows:

(i) Guarantor has received, or will receive, direct or indirect benefit from the making of this Guaranty, the making of the Loan and the entering into and execution of the Loan Agreement and the Loan Documents in connection therewith;

(ii) Guarantor is familiar with, and has independently reviewed the financial condition of the Borrower and is familiar with the value of any and all collateral intended to be created as security for the payment and performance of the indebtedness evidenced by the Note and the Guaranteed Obligations, and Guarantor assumes full responsibility for keeping fully informed as to such matters in the future; however, Guarantor is not relying on such financial condition or the collateral as an inducement to enter into this Guaranty;

(iii) All financial statements concerning Guarantor which have been or will hereafter be furnished by Guarantor or Borrower to Lender pursuant to the Loan Documents, have been or will be (A) prepared in accordance with GAAP consistently applied (except as disclosed therein, to the extent Lender approves such disclosure, and in the case of clauses (A) and (B) with respect to any unaudited quarterly financial statements, subject to the absence of footnotes and normal year-end adjustments) and, (B) in all material respects present fairly the financial condition of the Persons covered thereby as at the dates thereof and the results of their operations for the periods then ended;

(iv) No ERISA Affiliate of Guarantor maintains or contributes to, or has any obligation under, any Employee Benefit Plans. Guarantor is not an "employee benefit plan" (within the meaning of section 3(3) of ERISA) to which ERISA applies and Guarantor's assets do not constitute plan assets. No actions, suits or claims under any laws and regulations promulgated pursuant to ERISA are pending or, to Guarantor's knowledge, threatened against Guarantor. Guarantor has no knowledge of any material liability incurred by Guarantor which remains unsatisfied for any taxes or penalties with respect to any Employee Benefit Plan or any Multiemployer Plan, or of any lien which has been imposed on Guarantor's assets pursuant to section 412 of the Code or sections 302 or 4068 of ERISA. The Loan, the execution, delivery and performance of the Loan Documents and the transactions contemplated by this Guaranty are not a non-exempt prohibited transaction under ERISA. Guarantor is an "operating company" as defined in ERISA;

(v) As of the date hereof, and after giving effect to this Guaranty and the contingent obligations evidenced hereby, Guarantor is and expects to be solvent at all times, and has and expects to have assets at all times which, fairly valued, exceed his or its obligations, liabilities and debts, and has and expects to have property and assets at all times sufficient to satisfy and repay his or its obligations and liabilities; and

(vi) As of the date hereof, (A) there is no litigation, governmental investigation or arbitration pending or, to Guarantor's knowledge, threatened against Guarantor which seeks to enjoin the consummation of the matters contemplated hereby or, except as set forth on Schedule 4.7 of the Loan Agreement, if adversely determined, could reasonably be expected to have a Material Adverse Effect on Carveout Guarantor; (B) there are no judgments outstanding against Guarantor that could reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect; (C) no petition in bankruptcy, whether voluntary or involuntary, or assignment for the benefit of creditors, or any other action involving debtors' and creditors' rights has ever been filed under the laws of the United States of America or any state thereof, or threatened, by or against Guarantor.

9. Subordination. If, for any reason Borrower is now or hereafter becomes indebted to Guarantor (such indebtedness and all interest thereon being referred to as the "Affiliated Debt"), such Affiliated Debt shall, at all times, be subordinate in all respects to the full payment and performance of the obligations evidenced by the Note, and Guarantor shall not be entitled to

enforce or receive payment thereof until all of the obligations evidenced by the Note have been fully paid. Guarantor agrees that any liens, mortgages, deeds of trust, security interests, judgment liens, charges or other encumbrances upon Borrower's assets securing payment of the Affiliated Debt shall be and remain subordinate and inferior to any liens, security interests, judgment liens, charge or other encumbrances upon Borrower's assets securing the payment of the obligations evidenced by the Note and Guaranteed Obligations, and without the prior written consent of Lender, Guarantor shall not exercise or enforce any creditor's rights of any nature against Borrower to collect the Affiliated Debt (other than demand payment therefor). In the event of the receivership, bankruptcy, reorganization, arrangement, debtor's relief or other insolvency proceedings involving Borrower as a debtor, Lender shall have the right and authority, either in its own name or as attorney-in-fact for Guarantor, to file such proof of debt claim, petition or other documents and to take such other steps as are necessary to prove its rights hereunder.

10. Waiver of Subrogation. Notwithstanding any other provision of this Guaranty to the contrary, until the Loan is indefeasibly paid in full, Guarantor hereby waives any claim or other rights which Guarantor may now have or hereafter acquire against Borrower or any other guarantor of all or any of the obligations that arise from the existence or performance of Guarantor's obligations under this Guaranty (all such claims and rights are referred to as "Guarantor's Conditional Rights"), including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, or indemnification, any right to participate in any claim or remedy of Lender against Borrower or any security or collateral which Lender now has or hereafter acquires, whether or not such claim, remedy or right arises in equity or under contract, statute (including the Bankruptcy Code or any successor or similar statute) or common law, by any payment made hereunder or otherwise, including without limitation, the right to take or receive from Borrower, directly or indirectly, in cash or other property or by setoff or in any other manner, payment or security on account of such claim or other rights. If, notwithstanding the foregoing provisions, any amount shall be paid to Guarantor on account of Guarantor's Conditional Rights and either (i) such amount is paid to Guarantor at any time when the Guaranteed Obligations or the Borrower's Obligations under the Loan Documents shall not have been paid or performed in full, or (ii) regardless of when such amount is paid to Guarantor, any payment made by Borrower to Lender is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by Lender or paid over to a trustee, receiver or any other entity, whether under any bankruptcy act or otherwise (such payment, a "Preferential Payment"), then such amount paid to Guarantor shall be held in trust for the benefit of Lender and shall forthwith be paid to Lender to be credited and applied upon the Guaranteed Obligations, whether matured or unmatured, in such order as Lender, in its sole and absolute discretion, shall determine. The foregoing waivers shall be effective until the Guaranteed Obligations have been paid and performed in full.

11. Impairment of Subrogation Rights; Waivers of Rights Under the Anti-Deficiency Rules.

(a) Guarantor agrees that upon an Event of Default under the Loan Documents, Lender may elect to foreclose either nonjudicially or judicially against any real or personal property security (including, without limitation, the Mortgaged Property) it holds for the obligations evidenced by the Note or any Guaranteed Obligations, or any part thereof, or accept an assignment of any such security in lieu of foreclosure, or compromise or adjust any part of

such obligations, or make any other accommodation with Borrower or Guarantor, or exercise any other remedy against Borrower or any collateral or security. No such action by Lender will release or limit the liability of Guarantor to Lender, who shall remain liable under this Guaranty after the action, even if the effect of that action is to deprive Guarantor of the right to collect reimbursement from Borrower or any other person for any sums paid to Lender or Guarantor's rights of subrogation, contribution, or indemnity against Borrower or any other person. Without limiting the foregoing, it is understood and agreed that on any foreclosure or assignment in lieu of foreclosure of any collateral or security held by Lender, such security will no longer exist and that any right that Guarantor might otherwise have, on full payment of the Guaranteed Obligations by Guarantor to Lender, to participate in any such security or to be subrogated to any rights of Lender with respect to any such security will be nonexistent; nor shall Guarantor be deemed to have any right, title, interest or claim under any circumstances in or to any real or personal property held by Lender or any third party following any foreclosure or assignment in lieu of foreclosure of any such security.

(b) Guarantor understands and acknowledges that if Lender forecloses judicially or nonjudicially against any real property security for Borrower's obligations, such foreclosure could impair or destroy any right or ability that Guarantor may have to seek reimbursement, contribution, or indemnification for any amounts paid by Guarantor under this Guaranty.

(c) [Intentionally Omitted].

(d) Guarantor intentionally, freely, irrevocably and unconditionally waives and relinquishes all rights which may be available to it under any provision of applicable law to limit the amount of any deficiency judgment or other judgment which may be obtained against Guarantor under this Guaranty to not more than the amount by which the unpaid Guaranteed Obligations plus all other indebtedness due from Borrower under the Loan Documents exceeds the fair market value or fair value of any real or personal property securing said obligations and any other indebtedness due from Borrower under the Loan Documents, including, without limitation, all rights to an appraisement of, judicial or other hearing on, or other determination of the value of said property. Guarantor acknowledges and agrees that, as a result of the foregoing waiver, Lender may be entitled to recover from Guarantor an amount which, when combined with the value of any real or personal property foreclosed upon by Lender (or the proceeds of the sale of which have been received by Lender) and any sums collected by Lender from Borrower or other Persons, might exceed the amount of the Guaranteed Obligations plus all other indebtedness due from Borrower under the Loan Documents.

(e) Guarantor understands and agrees that Lender may have the ability to pursue Guarantor for a judgment on the Guaranteed Obligations without having first foreclosed on the real property security for such Guaranteed Obligations, that Lender may have the ability to sue Guarantor for a deficiency judgment on the Guaranteed Obligations after a non-judicial foreclosure sale or, regardless of any election of remedies by Lender, if the Guaranteed Obligations or any of the other indebtedness of Borrower to Lender under the Loan Documents is considered to have been provided by a vendor to a buyer and to evidence part of the purchase price for the real property security, and that Lender may be able to recover from Borrower an amount which, when combined with the fair market value of the property acquired by Lender in a foreclosure sale or the proceeds of the foreclosure sale received by Lender, might exceed the amount of the Guaranteed Obligations due and owing by Guarantor and the amounts payable under the Loan Documents.

(f) [Intentionally Omitted].

Notwithstanding the foregoing or any provisions of Section 2(c) hereof, nothing contained in this Guaranty shall in any way be deemed to imply that any other state's law other than the law of the State of New York shall govern this Guaranty or any of the Loan Documents in any respect, except as expressly set forth therein, including with respect to the exercise of Lender's remedies under the Loan Documents.

12. Benefit; Successors and Assigns. This Guaranty is for the benefit of Lender, its successors and assigns, and in the event of an assignment by Lender, its successors and assigns, of the obligations evidenced by the Note, or any part or parts thereof, the rights and benefits hereunder, to the extent applicable to the obligations so assigned, may be transferred with such obligations. This Guaranty is binding upon the Guarantor and its successors and assigns to the extent permitted under the Loan Documents; provided, however, that the existing Guarantor shall continue to be liable for the obligations under this Guaranty unless and until such Guarantor is released in writing by Lender from its obligations hereunder.

13. No Release if Preference, Refund, Etc. In the event any payment by Borrower to Lender is determined to be a preferential payment under any applicable bankruptcy or insolvency laws, or if for any reason Lender is required to refund part or all of any payment or pay the amount thereof to any other party, such repayment by Lender to Borrower shall not constitute a release of Guarantor from any liability hereunder, and Guarantor, agrees to pay such amount to Lender upon demand to the extent such amount constitutes a Guaranteed Obligation.

14. Intentionally Omitted.

15. GOVERNING LAW. PURSUANT TO SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, GUARANTOR AGREES THAT THIS GUARANTY AND ALL RIGHTS, OBLIGATIONS AND LIABILITIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

16. Notices. Unless otherwise specifically provided herein, any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied (with request for confirmation) or sent by overnight courier service or United States registered mail return receipt requested, postage prepaid. Any notice so given shall be deemed effective upon delivery or on refusal or failure of delivery during normal business hours. Notices shall be addressed to the parties at the following addresses or to such other address as the party addressed shall have previously designated by written notice to the serving party, given in accordance with this Section 16.

If to Guarantor:

Equinix, Inc.
301 Velocity Way, 5th Floor
Foster City, California 94404
Attn: Director of Real Estate and General Counsel
Telephone: (650) 513-7000
Facsimile: (650) 513-7913

With a copy to:	Orrick, Herrington & Sutcliffe LLP 405 Howard Street San Francisco, California 94105 Attn: William G. Murray, Jr., Esq. Telephone: (415) 773-5807 Facsimile: (415) 773-5759
If to Lender:	SFT I, Inc. 1114 Avenue of the Americas, 27th Floor New York, New York 10036 Attn: Chief Operating Officer Telephone: 212-930-9400 Facsimile: 212-930-9494
With a copy to:	iStar Financial Inc. 1114 Avenue of the Americas, 27th Floor New York, New York 10036 Attn: Nina B. Matis, Esq./General Counsel Telephone: 212-930-9406 Facsimile: 212-930-9492
With a copy to:	iStar Asset Services Inc. 180 Glastonbury Boulevard, Suite 201 Glastonbury, Connecticut 06033 Attn: President Telephone: 860-815-5900 Facsimile: 860-815-5901
With a copy to:	Katten Muchin Rosenman LLP 1025 Thomas Jefferson St., NW East Lobby, Suite 700 Washington, DC 20007 Attn: John D. Muir, Jr., Esq. Telephone: (202) 625-3839 Facsimile: (202) 339-6054

Refusal to accept delivery of any notice shall be deemed to constitute receipt of such notice.

17. CONSENT OF JURISDICTION/SERVICE OF PROCESS. IN ACCORDANCE WITH SECTION 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, GUARANTOR HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK AND IRREVOCABLY AGREES THAT, SUBJECT TO LENDER’S

ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. GUARANTOR ACCEPTS FOR ITSELF, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS GUARANTY, THE NOTE, SUCH OTHER LOAN DOCUMENTS OR SUCH OBLIGATION. GUARANTOR ACKNOWLEDGES AND AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION, SUIT OR PROCEEDING WILL BE DEEMED EFFECTIVE ON GUARANTOR IF PERSONALLY SERVED OR SERVED IN ACCORDANCE WITH SECTION 17 ABOVE OR AT SUCH OTHER ADDRESS AS SUCH GUARANTOR MAY HAVE FURNISHED AS TO ITSELF TO THE SERVING PARTY BY LIKE NOTICE, OR TO THE LAST KNOWN ADDRESS OF SUCH GUARANTOR PROVIDED THEREUNDER.

18. WAIVER OF JURY TRIAL. GUARANTOR AND LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS GUARANTY, ANY OF THE LOAN DOCUMENTS, OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION AND THE RELATIONSHIP THAT IS BEING ESTABLISHED. GUARANTOR AND LENDER ALSO WAIVE ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF GUARANTOR OR LENDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. GUARANTOR AND LENDER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS GUARANTY AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. GUARANTOR AND LENDER FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS GUARANTY, THE LOAN DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOAN. IN THE EVENT OF LITIGATION, THIS GUARANTY MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

19. Expenses. Guarantor agrees to fully and punctually pay all costs and expenses, including, without limitation, reasonable attorneys’ fees, court costs and costs of appeal, which Lender may incur in enforcing and collecting the Guaranteed Obligations.

20. No Oral Modifications. This Guaranty, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Guarantor or Lender, but only by an agreement in writing signed by each of the parties hereto.

21. Conflict of Law. If, for whatever reason, a court of competent jurisdiction determines that this Guaranty shall be governed by California law, the provisions set forth on **Exhibit A** hereto shall be deemed incorporated herein by reference as additional provisions hereto, except to the extent that the provisions set forth on **Exhibit A** are inconsistent with the terms of this Guaranty, in which case, the terms set forth in **Exhibit A** shall govern.

22. Definitions. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement.

23. Recitals. The Recitals set forth above are incorporated herein and made a part hereof.

[Remainder of Page Intentionally Left Blank. Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the day and year first above written.

GUARANTOR:

EQUINIX, INC., a Delaware corporation

By: /s/ Keith D. Taylor
Name: Keith D. Taylor
Title: CFO

Exhibit 10.40

MASTER LEASE

by and between

CHI 3, LLC,
a Delaware limited liability company,

as LANDLORD

and

EQUINIX OPERATING CO., INC.,
a Delaware corporation,

as TENANT

Premises:
1905 – 1945 Lunt Avenue
Elk Grove Village, Illinois 60007

Dated as of February 2, 2007

TABLE OF CONTENTS

		Page
1.	Demise of Premises	1
2.	Certain Definitions	1
3.	Title and Condition	8
4.	Use of Leased Premises; Quiet Enjoyment	9
5.	Term	10
6.	Basic Rent	11
7.	Additional Rent	12
8.	Payment of Impositions	13
9.	Compliance with Laws and Easement Agreements; Environmental Matters; Above-Ground/Under-Ground Storage Tanks	14
10.	Liens; Recording	16
11.	Maintenance and Repair	17
12.	Alterations and Improvements	17
13.	Approved Alterations	19
14.	Indemnification	20
15.	Insurance	21
16.	Casualty and Condemnation	25
17.	Termination Events	26
18.	Restoration	26
19.	Assignment and Subletting	28
20.	Events of Default	30
21.	Remedies and Damages Upon Default	31
22.	Notices	34
23.	Estoppel Certificate	34
24.	Surrender	35
25.	No Merger of Title	35
26.	Books and Records	35
27.	Non-Recourse as to Landlord	36
28.	Financing	36
29.	Subordination and Attornment	37
30.	Tax Treatment; Reporting	38
31.	Guaranty	38
32.	Miscellaneous	38
33.	Publicity	40

EXHIBITS

EXHIBIT A	Premises
EXHIBIT B	Equipment
EXHIBIT C	Schedule of Permitted Encumbrances
EXHIBIT D	Landlord's Wiring Instructions
EXHIBIT E	Form of Guaranty of Lease

MASTER LEASE

THIS MASTER LEASE is made as of February 2, 2007, by and between **CHI 3, LLC**, a Delaware limited liability company ("Landlord"), with an address at 301 Velocity Way, 5th Floor, Foster City, California 94404, and **EQUINIX OPERATING CO., INC.**, a Delaware corporation ("Tenant"), with an address at 301 Velocity Way, 5th Floor, Foster City, California 94404.

In consideration of the rents and provisions herein stipulated to be paid and performed, Landlord and Tenant hereby covenant and agree as follows:

1. Demise of Premises. Landlord hereby demises and lets to Tenant, and Tenant hereby takes and leases from Landlord, for the term and upon the provisions hereinafter specified, the following described property (hereinafter collectively referred to as the "Leased Premises"): (i) the premises described in Exhibit "A" hereto, together with the Appurtenances (collectively, the "Land"); (ii) the buildings, structures and other improvements now or hereafter located on the Land, including, without limitation, the roof of the buildings located on the Land (collectively, the "Improvements"); and (iii) the fixtures, machinery, equipment and other property described in Exhibit "B" hereto (collectively, the "Equipment").

2. Certain Definitions.

"Additional Rent" shall mean Additional Rent as defined in Section 7(a).

"Adjustment Date" shall mean the Adjustment Date as defined in Schedule 1.

"Affiliated Party" shall mean Affiliated Party as defined in Section 19(a).

"Alterations" shall mean all changes, additions, improvements or repairs to, all alterations, reconstructions, renewals, replacements or removals of and all substitutions or replacements for any of the Improvements or Equipment, both interior and exterior, structural and non-structural, and ordinary and extraordinary. Notwithstanding the foregoing, Alterations shall not include the addition, reconfiguration or removal of internal cabling, server cages or other equipment installed in the Premises primarily for the service of Tenant's Customers.

"Appurtenances" shall mean all tenements, hereditaments, easements, rights-of-way, rights, privileges in and to the Land, including (a) easements over other lands granted by any Easement Agreement and (b) any streets, ways, alleys, vaults, gores or strips of land adjoining the Land.

"Basic Rent" shall mean Basic Rent as defined in Section 6.

"Basic Rent Payment Date" shall mean the Basic Rent Payment Dates as defined in Section 6.

"Casualty" shall mean any injury to or death of any person or any loss of or damage to any property (including the Leased Premises) included within or related to the Leased Premises resulting from a fire or other casualty affecting the Leased Premises.

"Code" shall mean Code as defined in Section 30.

"Commencement Date" shall mean Commencement Date as defined in Section 5(a).

"Condemnation" shall mean a Taking.

"Condemnation Notice" shall mean notice of the institution of any proceeding for Condemnation.

"Costs" of a Person or associated with a specified transaction shall mean all reasonable costs and expenses incurred by such Person or associated with such transaction, including, without limitation, attorneys' fees and expenses, court costs, brokerage fees, escrow fees, title insurance premiums, recording fees and transfer taxes, as the circumstances require, subject to any limitations hereinafter set forth.

"Customer" shall mean a Person that has entered into an agreement with Tenant, or an affiliate of Tenant, to receive telecommunication, collocation or any similar or successor services from the Leased Premises.

"Customer Agreement" shall mean Customer Agreement as defined in Section 19(d).

"Debt Service" shall mean with respect to any particular period, the scheduled principal and interest payments due on account of any promissory note secured by the Mortgage.

"Default Rate" shall mean the Default Rate as defined in Section 6(c).

"Easement Agreement" shall mean any conditions, covenants, restrictions, easements, declarations, licenses and other agreements listed as Permitted Encumbrances or as may hereafter affect the Leased Premises.

"Environmental Law" shall mean (i) whenever enacted or promulgated, any applicable federal, state and local law, statute, ordinance, rule, regulation, license, permit, authorization, approval, consent, court order, judgment, decree, injunction, code, requirement or agreement with any governmental entity, (x) relating to pollution (or the cleanup thereof), or the protection of air, water vapor, surface water, groundwater, drinking water supply, land (including land surface or subsurface), plant, aquatic and animal life from injury caused by a Hazardous Substance or (y) concerning exposure to, or the use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, handling, labeling, production, disposal or remediation of any Hazardous Substance, and (ii) any common law or equitable doctrine (including, without limitation, injunctive relief and tort doctrines such

as negligence, nuisance, trespass and strict liability) that may impose liability or obligations or injuries or damages due to or threatened as a result of the presence of, exposure to, or ingestion of, any Hazardous Substance. The term Environmental Law includes, without limitation, the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act, the federal Water Pollution Control Act, the federal Clean Air Act, the federal Clean Water Act, the federal Resources Conservation and Recovery Act of 1976 (including the Hazardous and Solid Waste Amendments to RCRA), the federal Solid Waste Disposal Act, the federal Toxic Substance Control Act, the federal Occupational Safety and Health Act of 1970, the federal National Environmental Policy Act and the federal Hazardous Materials Transportation Act, each as amended and as now or hereafter in effect and any similar state or local Law.

"Environmental Violation" shall mean any violation of any Environmental Law.

"Equinix" shall mean Equinix, Inc., a Delaware corporation.

"Equinix OpCo" shall mean Equinix Operating Co., Inc., a Delaware corporation.

"Equipment" shall mean the Equipment as defined in Section 1.

"Event of Default" shall mean an Event of Default as defined in Section 20(a).

"Expenses" shall mean the Expenses as defined in Section 7(a).

"Expiration Date" shall mean the Expiration Date as defined in Section 5(a).

"Federal Funds" shall mean federal or other immediately available funds which at the time of payment are legal tender for the payment of public and private debts in the United States of America.

"Financial Strength Criteria" as applied to any Person as of any date of determination means that such Person (a) has a net worth and financial strength on such date of determination equal to or greater than the lower of (1) the net worth and financial strength of Equinix as of the date of this Lease and (2) the net worth and financial strength of Carveout Guarantor (as such term is used in the Loan Agreement) on such date of determination, provided that in either case, the net worth of such Person is not less than $262,000,000, and (b) is experienced in, or, has a management team with experience in the management and operation of first-class data centers comparable to data centers operated by Equinix or Equinix OpCo, and which, clause (a) and (b) are demonstrated to the reasonable satisfaction of Landlord and Lender and approved in writing by Lender, which approval shall not be unreasonably withheld, delayed or conditioned.

"GAAP" shall mean GAAP as defined in Section 26(a).

"Guarantor" shall mean Equinix, Inc., a Delaware corporation, or a successor to Guarantor by acquisition or merger, or by a consolidation or reorganization pursuant to which Guarantor ceases to exist as a legal entity.

"Guaranty" shall mean Guaranty as defined in Section 33.

"Good Condition and Repair" shall mean Good Condition and Repair as defined in Section 7(a).

"Hazardous Substance" means (i) any substance, material, product, petroleum, petroleum product, derivative, compound or mixture, mineral (including asbestos), chemical, gas, medical waste, or other pollutant, in each case whether naturally occurring, man-made or the by-product of any process, that is toxic, harmful or hazardous or acutely hazardous to the environment or public health or safety or (ii) any substance supporting a claim under any Environmental Law, whether or not defined as hazardous as such under any Environmental Law. Hazardous Substances include, without limitation, any toxic or hazardous waste, pollutant, contaminant, industrial waste, petroleum or petroleum-derived substances or waste, radon, radioactive materials, asbestos, asbestos containing materials, urea formaldehyde foam insulation, lead, polychlorinated biphenyls.

"Impositions" shall mean the Impositions as defined in Section 8.

"Improvements" shall mean the Improvements as defined in Section 1.

"Indemnitee" shall mean an Indemnitee as defined in Section 14.

"Investment Grade Criteria" as applied to any Person means that such Person has a credit rating of either "BBB-" or higher from S&P or "Baa3" or higher from Moody's, (or an approximately equivalent credit rating from an alternative nationally recognized credit rating agency, as applicable).

"Insurance Requirements" shall mean the requirements of all insurance policies maintained in accordance with this Lease.

"Land" shall mean the Land as defined in Section 1.

"Landlord Transfer" shall mean a Landlord Transfer as defined in Section 8.

"Law" shall mean any constitution, statute, rule of law, code, ordinance, order, judgment, decree, injunction, rule, regulation, policy, requirement or administrative or judicial determination, even if unforeseen or extraordinary, of every duly constituted governmental authority, court or agency, now or hereafter enacted or in effect.

"Lease" shall mean this Master Lease.

"Lease Year" shall mean, with respect to the first Lease Year, the period commencing on the Commencement Date and ending at midnight on the last day of the twelfth (12th) consecutive calendar month following the month in which the Commencement Date occurred, and each succeeding twelve (12) month period during the Term.

"Leased Premises" shall mean the Leased Premises as defined in Section 1.

"Legal Requirements" shall mean the requirements of all present and future Laws (including, but not limited to, Environmental Laws and Laws related to accessibility to, usability by, and discrimination against, disabled individuals) and all covenants, restrictions and conditions now or hereafter of record which may be applicable to Tenant or to the Leased Premises, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or restoration of the Leased Premises, even if compliance therewith necessitates structural changes or improvements or results in interference with the use or enjoyment of the Leased Premises or requires Tenant to carry insurance other than as required by this Lease.

"Lender" shall mean any holder of a Mortgage secured by the Landlord's interest in the Leased Premises, including without limitation, Mortgage Lender.

"Monetary Obligations" shall mean Rent and all other sums payable by Tenant under this Lease to Landlord, to any third party on behalf of Landlord or to any Indemnitee.

"Moody's" means Moody's Investors Service, Inc., or its successor in interest.

"Mortgage" shall mean any mortgage lien on the Leased Premises, including the SFT I Mortgage.

"Mortgage Lender" shall mean SFT I, Inc., a Delaware corporation, and its successors and assigns.

"Mortgage Lender Financing" shall mean that certain loan to Landlord from Mortgage Lender secured by, among other things, a first priority mortgage lien on the Leased Premises pursuant to the SFT I Mortgage.

"Mortgage Loan Documents" shall mean this Lease, the SFT I Mortgage and those certain other loan documents of even date herewith executed by and entered into by Landlord in connection with the Mortgage Lender Financing.

"Net Award" shall mean (a) the entire award payable by reason of a Condemnation whether pursuant to a judgment or by agreement or otherwise, or (b) the entire proceeds of any insurance required under clauses (i), (ii) (to the extent payable to Landlord), (iv), (v), (vi), (vii) or (viii) of Section 15(a), as the case may be, less any expenses incurred by Landlord in collecting such award or proceeds.

"Non-Preapproved Assignee" shall mean Non-Preapproved Assignee as defined in Section 19(b).

"Non-Preapproved Assignment" shall mean Non-Preapproved Assignment as defined in Section 19(b).

"Partial Casualty" shall mean any Casualty which does not constitute a Termination Event.

"Partial Condemnation" shall mean any Condemnation which does not constitute a Termination Event.

"Permitted Encumbrances" shall mean those covenants, restrictions, reservations, liens, conditions and easements and other encumbrances listed on Exhibit "C" hereto (but such listing shall not be deemed to revive any such encumbrances that have expired or terminated or are otherwise invalid or unenforceable).

"Person" shall mean an individual, partnership, association, limited liability company, corporation or other entity.

"Preapproved Assignee" shall mean Preapproved Assignee as defined in Section 19(a).

"Preapproved Assignment" shall mean Preapproved Assignment as defined in Section 19(a).

"Prime Rate" shall mean the interest rate per annum as published, from time to time, in The Wall Street Journal as the "Prime Rate" in its column entitled "Money Rate". The Prime Rate may not be the lowest rate of interest charged by any "large U.S. money center commercial banks" and Landlord makes no representations or warranties to that effect. In the event The Wall Street Journal ceases publication or ceases to publish the "Prime Rate" as described above, the Prime Rate shall be the average per annum discount rate (the "Discount Rate") on ninety-one (91) day bills ("Treasury Bills") issued from time to time by the United States Treasury at its most recent auction, plus three hundred (300) basis points. If no such 91-day Treasury Bills are then being issued, the Discount Rate shall be the discount rate on Treasury Bills then being issued for the period of time closest to ninety-one (91) days.

"Renewal Date" shall mean Renewal Date as defined in Section 5(b).

"Renewal Notice" shall mean Renewal Notice as defined in Section 5(b).

"Renewal Term" shall mean Renewal Term as defined in Section 5(b).

"Rent" shall mean, collectively, Basic Rent and Additional Rent.

"Rent Commencement Date" shall mean Rent Commencement Date as defined in Section 6(a).

"Requesting Party" shall mean Requesting Party as defined in Section 23.

"Required Replacements" shall mean the Required Replacements as defined in Section 7(a).

"Responding Party" shall mean Responding Party as defined in Section 23.

"Restoration Fund" shall mean Restoration Fund as defined in Section 18(a).

"Review Criteria" shall mean Review Criteria as defined in Section 19(b).

"S&P" means Standard & Poor's Ratings Services or its successor in interest.

"SFT I Mortgage" shall mean that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith granted by Landlord for the benefit of Mortgage Lender to secure Landlord's obligations under the Mortgage Lender Financing as evidenced by the Mortgage Loan Documents.

"SNDA" shall mean SNDA as defined in Section 29.

"State" shall mean the state in which the Leased Premises are located.

"Successor Landlord" shall mean Successor Landlord as defined in Section 29(c).

"Successor Party" shall mean Successor Party as defined in Section 19(a).

"Surviving Obligations" shall mean any obligations of Tenant under this Lease, actual or contingent, which arise on or prior to the expiration or prior termination of this Lease or which survive such expiration or termination by their own terms.

"Taking" shall mean (a) any taking or damaging of all or a portion of the Leased Premises (i) in or by condemnation or other eminent domain proceedings pursuant to any Law, general or special, or (ii) by reason of any agreement with any condemnor in settlement of or under threat of any such condemnation or other eminent domain proceeding, or (iii) by any other means, or (b) any de facto condemnation. The Taking shall be considered to have taken place as of the earlier of the date actual physical possession is taken by the condemnor, or the date on which the right to compensation and damages accrues under the law applicable to the Leased Premises.

"Tenant's Plans" shall mean Tenant's Plans as defined in Section 12(d).

"Term" shall mean the Term as defined in Section 5.

"Termination Date" shall mean the Termination Date as defined in Section 17.

"Termination Event" shall mean a Termination Event as defined in Section 17.

"Termination Notice" shall mean Termination Notice as defined in Section 17(a).

"Third Party Purchaser" shall mean the Third Party Purchaser as defined in Section 19(h).

"Warranties" shall mean the Warranties as defined in Section 3(c).

"Work" shall mean the Work as defined in Section 12(c).

3. Title and Condition.

(a) The Leased Premises are demised and let subject to (i) the Permitted Encumbrances, (ii) any state of facts which an accurate survey or physical inspection of the Leased Premises might show, (iii) all Legal Requirements, including any existing violation of any thereof, and (iv) the condition of the Leased Premises in all respects as of the commencement of the Term, without representation or warranty by Landlord.

(b) Tenant acknowledges that the Leased Premises are in acceptable condition and repair at the inception of this Lease. LANDLORD LEASES AND WILL LEASE AND TENANT TAKES AND WILL TAKE THE LEASED PREMISES "AS IS WITH ALL FAULTS". TENANT ACKNOWLEDGES THAT LANDLORD (WHETHER ACTING AS LANDLORD HEREUNDER OR IN ANY OTHER CAPACITY) HAS NOT MADE AND WILL NOT MAKE, NOR SHALL LANDLORD BE DEEMED TO HAVE MADE, ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTERS CONCERNING THE LEASED PREMISES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION AS TO (i) ITS FITNESS, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE, (ii) THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, (iii) THE EXISTENCE OF ANY DEFECT, LATENT OR PATENT, (iv) LANDLORD'S TITLE THERETO, (v) VALUE, (vi) COMPLIANCE WITH SPECIFICATIONS, (vii) LOCATION, (viii) USE, (ix) CONDITION, (x) MERCHANTABILITY, (xi) QUALITY, (xii) DESCRIPTION, (xiii) DURABILITY (xiv) OPERATION, (xv) THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, OR (xvi) COMPLIANCE OF THE LEASED PREMISES WITH ANY LAW OR LEGAL REQUIREMENT; AND ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY TENANT. TENANT ACKNOWLEDGES THAT THE LEASED PREMISES ARE OF ITS SELECTION AND TO ITS SPECIFICATIONS AND THAT THE LEASED PREMISES HAVE BEEN INSPECTED BY TENANT AND ARE SATISFACTORY TO IT.

(c) Landlord hereby assigns to Tenant, without recourse or warranty whatsoever, on a non-exclusive basis, all assignable warranties, guaranties, indemnities and similar rights (collectively "Warranties") which Landlord may have against any manufacturer, seller, engineer, contractor or builder in respect of the Leased Premises. Such assignment shall remain in effect until the expiration or earlier termination of this Lease, whereupon such assignment shall cease and all of the Warranties shall automatically revert to Landlord. In confirmation of such reversion Tenant shall execute and deliver promptly any certificate or other document reasonably required by Landlord. Landlord shall also retain the right to enforce any guaranties (i) to the extent of Landlord's obligations hereunder, and (ii) upon the occurrence of an Event of Default. Tenant in its reasonable discretion, may enforce and shall comply with the terms of all Warranties in accordance with their respective terms, provided that if Tenant does not enforce any Warranty, Landlord shall have the right to do so. Tenant shall not take any actions which would cause any of the Warranties to lapse.

4. Use of Leased Premises; Quiet Enjoyment.

(a) Tenant may occupy and use the Leased Premises as a data center and internet business exchange ("IBX") collocation facility (and ancillary administrative or other support services) or any facility that as a result of technological changes is substantially equivalent, or a technological successor, to a data center and IBX collocation facility, so long as such change does not have any material negative impact on the value of the Leased Premises, or, for any other purpose previously approved by Landlord in writing and in a manner consistent with applicable Laws, Legal Requirements and the Permitted Encumbrances. In approving any alternative uses, Landlord shall act reasonably taking into account technological changes and changes in the telecommunications industry. Tenant shall not use or occupy or permit the Leased Premises to be used or occupied, nor do or permit anything to be done in or on the Leased Premises, in a manner which would or is likely to (i) violate any Law or Legal Requirement, (ii) make void or voidable or cause any insurer to cancel any insurance required by this Lease, or make it impossible to obtain any such insurance at commercially reasonable rates, (iii) make void or voidable, cancel or cause to be cancelled or release any warranty, guaranty or indemnity, (iv) cause structural injury to any of the Improvements or (v) constitute a public or private nuisance or waste.

(b) Subject to the provisions hereof, so long as no Event of Default has occurred and is continuing, Tenant shall quietly hold, occupy and enjoy the Leased Premises throughout the Term, without any hindrance, ejection or molestation by Landlord with respect to matters that arise after the date hereof.

(c) Landlord acknowledges that Tenant will operate the Leased Premises as a highly secure facility which has very limited access. As a result thereof, Landlord shall not under any circumstances enter the Leased Premises without being accompanied by a representative of Tenant and after, at least, 48 hours prior written notice. Subject to the foregoing requirement, Landlord shall be entitled to enter the Premises at the following times and for the following purposes: (i) as required to perform Landlord's obligations under this Lease and to inspect the Premises to confirm that Tenant is in compliance with its obligations under the Lease, provided, however, that such inspection shall only occur once a quarter (unless

an Event of Default exists in which case Landlord may enter the Leased Premises as often as Landlord deems necessary in its sole discretion, subject to the notice requirements set forth above), and (ii) showing the Leased Premises to prospective purchasers or lenders, or, during the last 180 days of the Term, to prospective tenants. Notwithstanding anything to the contrary but subject to the notice requirements set forth above in this Section 4(c), Landlord shall have access to the Leased Premises at ay time in order to enforce its self-help rights or any of its other remedies under this Lease. In exercising such entry rights, Landlord will endeavor to minimize, to the extent reasonably practicable, the interference with Tenant's business.

5. Term.

(a) Subject to the provisions hereof, Tenant shall have and hold the Leased Premises for an initial term (such term, as extended or renewed in accordance with the provisions hereof, being called the "Term") commencing on February 2, 2007 (the "Commencement Date") and ending on the last day of the two hundred fortieth (240th) calendar month next following the date hereof (the "Expiration Date").

(b) Provided that if, on or prior to the Expiration Date or any other Renewal Date (as hereinafter defined) this Lease shall not have been terminated pursuant to any provision hereof, Tenant shall have the right to extend the Term of this Lease so long as no Event of Default exists at the time of any such request or on the applicable Renewal Date, for three (3) consecutive additional periods of five (5) years each (each such extension, a "Renewal Term") as of the Expiration Date and on the fifth (5th) and tenth (10th) anniversary of the Expiration Date (the Expiration Date and each such fifth (5th) and tenth (10th) anniversary thereafter occurring being a "Renewal Date") upon notice by Tenant to Landlord in writing (a "Renewal Notice") no more than thirty-six (36) months and no less than twelve (12) months prior to the applicable Renewal Date. Any such extension of the Term shall be subject to all of the provisions of this Lease, as the same may be amended, supplemented or modified. Notwithstanding anything in this Lease to the contrary, including, without limitation, Section 17 hereof, this Lease shall not be cancelable or terminable for any reason whatsoever by Landlord or Tenant prior to the Expiration Date unless and until the Mortgage Financing has been repaid in full, including, without limitation, all outstanding principal and interest and other indebtedness payable under the Mortgage Loan Documents. Notwithstanding the foregoing, the restrictions of this Section 5(b) shall not apply to any Successor Landlord (as defined in Section 29 hereof).

(c) Basic Rent for any Renewal Term shall be calculated as set forth in Schedule 1.

(d) If Tenant fails to exercise its option pursuant to Section 5(b) to have the Term extended, or if an Event of Default occurs and so long as such Event of Default shall continue, then Landlord shall have the right during the remainder of the Term then in effect, to (i) advertise the availability of the Leased Premises for sale or reletting and to erect upon the Leased Premises one (1) sign reasonably acceptable to Tenant indicating such availability and (ii) show the Leased Premises to prospective purchasers or tenants or their agents subject to the requirements of Section 4(c).

6. Basic Rent.

(a) Commencing on the date (the "Rent Commencement Date") which is the earlier of (i) twelve (12) months from the Commencement Date or (ii) commencement of the operation of the Leased Premises, but not later than twelve (12) months from the Commencement Date, Tenant shall pay to Landlord, in lawful money of the United States, without set-off, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense, except as otherwise specifically set forth herein, for each calendar month of the Term, monthly rent in the amount of $1,333,333.33, and with respect to any Renewal Term, the amount set forth in Schedule 1 ("Basic Rent"), in advance, beginning on the Rent Commencement Date and then on the first day of each calendar month thereafter (each such day being a "Basic Rent Payment Date"); without abatement, deduction, claim, offset, prior notice or demand. If the Rent Commencement Date is not the first day of a calendar month, then the amount of the Basic Rent due and payable shall be prorated. Each such rental payment shall be made, at Landlord's sole discretion, to Landlord by wire transfer in Federal Funds in accordance with the wiring instructions set forth on Exhibit "D" attached hereto and made a part hereof and/or to such one or more other Persons, at such addresses as Landlord may direct by fifteen (15) days' prior written notice to Tenant (in which event Tenant shall give Landlord notice of each such payment concurrent with the making thereof), on or before the applicable Basic Rent Payment Date.

(b) In the event that any installment of Basic Rent is not paid within five (5) business days of the date due, Tenant shall pay to Landlord, in addition to the Basic Rent, an amount equal to three percent (3%) of the amount of such unpaid installment or portion thereof to reimburse Landlord for its cost and inconvenience incurred as a result of Tenant's delinquency; provided that Tenant shall not be obligated to pay such amount the first time in each Lease Year that Tenant is late in paying the Basic Rent, provided that Tenant actually pays such Basic Rent within five (5) business days of written notice from Landlord.

(c) Interest at the rate (the "Default Rate") of four percent (4%) over the Prime Rate per annum shall be due and payable on the following sums until paid in full: (A) all overdue installments of Basic Rent from the respective due dates thereof provided, however, that with the first late payment of all or any installment of Basic Rent in any Lease Year, the Default Rate shall not be due and payable unless the Basic Rent has not been paid within five (5) business days following written notice from Landlord that such installment is past due, (B) all overdue amounts of Additional Rent relating to obligations which Landlord shall have paid on behalf of Tenant, from the date of payment thereof by Landlord, and (C) all other overdue amounts of Additional Rent, from the date when any such amount becomes overdue.

(d) In addition, in the event of a Casualty/Condemnation resulting in a partial prepayment of the Mortgage Lender Financing, the Basic Rent due under this Lease shall be equitably reduced to an amount equal to 1.2 times the current Debt Service based on the then outstanding principal amount of the Mortgage Lender Financing in order to reflect among other things, the new loan amortization schedule so that the remaining outstanding principal amortizes in full over the remaining term of the Mortgage Lender Financing.

7. Additional Rent.

(a) Tenant shall pay and discharge, as additional rent (collectively, "Additional Rent") (i) all expenses incurred in the use, operation and maintenance of the Leased Premises, including, without limitation, the following: electricity, gas, water, sewer, storm water, fuel and other reasonable utility charges, (ii) premiums and other charges for insurance (including, but not limited to, property insurance, rent loss insurance and liability insurance), (iii) all costs incurred in connection with service and maintenance contracts, (iv) all costs required to keep the Leased Premises and Equipment in Good Condition and Repair, as defined below, and (v) all Impositions in accordance with Section 8 below. All of the foregoing items described in the preceding clauses (i)-(v) are referred to herein as "Expenses." Except as otherwise agreed to by Landlord and Tenant, all of such Expenses shall be paid directly by Tenant and Tenant shall, upon the written request of Landlord, provide Landlord with reasonable evidence of such payment. As used herein the phrase "Good Condition and Repair" shall mean that the Leased Premises are in the condition that one would expect the Leased Premises to be in, if throughout the Term Tenant (y) uses and maintains the Leased Premises and Equipment in a commercially reasonable manner and in an accordance with the requirements of this Lease and (z) makes all Required Replacements. "Required Replacements" are the replacements to nonfunctioning equipment, fixtures, and improvements that a commercially reasonable owner-user would make. Good Condition and Repair shall not require the replacement of functioning but obsolete Equipment or Improvements. Notwithstanding the foregoing, Tenant shall not be obligated to pay any portion of the following items:

(i) Sums paid to subsidiaries or other affiliates of Landlord for services on or to Leased Premises, but only to the extent that the costs of such services exceed the competitive cost for such services rendered by persons or entities of similar skill, competence and experience.

(ii) Advertising and promotional expenditures.

(iii) Landlord's charitable and political contributions.

(iv) Any expenses for which Landlord has received actual reimbursement.

(v) Wages, salaries, benefits or other similar compensation paid to employees of Landlord or Landlord's agents.

(vi) Penalties or other costs incurred due to a violation by Landlord, as determined by written admission, stipulation, final judgment or arbitration award, of any of the terms and conditions of this Lease or any Law relating to the Leased Premises.

(vii) Landlord's general corporate office overhead and administrative expenses (which shall not be deemed to include a management fee).

(viii) The cost of abatement or removal of any Hazardous Substances, except for the costs of any such actions taken by Landlord to comply with any Laws in connection with the ordinary operation and maintenance of the Leased Premises or any costs for which Tenant is responsible under Sections 9 and 14.

(ix) All direct and indirect costs of refinancing, selling, exchanging or otherwise transferring ownership of the Leased Premises or any interest therein or portion thereof, including broker commissions, attorneys' fees and closing costs.

(x) Reserves for bad debts, rent loss, capital items or future expenses.

(xi) Third party claims paid by Landlord for personal injury or property damage, including costs of Landlord's defense thereof, except that the foregoing shall not relieve Tenant of responsibility for claims (and the defense costs thereof) for which Tenant is responsible pursuant to Section 14 or any other provision of this Lease.

(b) Tenant shall pay and discharge any Additional Rent referred to in Section 7(a) when the same shall become due, provided that amounts which are billed to Landlord or any third party, but not to Tenant, shall be paid within thirty (30) days after Landlord's demand for payment thereof. Any demand by Landlord for the payment of Additional Rent shall be accompanied by reasonably supporting material explaining the Additional Rent amount.

8. Payment of Impositions. Tenant shall, before interest or penalties are due thereon, pay and discharge all taxes (including real and personal property, franchise, sales, use, gross receipts and rent taxes), all charges for any easement or agreement maintained for the benefit of the Leased Premises, all assessments (including, without limitation, special assessments) and levies, all permit, inspection and license fees, all rents and charges for water, sewer, utility and communication services relating to the Leased Premises and all other public charges whether of a like or different nature, even if unforeseen or extraordinary, imposed upon or assessed against (a) Tenant, (b) Tenant's possessory interest in the Leased Premises, (c) the Leased Premises, or (d) Landlord as a result of or arising in respect of the acquisition, ownership, occupancy, leasing, use, possession or sale of the Leased Premises, any activity conducted on the Leased Premises, or the Rent (collectively, the "Impositions"); provided, that nothing herein shall obligate Tenant to pay (i) income, excess profits or other taxes of Landlord which are determined on the basis of Landlord's net income or net worth (unless such taxes are in lieu of or a substitute for any other tax, assessment or other charge upon or with respect to the Leased Premises which, if it were in effect, would be payable by Tenant under the provisions hereof or by the terms of such tax, assessment or other charge), (ii) any estate, inheritance, succession, gift or similar tax imposed on Landlord or (iii) any capital gains tax imposed on Landlord in connection with the sale of the Leased Premises to any Person. If any Imposition may be paid in installments without interest or penalty, Tenant shall have the option to pay such Imposition in installments; in such event, Tenant shall be liable only for those installments which accrue or become due and payable during the Term. Tenant shall prepare and file all tax reports required by governmental authorities which relate to the Impositions. Tenant shall deliver to Landlord

(A) copies of all settlements and notices pertaining to the Impositions which may be issued by any governmental authority within ten (10) days after Tenant's receipt thereof, (B) receipts for payment of all taxes required to be paid by Tenant hereunder within thirty (30) days after the due date thereof and (C) receipts for payment of all other Impositions within ten (10) days after Landlord's request therefor.

9. Compliance with Laws and Easement Agreements; Environmental Matters; Above-Ground/Under-Ground Storage Tanks.

(a) Tenant shall, at its expense, comply with and conform to, and cause the Leased Premises and any other Person occupying any part of the Leased Premises to comply with and conform to, all Insurance Requirements and Legal Requirements (including all applicable Environmental Laws). Tenant shall not at any time (i) cause, permit or suffer to occur any Environmental Violation or (ii) permit any subtenant, assignee or other Person occupying the Leased Premises under or through Tenant to cause, permit or suffer to occur any Environmental Violation and, at the request of Landlord, Tenant shall promptly remediate or undertake any other appropriate response action to correct any existing Environmental Violation in a manner which is commercially reasonable and sufficient to remediate or correct such Environmental Violation to levels consistent with non-residential use of the Leased Premises and in accordance and compliance with all applicable Legal Requirements. Any and all reports prepared for or by Landlord with respect to the Leased Premises shall be for the sole benefit of Landlord and no other Person shall have the right to rely on any such reports.

(b) Tenant, at its sole cost and expense, will at all times promptly abide by, discharge and perform all of the covenants, conditions and agreements contained in any Easement Agreement on the part of Landlord or the occupier to be kept and performed thereunder. Tenant will not alter, modify, amend or terminate any Easement Agreement, give any consent or approval thereunder, or enter into any new Easement Agreement without, in each case, prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing or anything to the contrary contained in this Lease, Tenant shall have the right without obtaining Lender's or Landlord's prior approval to grant or modify standard utility and telecommunications easements serving the Leased Premises.

(c) If Tenant fails to comply with any requirement of any Environmental Law in connection with any Environmental Violation which occurs or is found to exist, after the expiration of a reasonable period of time of not less than thirty (30) days provided by Landlord to Tenant in writing to cure such Environmental Violation, Landlord shall have the right (but no obligation) to take any and all actions as Landlord shall deem reasonably necessary or advisable in order to cure such Environmental Violation.

(d) Tenant shall promptly notify Landlord after becoming aware of any Environmental Violation (or alleged Environmental Violation) or noncompliance with any of the covenants contained in this Section 9 and shall forward to Landlord immediately upon receipt thereof copies of all orders, reports, notices, permits, applications or other communications relating to any such violation or noncompliance.

(e) Landlord acknowledges that as of the Rent Commencement Date, the Leased Premises includes generators and other redundant power generation equipment, specialized HVAC and fire suppression systems, which may contain Hazardous Substances. During the Term Tenant may, in accordance with the provisions of this Lease, install up to four (4) fuel storage tanks (the "Initial Storage Tanks") which are currently scheduled to be installed on the Leased Premises. Furthermore, during the Term Tenant may, install additional above-ground fuel storage tanks ("ASTs") or underground fuel storage tanks ('USTs"), replace the Initial Storage Tanks, install or replace any battery back-up systems, install or replace the HVAC or fire suppression systems, so long as all of such work is done in accordance with the requirements of this Lease and all Hazardous Substances involved in any of such systems or equipment are handled, used, stored, maintained and disposed of in accordance with applicable Laws, including, without limitation, Environmental Laws and is necessary to support the operations of data centers or IBX collation facilities. Any Additional Storage Tanks (as defined below) installed on the Leased Premises shall be AST's, unless such AST's are not feasible in light of the design and operation of the improvements on the Leased Premises. The determination of such feasibility shall be in Landlord's sole reasonable discretion. Notwithstanding the foregoing, the installation of ASTs or USTs (collectively "Additional Storage Tanks"), but not the replacement of any Initial Storage Tank, shall be subject to (i) Landlord's prior written approval with respect to the location of any Additional Storage Tanks, which approval shall not be unreasonably delayed or conditioned, (ii) requiring additional storage tank liability insurance in accordance with Section 15(a)(ix) and (iii) Landlord's right to require removal of any Additional Storage Tanks as set forth in Section 21.

(f) Tenant agrees that in no manner, expressed or implied, shall Landlord have any responsibility for any and all Initial Storage Tanks and Additional Storage Tanks (collectively the "Storage Tanks") located now or in the future on the Leased Premises, including the maintenance, operation. Tenant hereby agrees to indemnify, defend and hold harmless Landlord from any and all claims and damages in any way relating to the construction, maintenance, operation of any Storage Tanks on the Leased Premises, and if applicable, the Storage Tank Removal (as defined below), including claims and damages from subsurface and groundwater conditions relating to any of the construction, maintenance, operation, and if applicable, the Storage Tank Removal. Such indemnity shall survive the termination or expiration of the Lease.

(g) At all times, Tenant shall cause the Storage Tanks, at Tenant's sole cost and expense, to be maintained and operated in accordance with all applicable Laws and all Legal Requirements, but not limited to, making any changes thereto as may be required from time to time by such applicable Laws, Legal Requirements, ordinances or other requirements. Tenant shall maintain complete and accurate records of all maintenance and all testing of the Storage Tanks, and each portion thereof, and make such records available upon ten (10) days' prior written notice to Landlord. Additionally, Tenant shall furnish Landlord with copies of all certification and inspection reports obtained by Tenant for any purpose in connection with the Storage Tanks, including but not limited to as required for insurance purposes, within thirty (30) days of Tenant's receipt of such certification and inspection reports

(h) Prior to the end of the Term (but not more than sixty (60) days prior thereto), Tenant shall furnish Landlord with an environmental report (which report shall be customary at the time it is furnished) reasonably acceptable to Landlord which report must indicate that the Storage Tanks are not leaking, or, if any leakage is detected, that areas in which the Storage Tanks are located are not contaminated above reportable levels by any leakage from the Storage Tanks and to the extent such report reveals that there are any Hazardous Substance in such areas, Tenant shall be solely responsible, at Tenant's sold cost and expense, for removing and remediating such areas in accordance with applicable Legal Requirements and in a manner reasonably acceptable to Landlord (including repairing any damage to the Leased Premises in connection with the Storage Tank Removal).

(i) All costs and expenses incurred by Landlord relating to the review, approval, monitoring or implementation and monitoring of the Storage Tanks shall be paid for by Tenant promptly upon demand, and in any event within ten (10) Business Days of written demand therefor.

10. Liens; Recording.

(a) Subject to the provisions of Section 9(b) hereof, Tenant shall not, directly or indirectly, create or permit to be created or to remain and shall promptly after notice thereof discharge or remove, any lien, levy or encumbrance on the Leased Premises or on any Rent or any other sums payable by Tenant under this Lease, other than the Permitted Encumbrances and any mortgage, lien, encumbrance or other charge created by or resulting solely from any act or omission of Landlord. In the event of attachment of a mechanic's lien or other lien for labor, services or materials furnished to Tenant or to anyone holding or occupying the Leased Premises through or under Tenant, Tenant shall immediately notify Landlord and Lender of such lien or other action of which Tenant has or reasonably should have knowledge and which affects title to the Leased Premises or any part thereof, and shall cause the same to be removed within twenty (20) days (or such additional time as Landlord and Lender may consent to in writing) of notice of such lien. If Tenant shall fail to remove such lien within said time period, Landlord or Lender may take such action as Landlord or Lender, as applicable, deem necessary to remove the same and the entire cost thereof shall be immediately due and payable by Tenant to Landlord or Lender, as applicable, and such amount shall bear interest at the Default Rate.

(b) Tenant shall execute, deliver and record, file or register all such instruments as may be required or permitted by any present or future Law in order to evidence the respective interests of Landlord and Tenant in the Leased Premises, and shall cause a memorandum of this Lease (or, if such a memorandum cannot be recorded, this Lease), and any supplement hereto or thereto, to be recorded in such manner and in such places as may be required or permitted by any present or future Law in order to protect the validity and priority of this Lease.

11. Maintenance and Repair.

(a) Tenant shall at all times maintain the Leased Premises and the Equipment in Good Condition and Repair and in compliance with all Legal Requirements. Tenant shall take every action reasonably necessary or appropriate for the preservation and safety of the Leased Premises. Tenant shall promptly make all Alterations of every kind and nature, whether foreseen or unforeseen, which may be required to comply with the foregoing requirements of this Section 11(a). Landlord shall not be required to make any Alteration, whether foreseen or unforeseen, or to maintain any of the Leased Premises. Tenant hereby expressly waives any right which may be provided for in any Law now or hereafter in effect to make Alterations at the expense of Landlord or, to require Landlord to make Alterations. Any Alteration made by Tenant pursuant to this Section 11 shall be made in conformity with the provisions of Section 12.

(b) If any Improvement hereafter constructed, shall (i) encroach upon any setback or any property, street or right-of-way adjoining the Leased Premises, (ii) violate the provisions of any restrictive covenant affecting the Leased Premises, (iii) hinder or obstruct any easement or right-of-way to which the Leased Premises is subject or (iv) impair the rights of others in, to or under any of the foregoing, Tenant shall, promptly after receiving notice thereof, either (A) obtain from all necessary parties waivers or settlements of all claims, liabilities and damages resulting from each such encroachment, violation, hindrance, obstruction or impairment, whether the same shall affect Landlord, Tenant or both, or (B) take such reasonable action as shall be necessary to remove all such encroachments, hindrances or obstructions and to end all such violations or impairments, including, if necessary, making Alterations. Tenant acknowledges and agrees that Landlord shall have no obligation to correct any of the foregoing conditions to the extent that any one or more of them exist prior to the Commencement Date and that Tenant shall continue to be bound by the terms of this Lease regardless of the existence of any such pre-existing conditions.

(c) Landlord and Tenant acknowledge that it is Tenant’s responsibility to keep the Leased Premises in Good Condition and Repair and in compliance with all Legal Requirements. Landlord shall not perform any repairs, modifications or improvements to the Leased Premises, unless (i) Tenant has failed to take the necessary actions to maintain the Leased Premises in Good Condition and Repair, after fifteen (15) days advance written notice from Landlord, or (ii) in Landlord’s reasonable judgment such actions are required on an emergency basis to protect life or property and Tenant is not responding to such emergency; provided, however, that under no circumstances shall Landlord be obligated to perform any repairs, modifications or improvements to the Leased Premises or keep the Leased Premises in Good Condition and Repair.

12. Alterations and Improvements.

(a) [Intentionally Omitted]

(b) Tenant shall have the right, without having obtained the prior written consent of Landlord and provided that no Event of Default then exists, (i) to make any improvements, alterations or modifications to the Leased Premises the cost of which is less than Two Hundred and Fifty Thousand Dollars ($250,000) (so long as such improvements do not

devalue the Leased Premises or increase Landlord's obligations or liability during or after the Term in any way), (ii) to make non-structural Alterations which are reasonably required or desirable for the operation of Tenant's business in the Leased Premises and which are not visible from the exterior of the Leased Premises, or (iii) to install or replace Equipment in the Improvements or accessions to the Equipment. If Tenant desires to make Alterations to the Leased Premises which are not covered by clauses (i), (ii) or (iii) above, the prior written approval of Landlord shall be required which shall not be unreasonably withheld, delayed or conditioned. Tenant shall not construct upon the Land any additional buildings without having first obtained the prior written consent of Landlord which shall not be unreasonably withheld, delayed or conditioned. Landlord and Tenant acknowledge that Tenant is in the business of providing telecommunications and collocation services to its customers. Over the Term of this Lease it is likely that, due to technological innovations, the nature of these services and/or the equipment or facilities required to perform these services in an optimal manner may change. Landlord acknowledges that any Alterations required to accommodate such changes in Tenant's business shall be deemed reasonable so long as they do not impair the value of the Leased Premises. An Alteration will not be deemed to impair the value of the Leased Premises, if the Alteration can be removed at the end of the Term, and the Leased Premises can be reasonably restored to their condition prior to such Alteration.

(c) If Tenant makes any Alterations pursuant to this Section 12 or as required by Sections 11 or 16 (such Alterations and actions being hereinafter collectively referred to as "Work"), then prior to commencing any Work, Tenant shall (i) submit to Landlord, for Landlord's written approval, where required, detailed plans and specifications therefor in form satisfactory to Landlord, (ii) if such Alterations require a filing with any Governmental Authority or require the consent of such authority, then such plans and specifications shall (A) be prepared and certified by a registered architect or licensed engineer, and (B) comply with all Laws to the extent necessary for such governmental filing or consent, (iii) at its expense, obtain all required permits, approvals and certificates, (iv) furnish to Landlord duplicate original policies or certificates of insurance evidencing worker's compensation coverage (covering all persons to be employed by Tenant, and all contractors and subcontractors supplying materials or performing work in connection with such Alterations) and comprehensive public liability (including property damage coverage) insurance, comprehensive form automobile liability insurance and Builder's Risk coverage (issued on a completed value basis) all in such form, with such companies, for such periods and in such amounts as Landlord may require, naming Landlord and its employees and agents as additional insureds. All Alterations shall be performed by Tenant at Tenant's sole cost and expense (A) in a good and workmanlike manner using materials of first class quality, (B) in compliance with all Laws, and (C) in accordance with the plans and specifications previously approved by Landlord. Tenant shall at its cost and expense obtain all approvals, consents and permits from every Governmental Authority having or claiming jurisdiction prior to, during and upon completion of such Alterations. If any such Work involves the replacement of Equipment or parts thereto installed on the Leased Premises, and except in instances where such Equipment is obsolete, all replacement Equipment or parts shall have a functional value and useful life equal to the functional value and useful life of the Equipment being replaced immediately prior to the occurrence of the event which required its replacement (assuming such replaced Equipment was then in the condition required by this

Lease). Tenant shall promptly reimburse Landlord, as Additional Rent and upon demand, for any and all costs and expenses incurred by Landlord in connection with Landlord's review of Tenant's plans and specifications for any such Alteration, not to exceed Fifteen Hundred Dollars ($1500).

(d) Landlord agrees to respond to any written request for approval of all Tenant's plans and specifications for any Alterations ("Tenant's Plans") within ten (10) Business Days after Tenant's request, provided Tenant's Plans comply in all material respects with the requirements of this Section 12. In addition, Landlord agrees to respond to any resubmission of Tenant's Plans within five (5) Business Days after written resubmission. If Landlord either fails to approve or disapprove any Tenant's Plans on or before the end of the applicable review period set forth herein, such Tenant's Plans or revisions thereto shall be deemed to be approved by Landlord. Tenant may at the time that any Tenant's Plans are submitted to Landlord also request that Landlord indicate whether or not the Alterations described in such Tenant's Plans will be required to be removed at the end of the Term or upon the earlier termination of this Lease. In the event that any Alterations or new equipment are in the category that do not require Landlord's consent for the construction or installation thereof, Tenant may remove such items at the end of the Term, at Tenant's election.

(e) Upon completion of any Alterations and any work pursuant to this Section 12, Tenant, at its expense, shall promptly obtain certificates of final approval of such Alterations as may be required by any Governmental Authority, and shall furnish Landlord with copies thereof, together with "as built" plans and specifications for such Alterations prepared on an Autocad Computer Assisted Drafting and Design System (or such other system or medium as Landlord may accept).

(f) Tenant shall not be required to remove the following at the end of the Term or earlier termination of this Lease: (i) Alterations which Landlord has previously agreed to in writing or which otherwise are permitted under the terms of the Lease, and (ii) Alterations which are substantially consistent in form or function to the Improvements existing as of the Rent Commencement Date. Notwithstanding anything to the contrary, Tenant shall not be permitted to remove any improvements and equipment existing on the Leased Premises as of the Rent Commencement Date or any new improvements or equipment added subsequent to the date hereof which are necessary for the operation of the Leased Premises (except to the extent replaced or removed prior to the expiration of the Term or earlier termination of this Lease in accordance with the provisions hereof) and all Alterations remaining on the Leased Premises at the end of the Term of this Lease shall become the property of Landlord at such time.

13. Approved Alterations. Subject to the provisions of this Lease, Tenant may install, at its sole cost, risk and expense: (i) satellite dishes and communications equipment on the roof of the Improvements and on the Land in an amount and of a type reasonably required for the conduct of Tenant's business on the Leased Premises, (ii) on the Land or Improvements such additional generators, storage tanks, HVAC equipment, electrical or telecommunications switching equipment or similar equipment of a type reasonably required for the conduct of Tenant's business on the Leased Premises, and (iii) on the Land and with access to the Improvements, such additional fiber or other communications lines as may be reasonably

required for the conduct of Tenant's business on the Leased Premises. All work done in connection with the items described in clauses (i), (ii) and (iii) above shall be deemed Alterations and shall be subject Sections 12(b)-12(e) above but shall not require any prior consent from the Landlord.

14. Indemnification.

(a) Tenant shall pay, protect, indemnify, defend, save and hold harmless Landlord and all other Persons described in Section 29 (each an "Indemnitee") from and against any and all liabilities, losses, damages (including punitive damages), penalties, Costs (including reasonable attorneys' fees and costs), causes of action, suits, claims, demands or judgments of any nature whatsoever arising from (i) any matter pertaining to the ownership, leasing, use, non-use, occupancy, operation, management, condition, design, construction, maintenance, repair or restoration of the Leased Premises and Tenant's business operations thereon, (ii) any casualty in any manner arising from the Leased Premises, whether or not Indemnitee has or should have knowledge or notice of any defect or condition causing or contributing to said casualty, (iii) any violation by Tenant of any provision of this Lease, any contract or agreement to which Tenant is a party, any Legal Requirement or any Permitted Encumbrance, or (iv) any alleged, threatened or actual Environmental Violation, including, with out limitation, (A) liability for response costs and for costs of removal and remedial action incurred by the United States Government, any state or local governmental unit or any other Person, or damages from injury to or destruction or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss, incurred pursuant to Section 107 of CERCLA, or any successor section or act or provision of any similar state or local Law, (B) liability for costs and expenses of abatement, correction or clean-up, fines, damages, response costs or penalties which arise from the provisions of any of the other Environmental Laws and (C) liability for personal injury or property damage arising under any statutory or common-law tort theory, including damages assessed for the maintenance of a public or private nuisance or for carrying on of a dangerous activity. Notwithstanding the foregoing, the indemnification contained in this Section 14(a) shall not cover any of the foregoing that result from the gross negligence or willful misconduct of Landlord or the breach by Landlord of any provision of this Lease.

(b) In case any action or proceeding is brought against any Indemnitee by reason of any such claim, (i) such Indemnitee shall notify Tenant to resist or defend such action or proceeding by retaining counsel reasonably satisfactory to such Indemnitee, and such Indemnitee will cooperate, at no cost to such Indemnitee, and assist in the defense of such action or proceeding if reasonably requested to do so by Tenant, and (ii) Tenant may, except in the event of a conflict of interest or a bona fide dispute between Tenant and any such Indemnitee or during the continuance of an Event of Default, retain its own counsel and defend such action (it being understood that Landlord may employ counsel of its choice to monitor the defense of any such action, the reasonable cost of which shall be paid by Tenant in the event of a conflict of interest, a bona fide dispute between Landlord and Tenant or during the continuance of an Event of Default). In the event of a conflict of interest or dispute or during the continuance of an Event of Default or Tenant's request that Landlord handle its own defense, Landlord shall have the right to select counsel, and the cost of such counsel shall be paid by

Tenant. Notwithstanding the foregoing, Tenant shall not enter into any settlement which would affect Landlord or the Leased Premises without Landlord's prior written consent which may be withheld in its sole and absolute discretion.

(c) The obligations of Tenant under this Section 14 shall survive any termination, expiration or rejection in bankruptcy of this Lease with respect to matters that occurred or existed prior to such termination, expiration or rejection.

15. Insurance.

(a) Tenant shall maintain the following insurance on or in connection with the Leased Premises:

(i) Insurance against physical loss or damage to the Improvements and Equipment as provided under a standard "All Risk" or "Special Perils" property policy including, but not limited to, flood (to the extent that the Leased Premises is in a flood zone) for 100% of the replacement value of the Improvements and Equipment. Such policies shall contain Replacement Cost and Agreed Amount Endorsements (waiving co-insurance penalties), Building Ordinance or Law coverage, a standard mortgagee clause acceptable to Lender and shall contain deductibles not more than $100,000 per occurrence.

(ii) Commercial General Liability Insurance and Business Automobile Liability Insurance (including Non-Owned and Hired Automobile Liability) against claims for personal and bodily injury, death or property damage occurring on, in or as a result of the use of the Leased Premises or any adjoining streets, sidewalks, and passageways, in an amount not less than $1,000,000 per occurrence and $2,000,000 annual aggregate and all other coverage extensions that are usual and customary for properties of this size and type provided, however, that the Landlord shall have the right to require such higher limits as may be commercially reasonable and customary for properties of this size, type and location.

(iii) Worker's compensation insurance covering all persons employed by Tenant in connection with any work done on or about the Leased Premises for which claims for death, disease or bodily injury may be asserted against Landlord, Tenant or the Leased Premises or, in lieu of such Workers' Compensation Insurance, a program of self-insurance complying with the rules, regulations and requirements of the appropriate agency of the State or States in which the Leased Premises are located.

(iv) Comprehensive Boiler and Machinery Insurance on any of the Equipment or any other equipment on or in the Leased Premises in an amount not less than $4,000,000 per accident for damage to property. Either such Boiler and Machinery policy or the All-Risk policy required in (i) above shall include at least $1,000,000 per incidence for Off-Premises Service Interruption, Expediting Expenses, and Hazardous Materials Clean-up Expense and may contain a deductible not to exceed $100,000.

(v) Business Interruption coverage on an "actual loss sustained" basis over the period of indemnity (such coverage shall be available for up to a period

of at least twelve (12) months). Such insurance shall name Landlord as loss payee solely with respect to Basic Rent payable to or for the benefit of the Landlord under this Lease. The perils covered by this policy shall be the same as those accepted on the Leased Premises including flood, earthquake and earth movement.

(vi) During any period in which any Alterations at the Leased Premises are being undertaken, Tenant will obtain commercial general liability insurance including contractual liability, in the amount of $1,000,000 primary and $10,000,000 excess liability in the aggregate (the policy shall provide coverage on an occurrence basis against claims for personal injury, bodily injury and death or property damage occurring on, in or about the Leased Premises and the adjoining streets, sidewalks and passageways. In addition, Tenant shall require all contractors and subcontractors, architects and engineers to provide appropriate insurance coverage), including Builder's risk insurance on a completed value basis protecting against "all risks" of physical loss, including collapse during construction, water damage, flood, earthquake and transit coverage (coverage should be on a non-reporting form, covering the total value of work performed and equipment, supplies and materials furnished (with an appropriate limit for soft costs in the case of construction) with deductibles approved by Landlord). The builder's risk insurance shall not contain a permission to occupy limitation. Borrower agrees to consult with Landlord prior to commencing the construction of any Improvements and to comply with all reasonable special insurance requirements of Lender pertaining to any construction or Alteration.

(vii) If not covered by the policy required in Section 15(a)(i) above, insurance coverage for terrorism and terrorist acts, in form and content and with coverages acceptable to Landlord in its sole discretion. Landlord and Tenant acknowledge that Tenant shall not be required to carry the insurance coverage described in Sections 15(a)(vii) and (viii) if such insurance cannot be obtained at commercially reasonable rates and is not customarily carried by institutional owners or tenants of facilities similar to the Leased Premises.

(viii) Umbrella excess liability insurance for not less than $10,000,000 per occurrence, subject to an aggregate cap of not less than $10,000,000.

(ix) In connection with the Initial Storage Tanks installed/to be installed on the Leased Premises in accordance with Section 9 of this Lease, Tenant shall, at all times during the Term of this Lease, obtain and keep in force or reimburse Lender for the cost of Storage Tank Pollution Liability Insurance in the amount of $1,000,000 per claim and $2,000,000 in the aggregate. For each Additional Storage Tank installed, the Tenant shall increase the aggregate limit by $500,000.

(x) Law and Ordinance coverage in form and substance reasonably satisfactory to Landlord.

(xi) Such other insurance (or other terms with respect to any insurance required pursuant to this Section 15, including, without limitation, amounts of coverage, deductibles, form of mortgagee clause) on or in connection with the Leased Premises as Landlord may reasonably require, which at the time is usual and commonly obtained in connection with properties similar in type of building size, use and location to the Leased Premises.

(b) The insurance required by Section 15(a) shall be written by companies which have a Best's rating of A with a financial size of Class IX or above or a comparable claims paying ability assigned by Standard & Poor's Corporation or equivalent rating agency approved by Landlord and are admitted in, and approved to write insurance policies by, the State Insurance Department for the state in which the Leased Premises are located. The insurance policies (i) shall be for such terms as Landlord may reasonably approve, (ii) shall be primary and without right of contribution of any other insurance carried by or on behalf of Landlord (if any), and (iii) shall be in amounts sufficient at all times to satisfy any coinsurance requirements thereof. The insurance referred to in Sections 15(a)(i), 15(a)(iv), 15(a)(v), 15(a)(vi) 15(a)(vii), 15(viii) and 15(a)(x) shall name Landlord as Owner, Landlord and Lender as loss payee as its interest may appear. The insurance referred to in Sections 15(a)(ii) and 15(a)(viii) shall name Landlord as an additional insured. Any obligation imposed upon the insureds shall be the sole obligation of Tenant and not of any other insured. If said insurance or any part thereof shall expire, be withdrawn, become void, voidable, unreliable or unsafe for any reason, including a breach of any condition thereof by Tenant or the failure or impairment of the capital of any insurer, or if for any other reason whatsoever said insurance shall become reasonably unsatisfactory to Landlord, Tenant shall within thirty (30) days prior to the expiration date of the policy or following written notice from Landlord obtain new or additional insurance reasonably satisfactory to Landlord. In addition, Tenant hereby grants to the Lender the same rights as Landlord under this Section 15 and Section 16. In addition to the foregoing, if required by Lender, the insurance referred to in Sections 15(a)(ii) and 15(a)(viii) shall also name the Lender as an additional insured under such policies.

(c) Each policy required by any provision of Section 15(a), except clause (iii) thereof, shall provide that it may not be cancelled on any renewal date except after thirty (30) days' prior notice to Landlord. Each such policy shall also provide that any loss otherwise payable thereunder shall be payable notwithstanding any change in title to or ownership of the Leased Premises and, to the extent available, shall provide that any loss otherwise payable thereunder shall be payable notwithstanding (i) any act or omission of Landlord or Tenant which might, absent such provision, result in a forfeiture of all or a part of such insurance payment, and (ii) the occupation or use of the Leased Premises for purposes more hazardous than those permitted by the provisions of such policy.

(d) Tenant shall pay as they become due all premiums for the insurance required by Section 15(a), shall renew or replace each policy and upon written request deliver to Landlord evidence of timely payment of the full premium therefor or installment then due and shall promptly deliver to Landlord all original certificates of insurance.

(e) Anything in this Section 15 to the contrary notwithstanding, any insurance which Tenant is required to obtain pursuant to Section 15(a) may be carried under a "blanket" or umbrella policy or policies covering other properties or liabilities of Tenant, provided that such "blanket" or umbrella policy or policies otherwise comply with the provisions of this Section 15 and provided further that Tenant shall provide to Landlord a Statement of Values which shall be reviewed annually and amended as necessary based on Replacement Cost Valuations. Upon written request, a certified copy of each such "blanket" or umbrella policy shall promptly be delivered to Landlord.

(f) Tenant shall have the replacement cost and insurable value of the Improvements and Equipment determined from time to time as required by the replacement cost and agreed amount endorsements and shall deliver to Landlord the new replacement cost and agreed amount endorsement or certificate evidencing such endorsement promptly upon Tenant's receipt thereof.

(g) Tenant shall promptly comply with and conform to (i) all provisions of each insurance policy required by this Section 15 and (ii) all requirements of the insurers thereunder applicable to Landlord, Tenant or the Leased Premises or to the use, manner of use, occupancy, possession, operation, maintenance, alteration or repair of the Leased Premises, even if such compliance necessitates Alterations or results in interference with the use or enjoyment of the Leased Premises.

(h) Tenant shall not carry separate insurance concurrent in form or contributing in the event of a Casualty with that required in this Section 15 unless (i) Landlord are included therein as named insureds, with loss payable as provided herein, and (ii) such separate insurance complies with the other provisions of this Section 15. Tenant shall immediately notify Landlord of such separate insurance and shall deliver to Landlord the certified copies of such certificates of insurance evidencing such coverage.

(i) All policies shall contain effective waivers by the carrier against all claims for insurance premiums against Landlord and shall contain full waivers of subrogation against the Landlord.

(j) All proceeds of any insurance required under Section 15(a) shall be payable as follows:

(i) Proceeds payable under clauses (ii), (iii) and (iv) of Section 15(a) and proceeds attributable to the general liability coverage of Builder's Risk insurance under clause (vi) of Section 15(a) shall be payable to the Person entitled to receive such proceeds.

(ii) Proceeds of insurance required under clause (i) and (vii) - (x) of Section 15(a) and proceeds attributable to Builder's Risk insurance (other than its general liability coverage provisions) under clause (vi) of Section 15(a) shall be payable to Landlord and applied as set forth in Section 17 or, if applicable, Section 18. Tenant shall apply the Net Award to restoration of the Leased Premises in accordance with the applicable provisions of this Lease unless a Termination Event shall have occurred and Tenant has given a Termination Notice in which case the Landlord shall be entitled to keep the Net Award.

(iii) Proceeds of insurance required under clause (v) of Section 15(a) shall be payable to Landlord, and any amounts so received shall be applied against Basic Rent as the same shall become due and owing.

16. Casualty and Condemnation.

(a) If any Casualty to the Leased Premises occurs the insurance proceeds for which are reasonably estimated by Tenant to be equal to or in excess of One Million Dollars ($1,000,000), Tenant shall give Landlord prompt notice thereof. So long as no Event of Default exists, Tenant is hereby authorized to adjust, collect and compromise all claims under any of the insurance policies required by Section 15(a) (except public liability insurance claims payable to a Person other than Tenant, or Landlord) and to execute and deliver on behalf of Landlord all necessary proofs of loss, receipts, vouchers and releases required by the insurers and Landlord shall have the right to join with Tenant therein. Notwithstanding the foregoing, any final adjustment, settlement or compromise of any such claim that is in excess of One Million Dollars ($1,000,000) shall be subject to the prior written approval of Landlord. If an Event of Default exists, Tenant shall not be entitled to adjust, collect or compromise any such claim or to participate with Landlord in any adjustment, collection and compromise of the Net Award payable in connection with a Casualty. Tenant agrees to sign, upon the request of Landlord, all such proofs of loss, receipts, vouchers and releases. Each insurer is hereby authorized and directed to make payment under said policies, excluding return of unearned premiums, directly to Landlord and Tenant jointly, and Tenant hereby appoints Landlord as Tenant's attorney-in-fact to endorse any draft therefor.

(b) Tenant, promptly upon receiving a Condemnation Notice, shall notify Landlord thereof. Landlord shall be authorized to collect, settle and compromise the amount of any Net Award and, provided that so long as an Event of Default does not exist, Tenant shall be entitled to participate with Landlord in any Condemnation proceeding or negotiations under threat thereof or to contest the Condemnation or the amount of the Net Award therefor. Subject to the provisions of this Section 16(b), Tenant hereby irrevocably assigns to Landlord any award or payment to which Tenant is or may be entitled by reason of any Condemnation, whether the same shall be paid or payable for Tenant's leasehold interest hereunder or otherwise; but nothing in this Lease shall impair Tenant's right to any award or payment on account of Tenant's trade fixtures, equipment or other tangible property which is not part of the Equipment, moving expenses or loss of business, if available, to the extent that and so long as (i) Tenant shall have the right to make, and does make, a separate claim therefor against the condemnor and (ii) such claim does not in any way reduce either the amount of the award otherwise payable to Landlord for the Condemnation of Landlord's fee interest in the Leased Premises or the amount of the award (if any) otherwise payable for the Condemnation of Tenant's leasehold interest hereunder.

(c) If any Partial Casualty (whether or not insured against) or Partial Condemnation shall occur to the Leased Premises, this Lease shall continue, notwithstanding such event, and the Basic Rent payable hereunder shall be appropriately adjusted to reflect any reduction in the net rentable area of the Improvements that is unavailable for Tenant's use and occupancy if the lost use of such space adversely affects Tenant's ability to operate its business

in a material manner, as a result of such Partial Casualty or Partial Condemnation, but only to the extent Landlord receives the insurance proceeds under Section 15(a)(v) to cover the lost Basic Rent and if any such insurance proceeds relating to lost Basic Rent (or lost profits but only to the extent of Basic Rent due and payable) are paid to Tenant, Tenant shall pay such sums to Landlord, and only for so long as Tenant's use and occupancy is adversely affected. Except as provided in the preceding sentence, Tenant's Basic Rent shall not abate or be reduced during Tenant's restoration of the Improvements. Promptly after such Partial Casualty or Partial Condemnation, Tenant, as required in Section 11(a), shall commence and diligently continue to restore the Leased Premises as nearly as possible to their value, condition and character immediately prior to such event (assuming the Leased Premises to have been in the condition required by this Lease), and so long as no Event of Default exists, any Net Award up to and including One Million Dollars ($1,000,000) shall be paid by Landlord directly to Tenant for the purpose of paying the cost of such restoration, provided, that Tenant shall pay Landlord the amount of any shortfall to the extent the Net Award is insufficient to cover the cost of the restoration or Tenant shall provide Landlord with adequate security to secure the payment of such shortfall as and when required by Landlord. Any Net Award in excess of One Million Dollars ($1,000,000) shall (unless such Casualty and Condemnation resulting in the Net Award is a Termination Event) be made available by Landlord to Tenant for the restoration of the Leased Premises pursuant to and in accordance with and subject to the provisions of Section 18(b) hereof.

17. Termination Events.

(a) If (i) all of the Leased Premises shall be taken by a Taking, (ii) all of the Leased Premises shall be substantially damaged or destroyed by a Casualty, (iii) any portion of the Leased Premises shall be taken by a Taking and the remaining portion of the Leased Premises is unsuitable or uneconomical for the continuation of Tenant's business therein, or (iv) any portion of the Leased Premises is destroyed or damaged by a Casualty and the estimated time to repair or replace the Leased Premises is in excess of one (1) year, as reasonably estimated by Landlord, or under applicable law the Leased Premises cannot be rebuilt to a condition that is suitable and economical for the operation of Tenant's business therein (each of the events described in the above clauses (i), (ii), (iii) and (iv) shall hereinafter be referred to as a "Termination Event"), then Tenant shall have the option, within thirty (30) days after Tenant receives a Condemnation Notice, or within thirty (30) days after the Casualty, as the case may be, to give to Landlord written notice (a "Termination Notice") in the form described in Section 17(b) of the Tenant's election to terminate this Lease.

(b) A Termination Notice shall contain notice of Tenant's intention to terminate this Lease on the first Basic Rent Payment Date occurring after the date of such Termination Notice.

18. Restoration.

(a) In the event that the Lease is not terminated as a result of any Condemnation or Casualty as provided in Section 17 above, Landlord shall hold any Net Award

in excess of One Million Dollars ($1,000,000) in a fund (the "Restoration Fund") and disburse amounts from the Restoration Fund only in accordance with the following conditions:

(i) prior to commencement of restoration, (A) the architects, contracts, contractors, plans and specifications for the restoration shall have been approved by Landlord, which approval shall not be unreasonably withheld, delayed or conditioned, and (B) if requested by Landlord, Landlord shall be provided with acceptable performance and payment bonds which insure completion of and payment for the restoration, are in an amount and form and have a surety acceptable to Landlord, and name Landlord as additional dual obligees;

(ii) at the time of any disbursement, no Event of Default shall exist and no mechanics' or materialmen's liens shall have been filed against the Leased Premises and remain undischarged, subject to Tenant's rights under Section 14 hereof;

(iii) disbursements shall be made monthly in an amount not exceeding the cost of the work completed since the last disbursement, upon receipt of (A) satisfactory evidence, including architects' certificates, of the stage of completion, the estimated total cost of completion and performance of the work to date in a good and workmanlike manner in accordance with the contracts, plans and specifications, (B) waivers of liens, (C) contractors' and subcontractors' sworn statements as to completed work and the cost thereof for which payment is requested and (D) a satisfactory bring-down of title insurance;

(iv) each request for disbursement shall be accompanied by a certificate of Tenant, signed by an officer of Tenant, describing the work for which payment is requested, stating the cost incurred in connection therewith, stating that Tenant has not previously received payment for such work and, upon completion of the work, also stating that the work has been fully completed and complies with the applicable requirements of this Lease;

(v) Landlord may retain ten percent (10%) of the Restoration Fund until the restoration is fully completed;

(vi) the Restoration Fund shall not be commingled with Landlord's other funds and shall bear interest at a rate agreed to by Landlord and Tenant;

(vii) such other customary reasonable conditions as Landlord may reasonably impose.

(b) Prior to commencement of restoration and at any time during restoration, if the estimated cost of completing the restoration work free and clear of all liens, as reasonably determined by Landlord, exceeds the amount of the Net Award available for such restoration, the amount of such excess shall, within ten (10) days following written request by Landlord, be paid by Tenant to Landlord to be added to the Restoration Fund or Tenant shall provide Landlord with reasonable adequate security to secure the payment of such excess as and when required. Any sum so added by Tenant which remains in the Restoration Fund upon completion of restoration shall be refunded to Tenant. For purposes of determining the source of funds with respect to the disposition of funds remaining after the completion of restoration, the Net Award shall be deemed to be disbursed prior to any amount added by Tenant.

(c) If any sum remains in the Restoration Fund after completion of the restoration and any refund to Tenant pursuant to Section 18(b), such sum shall be retained by Landlord.

19. Assignment and Subletting.

(a) Tenant shall have the right, upon fifteen (15) days prior written notice to Landlord, with no consent of Landlord being required or necessary ("Preapproved Assignment"), to assign this Lease by operation of law or otherwise to any of the following Persons (each a "Preapproved Assignee"): (i) an affiliate, subsidiary, or parent of Equinix or a corporation, partnership or other legal entity wholly owned by Equinix (collectively, an "Affiliated Party"), or (ii) a successor to Tenant by acquisition or merger, or by a consolidation or reorganization, or by any Transfer (as defined in the Loan Agreement) or series of Transfers resulting in any Person acquiring, directly or indirectly, more than a forty-nine percent (49%) ownership interest in Tenant (if such Person did not, prior to such Transfers, own at least forty-nine percent (49%) of the ownership interests of Tenant, pursuant to which Tenant ceases to exist as a legal entity (each such party a "Successor Party"); provided, however, that as a condition precedent to such Preapproved Assignment, such Preapproved Assignee shall either (x) satisfy the Investment Grade Criteria or the Financial Strength Criteria on the date of such Preapproved Assignment or (y) provide or cause to be provided to Landlord a guaranty in form and substance reasonably acceptable to Landlord and approved by Lender in writing from an entity that satisfies the Investment Grade Criteria or the Financial Strength Criteria on the date of such Preapproved Assignment.

(b) If Tenant desires to assign this Lease, whether by operation of law or otherwise, to a Person ("Non-Preapproved Assignee") who would not be a Preapproved Assignee ("Non-Preapproved Assignment") then Tenant shall, not less than twenty (20) days prior to the date on which it desires to make a Non-Preapproved Assignment submit to Landlord and Lender information regarding the following with respect to the Non-Preapproved Assignee (collectively the "Review Criteria"): (A) credit, (B) capital structure, (C) management, (D) operating history, (E) proposed use of the Leased Premises, (F) compliance with all OFAC and Patriot Act requirements, and (G) the name and financial information of the proposed replacement guarantor, if any. Landlord and Lender shall review such information and shall approve or disapprove the Non-Preapproved Assignee and replacement guarantor, if any (which approval shall not be unreasonably withheld) no later than the thirtieth (30th) day following receipt of all such information, and Landlord and Lender shall be deemed to have acted reasonably in granting or withholding consent if such grant or disapproval is based solely on their review of the Review Criteria applying prudent business judgment. Tenant acknowledges that the ability of Landlord to give its consent will be subject to Landlord receiving the consent of Lender and any such assignment shall be null and void without Lender's consent.

(c) [Intentionally Omitted]

(d) Tenant shall have the right, without the consent of Landlord to enter into subleases, licenses or similar agreements (collectively a ‘Customer Agreement”) with its Customers, consistent with the custom and practice of the telecommunications industry, to “co-locate” such Customers’ telecommunications equipment within the Leased Premises or to otherwise occupy a portion of the Leased Premises and to allow such Customer to avail themselves of the services provided by Tenant from the Leased Premises consistent with the permitted uses of the Leased Premises.

(e) Except to the extent otherwise prohibited by law, any Customer Agreement shall at all times be subject and subordinate in all respects to all of the terms of this Lease and the lien of the SFT I Mortgage or any other Mortgage, and (A) no Customer Agreement shall in any way discharge or diminish any of the obligations of Tenant to Landlord under this Lease and Tenant shall remain directly and primarily liable under this Lease; (B) each Customer Agreement shall prohibit the Customer from engaging in any activities on the Leased Premises that are not consistent with those permitted under this Lease; and (C) each Customer Agreement shall have a term which expires on or prior to the Expiration Date, but shall be subject to earlier termination if this Lease is terminated before the Expiration Date.

(f) At the request of Tenant, Landlord, in its sole discretion, may enter into a non-disturbance and attornment agreement, in form and substance reasonably acceptable to Landlord, with respect to any Customer Agreement for the occupancy, use or lease of more than ten percent (10%) of the Leased Premises.

(g) If Tenant assigns all its rights and interest under this Lease as permitted under Section 19(a), the assignee under such assignment shall expressly assume all the obligations of Tenant hereunder, actual or contingent, including obligations of Tenant which may have arisen on or prior to the date of such assignment, by a written instrument delivered to Landlord at the time of such assignment. Except for any Preapproved Assignment (in which case such Tenant shall be released from its obligations under this Lease and only the successor Tenant shall continue to be liable), no assignment or sublease made as permitted by this Section 21 shall affect or reduce any of the obligations of Tenant hereunder, and all such obligations shall continue in full force and effect as obligations of a principal and not as obligations of a guarantor, as if no assignment or sublease had been made. No assignment or sublease shall impose any additional obligations on Landlord under this Lease.

(h) With respect to any Preapproved Assignment, Tenant shall provide to Landlord and Lender information reasonably required by Landlord or Lender to establish that any proposed Preapproved Assignment satisfies the criteria set forth above.

(i) Tenant shall, within ten (10) business days after the execution and delivery of any Preapproved Assignment, deliver a duplicate original copy thereof to Landlord and if requested by Lender, to Lender.

(j) Subject to the prior approval of Lender, Landlord may sell or transfer the Leased Premises at any time without Tenant’s consent to any third party subject to the rights of Tenant under this Lease and an assumption of the obligations of Landlord hereunder

by the purchaser or other transferee (each a "Third Party Purchaser"). In the event of any such transfer, Tenant shall attorn to any Third Party Purchaser as Landlord so long as such Third Party Purchaser and Landlord notify Tenant in writing of such transfer. At the request of Landlord, Tenant will execute such documents confirming the agreement referred to above and such other agreements as Landlord may reasonably request in form and substance reasonably acceptable to Tenant, provided that such agreements do not increase the liabilities and obligations of Tenant hereunder.

20. Events of Default.

(a) The occurrence of any one or more of the following (after expiration of any applicable cure period as provided in Section 20(b)) shall, at the sole option of Landlord, constitute an "Event of Default" under this Lease:

(i) a failure by Tenant to make any payment of any Monetary Obligation as and when due;

(ii) a failure by Tenant duly to perform and observe, or a violation or breach of, any other provision hereof not otherwise specifically mentioned in this Section 20(a);

(iii) Tenant shall (A) voluntarily be adjudicated a bankrupt or insolvent, (B) seek or consent to the appointment of a receiver or trustee for itself, (C) file a petition seeking relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, (D) make a general assignment for the benefit of creditors, or (E) be unable to pay its debts as they mature;

(iv) a court shall enter an order, judgment or decree appointing, without the consent of Tenant, a receiver or trustee for it or approving a petition filed against Tenant which seeks relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, and such order, judgment or decree shall remain undischarged or unstayed sixty (60) days after it is entered;

(v) the Leased Premises shall have been vacated, provided it shall not be an Event of Default if the Leased Premises is vacant so long as Tenant is diligently pursuing a subtenant or assignee for the Leased Premises;

(vi) Tenant shall be liquidated or dissolved or shall begin proceedings towards its liquidation or dissolution; or

(vii) the estate or interest of Tenant in the Leased Premises shall be levied upon or attached in any proceeding and such estate or interest is about to be sold or transferred or such process shall not be vacated or discharged within ninety (90) days after it is made.

(b) No notice or cure period shall be required in any one or more of the following events: (A) the occurrence of an Event of Default under clause (i) (except as otherwise set forth below), (iii) (iv), (vi), or (vii) of Section 20(a); or (B) the default consists of a failure to provide any insurance required by Section 15 or an assignment or sublease entered into in violation of Section 19. If the default consists of the failure to pay Basic Rent, the applicable cure period shall be five (5) days from the date on which notice is given, but Landlord shall not be obligated to give notice of, or allow any cure period for, any such default more than one (1) time within any Lease Year. Any other Monetary Obligation, the applicable cure period shall be five (5) days from the date on which notice is given, but Landlord shall not be obligated to give notice of, or allow a cure period for, the same default more than one (1) time within any Lease Year. If the default consists of a default under clause (ii) of Section 20(a) (and is reasonably capable of cure), the applicable cure period shall be thirty (30) days from the date on which notice is given or, if the default cannot be cured within such thirty (30) day period and delay in the exercise of a remedy would not (in Landlord's reasonable judgment) cause any material adverse harm to Landlord or the Leased Premises, the cure period shall be extended for the period required to cure the default, provided that Tenant shall commence to cure the default within the said thirty-day period and shall actively, diligently and in good faith proceed with and continue the curing of the default until it shall be fully cured.

21. Remedies and Damages Upon Default.

(a) If an Event of Default shall have occurred and is continuing, Landlord shall have the right, at its sole option, then or at any time thereafter, to exercise its remedies and to collect damages from Tenant in accordance with this Section 21, subject in all events to applicable Law, without demand upon or notice to Tenant except as otherwise provided in Section 20(b) and this Section 21.

(i) Landlord may give Tenant notice of Landlord's intention to terminate this Lease on a date specified in such notice. Upon such date, this Lease, the estate hereby granted and all rights of Tenant hereunder shall expire and terminate. Upon such termination, Tenant shall immediately surrender and deliver possession of the Leased Premises to Landlord in accordance with Section 24. If Tenant does not so surrender and deliver possession of all of the Leased Premises, Landlord may re-enter and repossess the Leased Premises not surrendered pursuant to applicable legal process, by summary proceedings, ejectment or any other lawful means or procedure. Upon or at any time after taking possession of the Leased Premises, Landlord may, by legal process, remove any Persons or property therefrom. Landlord shall be under no liability for or by reason of any such entry, repossession or removal. Notwithstanding such entry or repossession, Landlord may exercise the remedies set forth in and collect the damages described in this Section 21.

(ii) After repossession of the Leased Premises pursuant to clause (i) above, Landlord shall have the right to relet the Leased Premises to such tenant or tenants, for such term or terms, for such rent, on such conditions and for such uses as Landlord may reasonably determine, and collect and receive any rents payable by reason of such reletting. Landlord may make such Alterations in connection with such reletting as it may deem advisable in its sole reasonable discretion. Notwithstanding any such reletting, Landlord may collect the

damages described in this Section 21. Tenant shall reimburse Landlord for the costs and expenses of reletting any portion of the Leased Premises, including, but not limited to, all brokerage, advertising, legal, alteration, redecorating, repairing and other expenses reasonably incurred to secure a new tenant for the Leased Premises or portion thereof. In addition, if the consideration collected by Landlord upon any such reletting, after payment of the expenses of reletting the Leased Premises which have not been reimbursed by Tenant, is insufficient to pay monthly the full amount of the Rent, Tenant shall pay to Landlord the amount of each monthly deficiency as it becomes due. If such consideration is greater than the amount necessary to pay the full amount of the Rent, the full amount of such excess shall be retained by Landlord and shall in no event be payable to Tenant.

(iii) [Intentionally Omitted].

(b) If Landlord elects to terminate Tenant's right to possession or, subject to applicable law, terminate this Lease upon the occurrence of an Event of Default, Landlord may (i) collect and recover from Tenant and Tenant shall pay Landlord, on demand, as and for liquidated and final damages, an accelerated lump sum amount equal to the amount by which Landlord's estimate of the aggregate amount of Rent owing, from the date of such termination through the Expiration Date plus the aggregate of Landlord's actual and estimated expenses of reletting the Leased Premises, exceeds the fair market rental value of the Leased Premises for the same period (after deducting from such fair market rental value the time needed to relet the Leased Premises and the amount of concessions which would normally be given to a new tenant) both discounted to present value at the rate equal to the then applicable discount rate of the Federal Reserve Bank of New York plus one percent (1%) and (ii) notwithstanding anything to the contrary contained herein, in its sole discretion, require removal of (A) any Additional Storage Tanks installed in the Leased Premises pursuant to Section 9(e) in accordance with all then applicable Legal Requirements, approvals, regulations and ordinances applicable thereto and Tenant shall cause such area of the Leased Premises to be fully restored with appropriate closure letters from the applicable governmental authorities (the "Storage Tank Removal"); and (B) except as expressly set forth in Section 12(f), all, or a portion of (as specified in such request), Alterations made during the Term of this Lease and require Tenant to restore the Leased Premises to their condition as of the Rent Commencement Date (its being understood that as of the Rent Commencement Date the Leased Premises will be a fully functioning IBX collocation facility).

(c) Notwithstanding anything to the contrary herein contained, in lieu of or in addition to any of the foregoing remedies and damages, Landlord may exercise any remedies and collect any damages available to it at law or in equity. If Landlord is unable to obtain full satisfaction pursuant to the exercise of any remedy, it may pursue any other remedy which it has hereunder at law or in equity.

(d) Landlord shall not be required to mitigate any of its damages hereunder unless required to by applicable Law. If any Law shall validly limit the amount of any damages provided for herein to an amount which is less than the amount agreed to herein, Landlord shall be entitled to the maximum amount available under such Law.

(e) No termination of this Lease, repossession or reletting of the Leased Premises, exercise of any remedy or collection of any damages pursuant to this Section 21 shall relieve Tenant of any Surviving Obligations.

(f) Upon the occurrence of any Event of Default, Landlord shall have the right (but no obligation) to perform any act required of Tenant hereunder at Tenant's sole cost and expense and, if performance of such act requires that Landlord enter the Leased Premises, Landlord may enter the Leased Premises for such purpose during normal business hours upon reasonable prior written notice to Tenant (except in the event of an emergency). Furthermore, upon the occurrence of any Event of Default, Landlord shall have the right (but not the obligation) at Tenant's sole cost and expense and without abatement of rent, to make any payment owed by Tenant to any party other than Landlord for which Tenant is liable under this Lease. Landlord's election to make any such payment or perform any such act on Tenant's part shall not give rise to any responsibility of Landlord to continue making the same or similar payments or performing the same or similar acts. Tenant agrees to reimburse Landlord upon demand for all sums so paid by Landlord and all necessary incidental costs, together with interest thereon at the Default Rate, from the date of such payment by Landlord until reimbursed by Tenant.

(g) No failure of Landlord (i) to insist at any time upon the strict performance of any provision of this Lease or (ii) to exercise any option, right, power or remedy contained in this Lease shall be construed as a waiver, modification or relinquishment thereof. A receipt by Landlord of any sum in satisfaction of any Monetary Obligation with knowledge of the breach of any provision hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision hereof shall be deemed to have been made unless expressed in a writing signed by Landlord.

(h) Landlord may also seek specific performance by Tenant in the case of breach by Tenant of one or more of its covenants contained in this Lease.

(i) All remedies are cumulative and concurrent and no remedy is exclusive of any other remedy. Each remedy may be exercised at any time an Event of Default has occurred and is continuing and may be exercised from time to time. No remedy shall be exhausted by any exercise thereof.

22. Notices. All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given pursuant to the provisions of this Lease shall be in writing and shall be deemed to have been given and received for all purposes when delivered in person or by Federal Express or other reliable 24-hour delivery service or five (5) business days after being deposited in the United States mail, by registered or certified mail, return receipt requested, postage prepaid, addressed to the other party at its address stated above or when delivery is refused. For the purposes of this Section, any party may substitute another address stated above (or substituted by a previous notice) for its address by giving fifteen (15) days' notice of the new address to the other party, in the manner provided above. A copy of all notices, demands, requests, consents, approvals, offer statements and other instruments or communications required or permitted to be given pursuant to this Lease shall be delivered in accordance with the requirements of this Section 22 to Mortgage Lender as follows:

Mortgage Lender:	SFT I, Inc. 1114 Avenue of the Americas, 27th Floor New York, NY 10036 Attention: Chief Operating Officer Reference: Loan No. 1364:01 Telephone: (212) 930-9400 Fax No.: (212) 930-9494
With a copy to:	iStar Financial Inc. 1114 Avenue of the Americas, 27th Floor New York, New York 10036 Attn: Nina B. Matis, Esq./General Counsel Reference: Loan No. 1364:01 Telephone: (212) 930-9406 Fax No.: (212) 930-9492
With a copy to:	iStar Asset Services Inc. 180 Glastonbury Blvd., Suite 201 Glastonbury, Connecticut 06033 Attn: President Reference: Loan No. 1364:01 Telephone: (860) 815-5900 Facsimile: (860) 815-5901
with a copy to:	Katten Muchin Rosenman LLP 1025 Thomas Jefferson Street, N.W. East Lobby – Suite 700 Washington, D.C. 20007 Attention: John D. Muir, Jr., Esq. Telephone: (202) 625-3839 Fax No.: (202) 339-6054

23. Estoppel Certificate. At any time upon not less than ten (10) business days' prior written request by either Landlord or Tenant (the "Requesting Party") to the other party (the "Responding Party"), the Responding Party shall deliver to the Requesting Party a statement in writing, executed by an authorized officer of the Responding Party, certifying (a) that, except as otherwise specified, this Lease is unmodified and in full force and effect, (b) the dates to which Basic Rent, Additional Rent and all other Monetary Obligations have been paid, (c) that, to the knowledge of the signer of such certificate and except as otherwise specified, no default by either Landlord or Tenant exists hereunder, and (d) such other matters as the Requesting Party may reasonably request. Any such statements by the Responding Party may be relied upon by the Requesting Party, any Person whom the Requesting Party notifies the Responding Party in its request for the Certificate is an intended recipient or beneficiary of the Certificate or their assignees and by any prospective purchaser or mortgagee of the Leased Premises.

24. Surrender. Upon the expiration or earlier termination of this Lease, Tenant shall peaceably leave and surrender the Leased Premises to Landlord in Good Condition and Repair. Upon such surrender, Tenant shall (a) remove from the Leased Premises all property which is owned by Tenant or third parties other than Landlord and any Alterations or Additional Storage Tanks if required by Landlord pursuant to Section 21, and (b) repair any damage caused by such removal. Property not so removed shall become the property of Landlord, and Landlord may thereafter cause such property to be removed from the Leased Premises. The reasonable cost of removing and disposing of such property and repairing any damage to the Leased Premises caused by such removal shall be paid by Tenant to Landlord within thirty (30) days of written demand. Landlord shall not in any manner or to any extent be obligated to reimburse Tenant for any such property which becomes the property of Landlord pursuant to this Section 24 and Section 12 hereof.

25. No Merger of Title. There shall be no merger of the leasehold estate created by this Lease with the fee estate in the Leased Premises by reason of the fact that the same Person may acquire or hold or own, directly or indirectly, (a) the leasehold estate created hereby or any part thereof or interest therein and (b) the fee estate in the Leased Premises or any part thereof or interest therein, unless and until all Persons having any interest in the interests described in (a) and (b) above which are sought to be merged shall join in a written instrument effecting such merger and shall duly record the same.

26. Books and Records.

(a) Tenant shall keep adequate records and books of account with respect to the Leased Premises, in accordance with generally accepted accounting principles ("GAAP") consistently applied, and shall permit Landlord and Lender, subject to the provisions of Section 4(c) above, by their respective agents, accountants and attorneys, upon reasonable notice to Tenant, to visit and inspect the Leased Premises, or such other location where such books and records are maintained, during normal business hours and examine (and make copies of) the records and books of account. Upon the request of Landlord (either telephonically or in writing), Tenant shall provide the requesting party with copies of any information to which such party would be entitled in the course of a personal visit.

(b) To the extent not available on the EDGAR website of the Securities and Exchange Commission ("EDGAR") or other public information sources, Tenant shall deliver to Landlord and Lender within one hundred twenty (120) days of the close of each fiscal year, annual audited financial statements of Equinix, Inc. prepared by nationally recognized independent certified public accountants. To the extent not available on EDGAR or other public information sources, Tenant shall also furnish to Landlord within forty-five (45) days after the end of each of the three remaining quarters all filings, if any, of Form 10-K, Form 10-Q and other required filings with the Securities and Exchange Commission pursuant to the provisions of the Securities Exchange Act of 1934, as amended, or any other Law.

27. Non-Recourse as to Landlord.

Anything contained herein to the contrary notwithstanding, any claim based on or in respect of any liability of Landlord under this Lease shall be enforced only against the Leased Premises and not against any other assets, properties or funds of (a) Landlord, (b) any director, member, officer, general partner, limited partner, employee or agent of Landlord, or any general partner of Landlord, any of its general partners or shareholders (or any legal representative, heir, estate, successor or assign of any thereof), (c) any predecessor or successor partnership or corporation (or other entity) of Landlord, or any of its general partners, either directly or through Landlord or its general partners or any predecessor or successor partnership or corporation or their shareholders, officers, directors, employees or agents (or other entity), or (d) any other Person.

28. Financing.

(a) In connection with the Mortgage Lender Financing, Tenant agrees to supply Lender with such notices and information as Tenant is required to give to Landlord hereunder in accordance with Section 22 herein and to extend the rights of Landlord hereunder to any Lender. Tenant shall provide any other consent or statement and shall execute any and all other documents that Lender reasonably requires in connection with such Mortgage Lender Financing and any subsequent Mortgage, so long as the same do not adversely affect any right, benefit or privilege of Tenant or increase Tenant's obligations under this Lease in any material respect. Furthermore, in connection with the Mortgage Lender Financing and any subsequent Mortgage, Tenant acknowledges that Landlord will assign its interest in this Lease and the Guaranty to Mortgage Lender and any successor Lender as additional security for the Mortgage Lender Financing and any subsequent financing. Notwithstanding anything to the contrary herein, this Section 28(a) shall be operative only during such time as a Mortgage encumbers the Leased Premises.

(b) In the event of any act or omission of Landlord which would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right (i) until it has given written notice of such act or omission to Lender at the addresses set forth in Section 22 above, and (ii) unless such act or omission shall be one which is not capable of being remedied by Landlord or Lender within the time period provided herein, until the period for remedying such act or omission provided herein shall have elapsed following the giving of such notice and following the time when Lender shall have become entitled under any applicable encumbrance to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy), provided Lender shall with due diligence give Tenant written notice of its intention to remedy such act or omission, and Lender shall commence and thereafter continue with reasonable diligence to pursue its remedies under any applicable encumbrance and to remedy such act or omission. Notwithstanding the foregoing, Lender shall have no obligation to act, perform or effect any such remedy.

(c) If Tenant desires to obtain or refinance any loan that encumbers Tenant's interest in the Leased Premises, Tenant's equipment and any Alterations approved by Landlord and which Landlord and Lender have expressly agreed in writing may be removed by Tenant at the end of the term of this Lease, any such loan or encumbrance shall not require the consent of Landlord or Lender and shall not be deemed subject to the provisions of Section 19 of this Lease. In the event that Landlord receives written notice identifying any such lender as the holder or beneficiary of any such loan or encumbrance, Landlord shall thereafter endeavor to provide such lender with duplicate copies of any notice of an Event of Default given by Landlord to Tenant hereunder; provided, however, failure to provide such lender with such duplicate notice shall not constitute a failure to give notice to Tenant or prevent or impair Landlord's ability to exercise its remedies under this Lease. Furthermore, Landlord shall accept from such lender any curative acts on account of such Event of Default. Notwithstanding anything to the contrary in the foregoing, Landlord shall not be required to recognize such lender under the Lease unless such lender is the direct tenant under this Lease and has a credit rating by a major national credit agency of BBB or better (or equivalent) or, in the event such lender assumes this Lease through an affiliated designee, such lender provides to Landlord a replacement guaranty in form reasonably acceptable to Landlord from a party with a net worth and financial strength at least equivalent to the Tenant as of the date hereof. No further assignments of this Lease will be permitted after such lender or its designee assumes this Lease without Landlord's and Lender's prior written consent.

29. Subordination and Attornment. This Lease and Tenant's interest hereunder shall be subordinate to any Mortgage or other security instrument hereafter placed upon the Leased Premises by Landlord, including without limitation, the first priority lien of Lender, and to any and all advances made or to be made thereunder, to the interest thereon, and all renewals, amendments, modifications, replacements and extensions thereof. Tenant further agrees that upon the request of Lender, Tenant will execute a subordination and attornment agreement providing as follows:

(a) [Intentionally Omitted]

(b) Neither the Lender nor its successors and assigns shall (A) be liable for any misrepresentation, act or omission of Landlord, and (B) be bound by any amendment or modification of this Lease, not expressly provided for in this Lease, or by any prepayment of more than one month's fixed rent, unless such amendment or modification or prepayment shall have been expressly approved in writing by such Lender.

(c) If a Lender, any successor or assignee of Lender, or any other purchaser at any foreclosure sale under such Lender's Mortgage or in connection with the delivery of a deed in lieu of foreclosure (collectively "Successor Landlord") shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a new lease or deed, then at Successor Landlord's request and election (it being understood and agreed that in the alternative Successor Landlord may elect to terminate this Lease), Tenant shall attorn to and recognize Successor Landlord as Tenant's landlord under this Lease, and shall promptly execute and deliver any instrument that Successor Landlord may reasonably request to evidence such attornment. Upon such attornment this Lease shall continue in full force and

effect as, or as if it were, a direct lease between Successor Landlord and Tenant upon all of the terms, conditions and covenants as are set forth in this Lease and shall be applicable after such attornment except that Successor Landlord shall not be: (i) liable for any misrepresentation, act or omission of Landlord (except that Successor Landlord shall be responsible for correcting any continuing defaults and obligations which exist at the time Successor Landlord succeeds to Landlord's interest under the Lease), or (ii) bound by any amendment or modification of this Lease, not expressly consented to by Lender, or by any prepayment of more than one month's fixed rent, unless such amendment or modification or prepayment shall have been expressly approved in writing by such Lender.

(d) In the event this Lease is terminated by a Successor Landlord in connection with a foreclosure or deed in lieu of foreclosure, Tenant shall cooperate in the assignment, to the extent same are assignable, of its licenses, permits, and entitlements and any other contracts specific to the operation of the Leased Premises to the extent requested by Successor Landlord.

30. Tax Treatment; Reporting. Landlord and Tenant each acknowledge that each shall treat this transaction as a true lease for state law purposes and shall report this transaction as a Lease for Federal income tax purposes. For Federal income tax purposes each shall report this Lease as a true lease with Landlord as the owner of the Leased Premises and Equipment and Tenant as the tenant of such Leased Premises and Equipment including: (1) treating Landlord as the owner of the property eligible to claim depreciation deductions under Section 167 or 168 of the Internal Revenue Code of 1986 (the "Code") with respect to the Leased Premises and Equipment, (2) Tenant reporting its Rent payments as rent expense under Section 162 of the Code, and (3) Landlord reporting the Rent payments as rental income.

31. Guaranty. Concurrently with the execution of this Lease, Tenant shall deliver Landlord a Guaranty of Lease (the "Guaranty") duly executed by Guarantor guaranteeing Tenant's obligations under the Lease in the form attached as Exhibit "E" hereto.

32. Miscellaneous.

(a) The Landlord and Tenant represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction. If any other person brings a claim for a commission or finder's fee based upon any contact, dealings or communication with Landlord or Tenant, then the party through whom such person makes his claim shall defend the other party from such claim, and shall indemnify such party and hold such party harmless from any and all costs, damages, claims, liabilities or expenses (including without limitation, court costs and reasonable attorneys' fees and disbursements) incurred by such party in defending against the claim.

(b) The paragraph headings in this Lease are used only for convenience in finding the subject matters and are not part of this Lease or to be used in determining the intent of the parties or otherwise interpreting this Lease.

(c) As used in this Lease, the singular shall include the plural and any gender shall include all genders as the context requires and the following words and phrases shall have the following meanings: (i) "including" shall mean "including without limitation"; (ii) "provisions" shall mean "provisions, terms, agreements, covenants and/or conditions"; (iii) "lien" shall mean "lien, charge, encumbrance, title retention agreement, pledge, security interest, mortgage and/or deed of trust"; (iv) "obligation" shall mean "obligation, duty, agreement, liability, covenant and/or condition"; (v) "the Leased Premises" shall mean "the Leased Premises or any part thereof or interest therein"; (vi) "any of the Land" shall mean "the Land or any part thereof or interest therein"; (vii) "any of the Improvements" shall mean "the Improvements or any part thereof or interest therein"; and (viii) "any of the Equipment" shall mean "the Equipment or any part thereof or interest therein".

(d) Any act which Landlord is permitted to perform under this Lease may be performed at any time and from time to time by Landlord or any person or entity designated by Landlord. Each appointment of Landlord as attorney-in-fact for Tenant hereunder is irrevocable and coupled with an interest. Landlord shall not unreasonably withhold or delay or condition its consent whenever such consent is required under this Lease. Time is of the essence with respect to the performance by Tenant of its obligations under this Lease.

(e) Landlord shall in no event be construed for any purpose to be a partner, joint venturer or associate of Tenant or of any subtenant, operator, concessionaire or licensee of Tenant with respect to the Leased Premises or otherwise in the conduct of their respective businesses.

(f) This Lease and any documents which may be executed by Tenant on or about the effective date hereof at Landlord's request constitute the entire agreement between the parties and supersede all prior understandings and agreements, whether written or oral, between the parties hereto relating to the Leased Premises and the transactions provided for herein. Landlord and Tenant are business entities having substantial experience with the subject matter of this Lease and have each fully participated in the negotiation and drafting of this Lease. Accordingly, this Lease shall be construed without regard to the rule that ambiguities in a document are to be construed against the drafter.

(g) This Lease may be modified, amended, discharged or waived only by an agreement in writing signed by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought.

(h) The covenants of this Lease shall run with the land and bind Tenant, its successors and assigns and all present and subsequent encumbrancers and subtenants of the Leased Premises, and shall inure to the benefit of Landlord, its successors and assigns. If there is more than one Tenant, the obligations of each shall be joint and several.

(i) If any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(j) All exhibits attached hereto are incorporated herein as if fully set forth.

(k) This Lease shall be governed by and construed and enforced in accordance with the laws of the State of Illinois.

33. Publicity. Provided that Landlord obtains the prior written consent of Tenant, which consent shall not be unreasonably withheld, delayed or conditioned, Landlord (and Landlord's affiliates) may, subject to the applicable limitations on distribution of Confidential Information set forth in this Section 33, refer to the Lease in tombstone advertisements, offering memoranda and reports to investors, which references, may include, a description of the Lease, use of Tenant's name, and the logo of Tenant and/or any Affiliated Party or Successor Party, as applicable, but not the address of the Leased Premises or any other specific description of the Leased Premises. Landlord and Tenant each hereby agree that, without the prior written consent of the other, any written information relating to either which is provided to the other in connection with this Lease which is either confidential, proprietary, or otherwise not generally available to the public (but excluding information Landlord has obtained independently from third-party sources without Landlord's knowledge that the source has violated any fiduciary or other duty not to disclose such information) and which has been expressly designated as such by notice to the applicable party (the "**Confidential Information**"), will be kept confidential, using the same standard of care in safeguarding the Confidential Information as the applicable party employs in protecting its own proprietary information which that party desires not to disseminate or publish. Notwithstanding the foregoing, Confidential Information may be disseminated by Landlord (a) pursuant to the requirements of applicable Laws or Legal Requirements, (b) pursuant to judicial process, administrative agency process or order of governmental authority, (c) in connection with litigation, arbitration proceedings or administrative proceedings before or by any governmental authority or stock exchange, (d) to Landlord's attorneys, accountants, advisors and actual or prospective financing sources who will be instructed to comply with this Section 33, and (e) pursuant to the requirements or rules of a stock exchange or stock trading system on which the Securities of Landlord or its affiliates may be listed or traded. In addition, notwithstanding any other provision, any party (and its employee, representative or other agent) may disclose to any and all persons, without limitation of any kind, any information with respect to the tax treatment and tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to such tax treatment and tax structure. For purposes of this Section 33, Confidential Information will be not deemed to include the fact that this Lease has been executed, the name of Tenant, the logo of Tenant and/or any Affiliated Party or Successor Party, as applicable.

[EXECUTION ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be duly executed under seal as of the day and year first above written.

LANDLORD:

CHI 3, LLC,
a Delaware limited liability company

By: /s/ Keith D. Taylor
Name: Keith D. Taylor
Title: Manager

TENANT:

EQUINIX OPERATING CO., INC.,
a Delaware corporation

By: /s/ Keith D. Taylor
Name: Keith D. Taylor
Title: CFO

GUARANTY OF LEASE

THIS GUARANTY OF LEASE (“Guaranty”) is made as of February 2, 2007, by EQUINIX, INC., a Delaware corporation (“Guarantor”), having a business address at 301 Velocity Way, 5th Floor, Foster City, California 94404, to CHI 3, LLC., a Delaware limited liability company (“Landlord”), having a business address at c/o Equinix, Inc., 301 Velocity Way, 5th Floor, Foster City, California 94404, with reference to the following facts:

A. Landlord and Equinix Operating Co., Inc., a Delaware corporation (“Tenant”), have entered into and executed that certain Master Lease (the “Lease”) of even date herewith with respect to the premises located at 1905 – 1945 Lunt Avenue, Elk Grove Village, Illinois 60007.

B. Guarantor indirectly owns one hundred percent (100%) of the ownership interest in Landlord and will benefit from, among other things, the revenue generated from Tenant’s operations on the Leased Premises (as defined in the Lease).

C. Tenant is a wholly-owned subsidiary of Guarantor.

D. Landlord is not willing to execute the Lease based solely upon the credit of Tenant. Guarantor is willing to execute this Guaranty of Lease in support of Tenant’s commitments made under the Lease for the express and intended purpose of inducing Landlord to enter into the Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby covenants, agrees and guarantees to Landlord and its successors and assigns as follows:

1. **Guaranty.** Guarantor does hereby absolutely and unconditionally guarantee to Landlord the prompt payment of all amounts that Tenant, or any assignee of the Lease, may at any time owe under the Lease, any extensions, renewals or modifications thereof, and further guarantees to Landlord the full, prompt and faithful performance by Tenant, or any assignee of the Lease, of each and all of the covenants, terms, and conditions of the Lease, or any extensions, modifications or renewals thereof and any holdover term following the term granted thereby, to be hereafter performed and kept by Tenant, or any assignee of the Lease (all such obligations of Tenant under the Lease are referred to as “Tenant’s Obligations”). This is a Guaranty of payment and performance and not merely of collection. This Guaranty shall include any liability of Tenant which shall accrue under the Lease for any period proceeding as well as any period following the term specified in the Lease, including, without limitation, any rent or other amounts payable pursuant to the terms of the Lease as a result of Tenant’s holding over. If Tenant or any assignee of the Lease fails to make any payment when due under the Lease or to perform any duties, obligations or covenants contained in the Lease to be performed by Tenant, or any assignee of the Lease, Guarantor will immediately and unconditionally pay to Landlord such amounts and perform such duties, obligations and covenants after expiration of any applicable grace or cure periods in the Lease; provided, however that such grace and cure periods shall be contemporaneous with and not in addition to any grace or cure period available to Tenant under the terms of the Lease. Guarantor shall pay to Landlord on demand, all expenses (including, without limitation, attorneys’ fees and costs) arising out of or relating to the enforcement or protection of Landlord’s rights hereunder.

2. **Independent Obligations.** Guarantor's obligations hereunder are absolute, primary, unconditional and irrevocable obligations which are independent of the obligations of Tenant, or any assignee of the Lease, and a separate action or actions may be brought and prosecuted against Guarantor whether or not action is brought against Tenant or any such assignee or whether or not Tenant or any such assignee be joined in any such action or actions.

3. **Rights of Landlord.** Guarantor authorizes Landlord, without notice or demand and without affecting its liability hereunder, from time to time to (a) extend, accelerate, or otherwise change the time for any payment provided for in the Lease, or any covenant, term or condition of the Lease, in any respect to impair or suspend the Landlord's remedies or rights against Tenant in connection with the Lease, and to consent to any assignment, subletting or reassignment of the Lease; (b) take and hold security for any payment provided for in the Lease or for the performance of any covenant, term or condition of the Lease, or exchange, waive or release any such security; (c) apply such security and direct the order or manner of sale thereof as Landlord in its discretion may determine. Landlord may without notice or the consent of Guarantor assign this Guaranty, the Lease, or the rents and other sums payable thereunder. Notwithstanding any termination, renewal, extension or holding over of the Lease, this Guaranty shall continue until all of Tenant's Obligations have been fully and completely performed by Tenant or any assignee of the Lease.

Guarantor shall not be released by any act or event which might, but for this provision of this Guaranty, be deemed a legal or equitable discharge of a surety, or by reason of any waiver, extension, modification, forbearance or delay or other act or omission of Landlord or its failure to proceed promptly or otherwise as against Tenant or Guarantor, or by reason of any action taken or omitted or circumstance which may or might vary the risk or affect the rights or remedies of Guarantor as against Tenant, or by reason of any further dealings between Tenant and Landlord, whether relating to the Lease or otherwise, and Guarantor hereby expressly waives and surrenders any defense to its liability hereunder based upon any of the foregoing acts, omissions, things, agreements, waivers or any of them; it being the purpose and intent of this Guaranty that the obligations of Guarantor hereunder are absolute and unconditional under any and all circumstances.

Guarantor further agrees that to the extent Tenant or Guarantor makes any payment to Landlord in connection with Tenant's Obligations and all or any part of such payment is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by Landlord or paid over to a trustee, receiver or any other entity, whether under any bankruptcy act or otherwise (any such payment is hereinafter referred to as a "Preferential Payment"), then this Guaranty shall continue to be effective or shall be reinstated, as the case may be, and, to the extent of such payment or repayment by Landlord, Tenant's Obligations or part thereof intended to be satisfied by such Preferential Payment shall be revived and continued in full force and effect as if said Preferential Payment had not been made.

4. **Waiver of Defenses.** Guarantor hereby expressly waives and relinquishes all rights, remedies and defenses accorded by applicable law to guarantors and sureties and agrees not to take advantage of any such rights, remedies or defenses. Without limiting in any way the foregoing, Guarantor hereby expressly waives (a) any right to require Landlord to (i) proceed against Tenant or any other person or entity; (ii) proceed against or exhaust any security held

from Tenant or Guarantor; (iii) pursue any other remedy in Landlord's power which Guarantor cannot itself pursue, and which would lighten its burden; or (iv) cause a marshalling of the assets of Tenant or Guarantor; (b) all statutes of limitations as a defense to any action brought against Guarantor by Landlord to the fullest extent permitted by law; (c) any defense based upon any legal disability of Tenant, or any assignee of the Lease, or any discharge or limitation of the liability of Tenant, or any assignee of the Lease, to Landlord, whether consensual or arising by operation of law or any bankruptcy, reorganization, receivership, insolvency, or debtor-relief proceeding, or from any other cause; (d) presentment, demand, protest and notice of any kind; (e) any defense based upon or arising out of any defense which Tenant, or any assignee of the Lease, may have to the payment or performance of any part of Tenant's Obligations; and (f) any and all of its rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to Guarantor. Guarantor waives all demands upon and notices to Tenant, or any assignee of the Lease, and to Guarantor, including demands for performance, notices of non-performance, notices of nonpayment and notice of acceptance of this Guaranty.

5. **Assumption of Obligations and Waivers as to Financial Condition.** Guarantor's obligations hereunder shall not be affected by any failure on the part of Landlord to inform Guarantor concerning Tenant's financial condition or notify Guarantor of any adverse change in Tenant's financial condition of which Landlord becomes aware. Guarantor assumes the obligation to make such inquiries with respect to such financial condition as Guarantor deems necessary or prudent in the circumstances.

6. **Costs and Expenses.** If Guarantor fails to perform any of its obligations under this Guaranty or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Guaranty, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Guaranty shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Guaranty and to survive and not be merged into any such judgment.

7. **Notices.** Notices or other communications given under this Guaranty shall be effective only if rendered or given in writing, sent by certified mail with a return receipt requested or by facsimile with a confirmation receipt (and a copy sent by a nationally recognized overnight courier service) or delivered personally or by a nationally recognized overnight courier service: (a) to Guarantor at Guarantor's address set forth above; or (b) to Landlord at Landlord's address set forth above. Any such notice or other communication shall be deemed to have been rendered or given two (2) days after the date when it shall have been mailed if sent by certified mail, or upon actual receipt if sent by facsimile, or upon the date personal delivery is made, or upon actual delivery if sent by overnight courier.

8. **Delay; Cumulative Remedies.** No delay or failure by Landlord to exercise any right or remedy against Tenant or Guarantor will be construed an a waiver of that right or remedy. No waiver or modification of any provision of this Guaranty nor any termination of this Guaranty shall be effective unless stated in writing and signed by the party charged with such waiver or modification, and then only to the extent so stated, and no such waiver shall apply to any circumstance other than the specific instance for which it is given. In no event shall a waiver of any provision of this Guaranty be implied from any course of conduct on the part of Guarantor and/or Landlord and/or any third party. All remedies of Landlord against Tenant and Guarantor are cumulative.

9. **Representations and Warranties of Guarantor**. Guarantor hereby represents, warrants and covenants that Guarantor has a financial interest in Tenant and will derive a material and substantial benefit, directly or indirectly, from the Lease and from the making of this Guaranty by Guarantor.

10. **Miscellaneous**.

(a) This Guaranty shall bind Guarantor, its successors and assigns, and shall inure to the benefit of Landlord and its successors and assigns. Guarantor consents to the assignment of this Guaranty by Landlord to Mortgage Lender (as such term is defined in the Lease) or any successor thereof as additional security for the Mortgage Lender Financing (as such term is defined in the Lease).

(b) The invalidity or unenforceability of any one or more provisions of this Guaranty will not affect any other provision.

(c) Time is of the essence of each and every provision hereof.

(d) This Guaranty and each and every term and provision thereof shall be construed in accordance with the laws of the State of Illinois. Guarantor consents to the exercise of personal jurisdiction by the courts of the State of Illinois over Guarantor, and agrees that any action to enforce the provisions of this Guaranty may be brought in any state or federal court located within the County of Cook, State of Illinois.

[SIGNATURE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Guarantor has executed this instrument under seal on the day and year first above written.

GUARANTOR:

EQUINIX, INC.,
a Delaware corporation

By: /s/ Keith D. Taylor
Name: Keith D. Taylor
Title: CFO

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "**Agreement**") is made and entered into as of January 25, 2007, by and among ROSE VENTURES II, INC., a California corporation ("**Seller**"), and EQUINIX, INC., a Delaware corporation ("**Buyer**").

R E C I T A L S

A. Seller is the owner of the "Property" (defined below), which consists principally of an approximately 133,500 square foot building, and is located in the City of San Jose, Santa Clara County (the "**County**"), State of California, having a street address of 11 Great Oaks Boulevard.

B. Buyer is currently the lessee ("**Lessee**") under that certain Commercial Lease Agreement with Seller, as lessor, dated June 10, 1999 (as amended, the "**Existing Lease**").

C. Buyer desires to purchase and Seller desires to sell the Property on the terms and conditions hereinafter documented.

NOW, THEREFORE, in consideration of the mutual undertakings of the parties hereto, it is hereby agreed as follows:

1. Purchase and Sale. Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Property on the terms and conditions hereinafter set forth.

1.1 Property. As used herein, the "**Property**" means, collectively, all right, title and interest of Seller in and to (a) that certain land described in **Exhibit "A"**, together with all easements, rights-of-way, and appurtenances benefiting such land (the "**Land**"), (b) all improvements, structures and fixtures now or on the "Closing Date" (as hereinafter defined) located upon the Land (the "**Improvements**"), (c) all tangible personal property now or on the Closing Date located on or used in connection with the Land and Improvements (the "**Personal Property**"), and (d) the Existing Lease and all "Service Agreements" (as hereinafter defined), and to the extent assignable, governmental permits, licenses and approvals, warranties and guarantees that Seller has received in connection with any work or services performed with respect to, or equipment installed in, the Improvements or the Land, tenant lists, advertising material, telephone exchange numbers and other intangible personal property related to the Land, Improvements or Personal Property (the "**Intangible Property**").

2. Purchase Price. The purchase price (the "**Purchase Price**") for the Property shall be Sixty-Five Million Dollars ($65,000,000). If, however, Seller elects to exercise its option to convey the Property in up to three separate installments pursuant to Section 5 below, then the purchase price (the "**Installment Purchase Price**") for such installment shall be a percentage of the Purchase Price equal to the tenancy in common percentage undivided interest in the Property being conveyed to Buyer.

3. Payment of Purchase Price. The Purchase Price shall be paid to Seller by Buyer as follows:

3.1 Escrow Deposit. Within three (3) business days after the full execution and delivery of this Agreement, Buyer shall deliver Six Million Five Hundred Thousand Dollars ($6,500,000) (the "**Deposit**") to First American Title Insurance Company, at its offices at 1737 N. First Street, San Jose, California, Attention: Bill Perry, which company, in its capacity as escrow holder hereunder, is called "**Escrow Agent**". The Deposit, together with all interest earned thereon, is referred to herein as the '**Escrow Deposit**". If, pursuant to Section 5 below, Seller elects to convey portions of the Property to Buyer in more than one conveyance, then One Million Five Hundred Thousand Dollars ($1,500,000) of the Escrow Deposit shall be applied towards the Installment Purchase Price of the first closing of any such portion and the remainder of the Escrow Deposit shall be applied to the Installment Purchase Price of the final closing, upon which Buyer shall have acquired all of the Property (the "**Final Closing**"). The Escrow Deposit shall be delivered to Escrow Agent by wire transfer of immediately available federal funds or by bank or cashier's check drawn on a national bank reasonably satisfactory to Seller. Such amount shall be held by Escrow Agent as a deposit against the Purchase Price or Installment Purchase Price in accordance with the terms and provisions of this Agreement. If Buyer delivers the "Go Hard Notice" (as defined below), prior to the expiration of the "Due Diligence Period" (as defined below), then the Escrow Deposit shall be non-refundable to Buyer, except as expressly provided in this Agreement. Upon delivery of the Go Hard Notice, a memorandum of this Agreement, in the form attached hereto as **Exhibit "C"**, shall be recorded by Seller and Buyer in the official records of the County. At all times that the Deposit is being held by Escrow Agent, the Deposit shall be invested by Escrow Agent in the following investments ("**Approved Investments**"): (i) United States Treasury obligations, (ii) United States Treasury-backed repurchase agreements issued by a major money center banking institution reasonably acceptable to Seller and Buyer, (iii) the Bank of America money market fund that invests in U.S. Treasury securities known as "Nations Treasury Reserves - Daily Shares (symbol NTRDX)", or (iv) such other manner as may be reasonably agreed to by Seller and Buyer. The Escrow Deposit shall be disposed of by Escrow Agent only as provided in this Agreement.

3.2 Closing Payment. The Purchase Price (or Installment Purchase Price, as applicable), as adjusted by the application of the Escrow Deposit and by the prorations and credits specified herein, shall be paid to Escrow Agent by wire transfer of immediately available federal funds (through the escrow described in Section 5.1) on each "Closing Date" (as defined below) (the amount to be paid under this Section 3.2 being herein called a "**Closing Payment**").

4. Conditions Precedent. The obligation of Buyer to purchase, and Seller to sell the Property or any "Designated Portion" (as defined below) as contemplated by this Agreement is subject to satisfaction of each of the following respective conditions precedent (any of which may be waived prior to the applicable closing only in writing and only by the party in whose favor such condition exists) on or before the applicable date specified for satisfaction of the applicable condition. If any of such conditions is not fulfilled (or so waived in writing) pursuant to the terms of this Agreement, then the party in whose favor such condition exists may terminate this Agreement and, in connection with any such termination made in accordance with this Section 4, Seller and Buyer shall be released from further obligation or liability hereunder (except for those obligations and liabilities which, pursuant to the terms of this Agreement, survive such termination [and without

releasing any party for a breach or default occurring prior to such termination]), and the Escrow Deposit shall be disposed of in accordance with Section 9.

4.1 Title Matters.

4.1.1 Title Report. Seller has delivered to Buyer a copy of a preliminary title report ("**Preliminary Title Report**") dated December 19, 2006, covering the Property from First American Title (which company, in its capacity as title insurer hereunder, is herein called the "**Title Company**"). If Buyer delivers the Go Hard Notice on or before the end of the Due Diligence Period, Buyer shall be deemed to have approved the typed exceptions to title shown on Schedule "B" of the Preliminary Title Report and any items disclosed by any survey (the "**Survey**") reviewed by Buyer prior to the expiration of the Due Diligence Period. Approval by Buyer of any additional exceptions (the "**Additional Exceptions**") to title or survey matters that are first disclosed to Buyer after the expiration of the Due Diligence Period shall be a condition precedent to Buyer's obligations to purchase the Property. Unless Buyer gives written notice that it disapproves any such Additional Exceptions, stating the exceptions so disapproved, on or before the date ("**Applicable Disapproval Date**") which is ten (10) business days after such Additional Exception is disclosed, Buyer shall be deemed to have approved said Additional Exception. If, for any reason, on or before the applicable Closing Date, Seller does not cause any exceptions to title which Buyer disapproves (to the extent Buyer is permitted hereunder to so disapprove) to be removed at no cost or expense to Buyer (Seller having the right but not the obligation to do so), then a condition to Buyer's obligation to close shall not have been satisfied and the obligation of Seller to sell, and Buyer to buy, the Property as herein provided shall terminate (and no party hereto shall have any further obligations in connection herewith except under those provisions that expressly survive a termination of this Agreement). Notwithstanding the foregoing provisions of this Section 4.1.1, Seller shall be obligated to cause the release of any "**Seller Encumbrances**" (which, as used herein, means any monetary liens created or suffered by Seller, or any lis pendens or judgment liens as a result of Seller's actions, that encumber the Land and Improvements, other than mechanics liens arising from the failure of Lessee or Buyer to pay its bills). Seller may use the Purchase Price or applicable Installment Purchase Price to effectuate such release concurrently with the applicable Closing.

4.1.2 Title Contingency. A condition precedent to Buyer's obligation to purchase the Property (or the "Designated Portion" (as defined below) as applicable) shall be the irrevocable and unconditional written agreement of Title Company to record the "Deed" (defined below) on the applicable Closing Date and to issue to Buyer effective as of the date and time the deed is recorded, an ALTA Form B (1970, amended 10/17/70, or if the 1970, amended 10/17/70, form is not available, the 1970 form with 1984 amendment and, if that is not available, the 1992 form with no creditors' rights exclusion and no arbitration) extended coverage owner's title insurance policy ("**Owner's Policy**"), or equivalent form acceptable to Buyer, without a creditor's rights exclusion or including an endorsement eliminating the creditor's rights exclusion, with coverage in the amount of the Purchase Price or the applicable Installment Purchase Price (or such greater amount, up to the total anticipated cost of acquisition, development and construction of the Property, as Buyer may elect) and dated as of the date and time the applicable Deed is recorded, indicating title to the Land (including any easements described herein for the benefit of the Property) and Improvements to be vested of record in Buyer, subject solely to the "Permitted Exceptions" (as hereinafter defined), and including the "Title Endorsements" (as hereinafter defined). As used herein:

"**Permitted Exceptions**" means the following: (1) the lien of any real estate taxes and assessments for the "Current Tax Year" (as defined below) and subsequent periods, provided that the same are prorated in accordance with this Agreement; and (2) such other matters set forth in the Preliminary Title Report or Survey which are approved or deemed approved by Buyer during the Due Diligence Period (or by the Applicable Disapproval Date with respect to any Additional Exception).

"**Title Endorsements**" means the endorsements included in any title commitment or proforma or specimen policy issued by the Title Company on or prior to the expiration of the Due Diligence Period (or by the Applicable Disapproval Date with respect to any Additional Exception).

4.2 Due Diligence Reviews. Except for title matters (which shall be governed by the provisions of Section 4.1 above), Buyer shall have until 11:59 a.m. (Pacific time) on February 1, 2007 (the period beginning on the date hereof and ending on such date being herein called the "**Due Diligence Period**") within which to perform and complete all of Buyer's due diligence examinations, reviews and inspections of all documents listed in **Exhibit "D"** attached hereto, and all matters pertaining to the Property, including all leases and service contracts, all physical, environmental and compliance matters and conditions respecting the Property, copies of Seller's insurance policies, copies of Seller's financial and operating statements, but excluding any confidential information; *provided, however,* in the case of any confidential information that would be material to an institutional investor in deciding whether to purchase the Property, Seller shall notify Buyer in writing of the existence of the same and shall either (1) give Buyer the right to terminate this Agreement or (2) disclose the same to Buyer on the condition that Buyer execute a confidentiality agreement reasonably satisfactory to Buyer and Seller. During the Due Diligence Period, Seller shall provide Buyer with reasonable access to the Property and its files (and the files of the engineer, architect, land use counsel, and other consultants and professionals engaged by Seller in connection with the Property) relating to the Property (excluding confidential information, except as aforesaid) upon reasonable advance notice and shall also provide to Buyer copies of such leases and service contracts and other contracts as Buyer shall reasonably request, all upon reasonable advance notice. Furthermore, Seller shall not unreasonably withhold its consent to any physically invasive testing desired by Buyer in connection with such inspections of the Property. If, on or before the expiration of the Due Diligence Period, Buyer elects to continue with the purchase of the Property, Buyer shall deliver to Seller a notice expressing its interest to go forward with such purchase (the "**Go Hard Notice**"). If Buyer does not deliver the Go Hard Notice to Seller prior to the expiration of the Due Diligence Period, then Buyer's obligations under this Agreement (and this Agreement) shall terminate and Escrow Agent shall immediately return the full Escrow Deposit to Buyer.

4.2.1 Indemnity; Review Requirements. Buyer will and does hereby indemnify, defend, and hold Seller and the Property harmless from and against any mechanics' liens, personal injury (including death) or physical property damage (or any liability, damage, loss, cost or expense resulting therefrom), and reasonable attorneys fees and costs incurred by Seller defending against the same, caused by Buyer in the conduct of its due diligence examinations, reviews and inspections (other than that arising from the discovery of preexisting conditions). The foregoing obligation shall survive any termination of this Agreement. In the event of any termination hereunder (other than by reason of Seller's default), Buyer shall return all documents and other materials furnished by Seller hereunder and at Seller's written request, Buyer shall promptly deliver

to Seller true, accurate and complete copies of any written reports relating to the Property prepared for or on behalf of Buyer by any third party. Prior to Closing, Buyer shall maintain the confidentiality of all information or data received from Seller in connection with any of the inspections, reviews or examinations; *provided*, *however*, that (x) such information or data may be disclosed by Buyer as Buyer may reasonably determine for its own valid business purposes, and (y) the foregoing confidentiality restriction shall not apply to any information or data that is available to Buyer from any other source (other than by reason of a breach by Buyer of such confidentiality restriction).

4.3 Performance by Seller. The performance and observance, in all material respects, by Seller of all covenants and agreements of this Agreement to be performed or observed by Seller prior to or on the Closing Date shall be a condition precedent to Buyer's obligation to purchase the Property. Without limitation on the foregoing, in the event that the "Seller Closing Certificate" (as defined below) shall disclose any material exception to the representations and warranties of Seller contained in this Agreement or any certificate delivered by Seller in connection herewith which are not otherwise permitted or contemplated by the terms of this Agreement, then Buyer shall have the right to terminate this Agreement upon prior written notice to Seller.

4.4 Performance by Buyer. The performance and observance, in all material respects, by Buyer of all covenants and agreements of this Agreement to be performed or observed by Buyer prior to or on the Closing Date shall be a condition precedent to Seller's obligation to sell the Property. Without limitation on the foregoing, in the event that the "Buyer Closing Certificate" (as defined below) shall disclose any material exception to the representations and warranties of Buyer contained in this Agreement or any certificate delivered by Buyer in connection herewith which are not permitted or contemplated by the terms of this Agreement, then Seller shall have the right to terminate this Agreement upon prior written notice to Buyer.

5. Closing Procedure. The sale and purchase of the entire Property shall be consummated on or before November 30, 2007 (the "**Outside Closing Date**"). Notwithstanding the foregoing, Seller shall have the right to elect to convey tenancy in common interests (each a "**Designated Portion**") to Buyer in such percentages (each a "**Designated Percentage**") to be determined by Seller upon thirty (30) days advance written notice to Buyer; provided that in all events (a) the entire Property shall be conveyed to Buyer on or prior to the Outside Closing Date, and (b) Seller shall convey the Property in no more than three (3) such conveyances. If Seller elects to sell the Property in installments, then the closing date for each portion of the Property sold shall be thirty (30) days after the date of such notice; provided that Seller shall have the one-time right upon fifteen (15) days prior written notice prior to a then-scheduled Closing to cancel such planned Closing (with such cancellation only effecting the date of such conveyance, not Seller's obligation to convey all of the Property to Buyer on or prior to the Outside Closing Date). The date on which the Property or any Designated Portion is conveyed to Buyer is referred to as the "**Closing Date**".

5.1 Escrow. On or before 2:00 p.m. Pacific time on the applicable Closing Date, the parties shall deliver to Escrow Agent the following: (1) by Seller, a duly executed and acknowledged original grant deed (each a "**Deed**") in the form of **Exhibit "F"**, and (2) by Buyer, the Closing Payment in immediately available federal funds. If the Closing Payment is received on the Closing Date but after 2:00 p.m. Pacific time, then the Closing Date shall be changed to the next business day. Such delivery shall be made pursuant to this Agreement and any supplemental escrow

instructions ("**Supplemental Escrow Instructions**"). The conditions to the closing of such escrow shall include the Escrow Agent's receipt of the Closing Payment and a notice from each of Buyer and Seller authorizing Title Company to close the transactions as contemplated herein (each of Buyer and Seller being obligated to deliver such authorization notice on the Closing Date as soon as it is reasonably satisfied that the other party is in a position to deliver the items to be delivered by such other party under Section 5.2 below).

5.2 Delivery to Parties. Upon the satisfaction of the conditions set forth in the Supplemental Escrow Instructions, then (x) the Deed shall be delivered to Buyer by Escrow Agent depositing the same for recordation, (y) the Closing Payment (and, if applicable, the Escrow Deposit) shall be delivered by Escrow Agent to Seller and (z) on the Closing Date, the following items shall be delivered:

5.2.1 Seller Deliveries. Seller shall deliver to Buyer the following:

(a) A duly executed bill of sale, assignment and assumption agreement ("**Assignment and Assumption Agreement**") from Seller with respect to the tangible and intangible personal property included in the Property (including the Existing Lease and Service Agreements) in the form of **Exhibit "G"** (to the extent Seller is only conveying a Designated Portion, Seller shall only convey the respective Designated Percentage in such tangible and intangible personal property);

(b) A duly executed certificate of Seller (the "**Seller Closing Certificate**") in the form of **Exhibit "H"** updating the representations and warranties contained in Section 7.1 hereof to the Closing Date and noting any changes thereto;

(c) A duly executed certificate of "non-foreign" status in the form of **Exhibit "I"** from Seller and any required state withholding or non-foreign status certificate;

(d) On the first Closing Date, a duly executed tenancy in common agreement (the "**TIC Agreement**") from Seller in the form of **Exhibit "J"**;

(e) On the first Closing Date, a duly executed memorandum of the tenancy in common agreement (the "**Memorandum of TIC Agreement**") from Seller in the form of **Exhibit "K"**;

(f) Evidence reasonably satisfactory to Buyer and Title Company respecting the due organization of Seller and the due authorization and execution of this Agreement and the documents required to be delivered hereunder;

(g) On the final Closing Date, to the extent they are then in Seller's possession, and have not theretofore been delivered to Buyer: (i) any plans and specifications for all Improvements on the Property; (ii) all unexpired warranties and guarantees which Seller has received in connection with any work or services performed with respect to, or equipment installed in, the improvements on the Property; (iii) all keys and other access control devices for all improvements on the Property; (iv) all documents of Seller relating to the Property; (v) originals of the Existing Lease and of any correspondence or other documents amending the provisions thereof; and (vi) originals of all service agreements that will remain in effect after the Final Closing and all

correspondence and records relating to the on-going operations (including tenant billings) and maintenance of the Property. In addition, Seller shall direct its property management company, if any, to deliver any documents or other files of Seller which are reasonably related to such on-going operations and which are in such management company's possession to Buyer at the Final Closing; and

(h) Such additional documents as may be reasonably required by Buyer and Title Company in order to consummate the transactions hereunder (provided the same do not increase in any material respect the costs to, or liability or obligations of, Seller in a manner not otherwise provided for herein).

5.2.2 Buyer Deliveries. Buyer shall deliver to Seller the following:

(a) A duly executed and acknowledged Assignment and Assumption Agreement;

(b) A duly executed TIC Agreement;

(c) A duly executed Memorandum of TIC Agreement;

(d) A certificate of Buyer (the "**Buyer Closing Certificate**") in the form of **Exhibit "L"** updating the representations and warranties contained in Section 7.2 hereof to the Closing Date and noting any changes thereto;

(e) Evidence reasonably satisfactory to Seller and Title Company respecting the due organization of Buyer and the due authorization and execution of this Agreement and the documents required to be delivered hereunder; and

(f) Such additional documents as may be reasonably required by Seller and Title Company in or to consummate the transactions hereunder (provided the same do not increase in any material respect the costs to, or liability or obligations of, Buyer in a manner not otherwise provided for herein).

5.3 Closing Costs. Seller shall pay (1) 50% of all state, county and city transfer taxes payable, if any, in connection with the transfer contemplated herein, (2) the title insurance premium for the CLTA portion of the Owner's Policy, and (3) 50% of all escrow charges. Buyer shall pay (1) 50% of all state, county and city transfer taxes payable, if any, in connection with the transfer contemplated herein, (2) 50% of all escrow charges and documentary transfer taxes, (3) the costs of extended coverage and any endorsements to the Owner's Policy, (4) the costs, if any, to update the Survey, and (5) all fees, costs or expenses in connection with Buyer's due diligence reviews hereunder. Any other closing costs shall be allocated in accordance with local custom. Seller and Buyer shall pay their respective shares of prorations as hereinafter provided.

5.4 Prorations.

5.4.1 Items to be Prorated. The following shall be prorated between Seller and Buyer as of the beginning of the applicable Closing Date (on the basis of the actual number of days elapsed over the applicable period):

(a) All real estate taxes and assessments on the Property for the tax year (the "**Current Tax Year**") in which the Closing occurs (with Seller and Buyer each being

responsible for a pro rata share of such taxes and assessments based upon the number of days in such tax year occurring before the Closing Date, in the case of Seller, and on or after the Closing Date, in the case of Buyer). Seller shall be responsible for all taxes and assessments for any tax year prior to the Current Tax Year. However, Buyer shall be solely responsible, and in no event shall Seller be charged with or be responsible, for any increase in the taxes on the Property resulting from the sale contemplated hereby or from any improvements made or leases entered into on or after the Closing. If any assessments on the Property are payable in installments, then the installment for the current period shall be prorated (with Buyer being allocated the obligation to pay any installments due after the Closing Date).

(b) All fixed and additional rentals under the Existing Lease. At the Final Closing, Seller shall credit Buyer an amount equal to, all prepaid rentals for periods after the final Closing Date and all refundable security deposits.

(c) All operating expenses including any premiums for casualty and liability insurance relating to the Property which Seller has paid, where the term of such insurance policy coverage continues after Buyer becomes a partial owner of the Property (but not for periods continuing after Buyer has acquired all of the Property) and insures Buyer, as well as Seller; however, there will be no prorations for debt service or payroll (because Buyer is not acquiring Seller's financing or employees).

5.4.2 Calculation. The prorations and payments shall be made on the basis of a written statement submitted to Buyer and Seller by Escrow Agent prior to the Close of Escrow and approved by Buyer and Seller. To the extent any such Closing is only for a portion of the Property, Buyer shall only be responsible for the Designated Percentage of such prorated amount. Any item which cannot be finally prorated because of the unavailability of information shall be tentatively prorated on the basis of the best data then available and reprorated when the information is available. In the event any prorations or apportionments made under this Section 5.4.2 shall prove to be incorrect for any reason, then any party shall be entitled to an adjustment to correct the same provided a written request identifying the error in reasonable detail is given to the other party no later than twelve (12) months after the Closing.

5.5 Conveyance of Intangible Property. In the event that Seller elects to convey the Property to Buyer in more than one installment, the Intangible Property shall remain in the name of Seller until the Final Closing Date and be governed by the terms of the TIC Agreement as if the Intangible Property were included in the definition of "Property" thereunder.

6. Condemnation or Destruction of Property. In the event that, after the date hereof either any portion of the Property is taken pursuant to eminent domain proceedings or any of the improvements on the Property are damaged or destroyed by any casualty, Seller shall be required to give Buyer prompt written notice of the same. Upon and after the initial Closing Date, Seller shall deliver and assign to Buyer (except to the extent any condemnation proceeds or insurance proceeds are attributable to lost rents or other items applicable to any period prior to the Closing), all claims of Seller respecting any condemnation or casualty insurance coverage, as applicable, and all condemnation proceeds or proceeds from any such casualty insurance received by Seller on account

of any casualty (except to the extent required for collection costs or repairs by Seller prior to the final Closing Date), as applicable, and Buyer shall be responsible for any repairs or construction required under the Existing Lease. In connection with any assignment of insurance proceeds hereunder, Buyer shall be credited against the Purchase Price at the next Closing with an amount equal to a pro rata share commensurate with Seller's then percentage ownership interest in the Property of the applicable deductible amount under Seller's insurance (except to the extent required for collection costs or repairs by Seller). Prior to the initial Closing Date, in the event that Lessee terminates the Existing Lease under Section 9 thereof, Buyer shall also have the right to terminate this Agreement and be entitled to a return of the Escrow Deposit.

7. Representations and Warranties.

7.1 Representations and Warranties of Seller.

7.1.1 GENERAL DISCLAIMER/AS-IS PURCHASE. EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 7.1.2 BELOW OR THE DEED AND THE OTHER DOCUMENTS TO BE DELIVERED HEREUNDER (COLLECTIVELY, THE "CONVEYANCING DOCUMENTS"), THE SALE OF THE PROPERTY HEREUNDER IS AND WILL BE MADE ON AN "AS IS" BASIS AND WITH ALL FAULTS, WITHOUT REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING ANY REPRESENTATION OR WARRANTY CONCERNING TITLE TO THE PROPERTY, THE PHYSICAL CONDITION OF THE PROPERTY (INCLUDING THE CONDITION OF THE SOIL OR THE IMPROVEMENTS), THE ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES ON OR RESPECTING THE PROPERTY), THE COMPLIANCE OF THE PROPERTY WITH APPLICABLE LAWS AND REGULATIONS (INCLUDING ZONING AND BUILDING CODES OR THE STATUS OF DEVELOPMENT OR USE RIGHTS RESPECTING THE PROPERTY), THE FINANCIAL CONDITION OF THE PROPERTY OR ANY OTHER REPRESENTATION OR WARRANTY RESPECTING ANY INCOME, EXPENSES, CHARGES, LIENS OR ENCUMBRANCES, RIGHTS OR CLAIMS ON, AFFECTING OR PERTAINING TO THE PROPERTY OR ANY PART THEREOF. BUYER ACKNOWLEDGES THAT, DURING THE DUE DILIGENCE PERIOD, BUYER WILL EXAMINE, REVIEW AND INSPECT ALL MATTERS WHICH IN BUYER'S JUDGMENT BEAR UPON THE PROPERTY AND ITS VALUE AND SUITABILITY FOR BUYER'S PURPOSES. EXCEPT AS TO MATTERS SPECIFICALLY SET FORTH IN SECTION 7.1.2 BELOW OR THE CONVEYANCING DOCUMENTS, BUYER WILL PROCEED WITH THE CLOSING CONTEMPLATED HEREBY SOLELY ON THE BASIS OF ITS OWN PHYSICAL AND FINANCIAL EXAMINATIONS, REVIEWS AND INSPECTIONS AND THE TITLE INSURANCE PROTECTION AFFORDED BY THE OWNER'S POLICY.

/s/ SD	**/s/ KT**
Seller's Initials	**Buyer's Initials**

7.1.2 Limited Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as follows:

(a) Leases. To Seller's actual knowledge, there are no leases (or other agreements regarding use or occupancy) of space in the Property which will be in force on the Closing Date and under which Seller is the landlord (whether by entering into the leases or acquiring the Property subject to the leases) other than the Existing Lease.

(b) Litigation. To Seller's actual knowledge, there is no pending (and Seller has not received any written notice of any threatened) action, litigation, arbitration, mediation, reference, condemnation or other proceeding (collectively, "**Proceeding**") involving any portion of the Property or against Seller and Seller is not aware of any Proceeding involving any portion of the Property (other than routine slip and fall claims covered by insurance) that has previously been settled or otherwise concluded. Seller has no knowledge of any contemplated condemnation or existing or contemplated special assessment affecting any portion of the Property.

(c) Compliance. To Seller's actual knowledge, Seller has received no written notice to the effect that the Property is not in compliance with applicable laws and ordinances or that there has been or may be an investigation of the Property by any governmental authority having jurisdiction over the Property.

(d) Service Agreements. To Seller's actual knowledge, Seller has not entered into any service agreements, equipment leasing contracts or other contracts relating to the Property which will be in force after the Closing, except for the Existing Lease, the Service Agreements and contracts recorded in the official records of the county in which the Property is located. As used herein, the "**Service Agreements**" means, collectively, (a) contracts described in **Exhibit "M"**, and (b) contracts entered into in accordance with this Agreement. The Service Agreements are in full force and effect, have not been amended and, to Seller's knowledge, are free from monetary default or material non-monetary default.

(e) Due Authority. This Agreement and all agreements, instruments and documents herein provided to be executed or to be caused to be executed by Seller is and on the Closing Date will be duly authorized, executed and delivered by and are binding upon Seller. Seller is a corporation, duly organized and validly existing and in good standing under the laws of the State of California, and is qualified to do business in the State of California. Seller has the capacity and authority to enter into this Agreement and consummate the transactions herein provided without the consent or joinder of any other party.

(f) Consents; No Conflict. To Seller's actual knowledge, Seller has obtained all consents and permissions related to the transactions herein contemplated and required under any covenant, agreement, encumbrance, or applicable laws. To Seller's actual knowledge, neither this Agreement nor any agreement, document or instrument executed or to be executed in connection with the same, nor anything provided in or contemplated by this Agreement or any such other agreement, document or instrument, does now or shall hereafter breach, violate, invalidate, cancel, make inoperative or interfere with, or result in the acceleration or maturity of, any agreement, document, instrument, right or interest, or applicable law affecting or relating to Seller or the Property.

(g) Environmental Matters. To Seller's actual knowledge, except as set forth in the reports described in**Exhibit "N"** (the "**Environmental Reports**"), there is (and

has been) no “Hazardous Material” at, upon or adjacent to the Property. The term “**Hazardous Material**” shall mean asbestos, mold, petroleum products, and any other hazardous waste or substance which has, as of the date hereof, been determined to be hazardous or a pollutant by the U.S. Environmental Protection Agency, the U.S. Department of Transportation, or any instrumentality authorized to regulate substances in the environment which has jurisdiction over the Property, *provided*, *however*, that the term “Hazardous Material” shall not include (x) motor oil and gasoline contained in or discharged from vehicles not used primarily for the transport of motor oil or gasoline, or (y) materials which are stored or used in the ordinary course of a tenant’s occupancy at (or Seller’s, or Seller’s managing agents’ operation of) the Property, and which are stored and used in compliance with all applicable environmental laws and which do not pose any material threat to the environment or person or property.

When a statement is made under this Agreement to the “**actual knowledge**” of Seller (or other similar phrase), it means that neither of Andrew Diamond or Steve Diamond, without any obligation of additional diligence or inquiry, has any actual knowledge of any facts indicating that such statement is not true; provided that neither of such individuals shall have any personal liability under this Agreement with respect to such matters.

7.2 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller: (1) this Agreement and all agreements, instruments and documents herein provided to be executed or to be caused to be executed by Buyer are and on the Closing Date will be duly authorized, executed and delivered by and are binding upon Buyer; (2) Buyer is a limited liability company, duly organized and validly existing and in good standing under the laws of the State of Delaware; and Buyer is duly authorized and qualified to do all things required of it under this Agreement; and (3) Buyer has the capacity and authority to enter into this Agreement and consummate the transactions herein provided without the consent or joinder of any other party (except as otherwise may be set forth in this Agreement).

7.3 Survival. Any cause of action of a party (the “**Benefiting Party**”) under this Agreement for a breach of the representations and warranties or any other provision in this Agreement or any certificate delivered in connection herewith by the other party (the “**Obligated Party**”) shall survive until the date that is twelve (12) months after the final Closing Date (the period beginning on the date hereof and ending on such date being herein called the “**Survival Period**”), at which time such representations and warranties and other provisions (and any cause of action resulting from a breach thereof) shall terminate except as to any breach with respect to which the Benefiting Party gives the Obligated Party written notice (identifying such breach with reasonable detail) on or before the date that is twelve (12) months after the final Closing Date. Notwithstanding the foregoing, if a Benefiting Party shall have knowledge as of the date of this Agreement that any of the representations or warranties of the Obligated Party contained herein or in any certificate delivered in connection herewith are false or inaccurate, then the Obligated Party shall not have any liability or obligation respecting such false or inaccurate representations or warranties (and any cause of action resulting therefrom shall terminate upon the Closing).

8. Interim Covenants of Seller. Until the earlier of the Final Closing or the termination of this Agreement:

8.1 Maintenance and Operation. Seller shall maintain and operate the Property in the same manner as prior hereto pursuant to its normal course of business and in accordance with all of its obligations under the Existing Lease, and in accordance with the TIC Agreement after the Initial Closing.

8.2 Service Agreements. Seller shall not enter into, materially modify or terminate any additional service contracts or other similar agreements relating to the Property or materially modify or terminate the Service Agreements without the prior consent of Buyer. Notwithstanding the fact that Seller may convey tenancy in common interests in the Property to Buyer (and, accordingly, the applicable Designated Percentage in any Service Agreement), Seller shall continue to perform its obligations under any Service Agreement (subject to reimbursement under the TIC Agreement).

8.3 Leases. Seller shall not enter into any new leases without Buyer's prior written consent.

8.4 Access to the Property. Seller shall continue to give Buyer access to the Property in accordance with and subject to the provisions of Section 4.2.

8.5 Encumbrances. Prior to the earlier of (a) the Final Closing and (b) the termination of this Agreement, Seller shall not encumber its ownership interest in the Property with any mortgages, deeds of trust, easements or other encumbrances except as expressly permitted above.

8.6 Lease: No Merger; Amendment. During any period when both Seller and Buyer are owners of the Property as tenants in common, the Existing Lease, as it may be modified hereunder, shall remain in full force and effect as to the entire Property, and said Lease shall not merge in whole or in part with Buyer's partial ownership of the Property. In the event that Buyer gives written notice to Seller that Buyer intends to obtain financing in connection with its acquisition or development of the Property secured *inter alia* by Lessee's interest in the Existing Lease ("**Construction Financing**"), then, as a condition precedent to Buyer's right to obtain such Construction Financing as permitted hereunder, Seller shall negotiate with Lessee concerning an amendment (the "**Lease Amendment**") to the Existing Lease, and as a result of such negotiations an amendment thereto must be executed by Seller and Lessee on terms and conditions which are satisfactory to Seller and Lessee and which accomplish the following objectives: (a) modifies the economic and rental terms of the Existing Lease to be effective during any period of the term of the Existing Lease which occurs after the Outside Closing Date when Seller remains an owner in whole or in part of the Property by reason of Buyer's default in completing its purchase of the Property hereunder, and (b) enables Lessee or Buyer to satisfy the requirements of its lender for the Construction Financing, including (1) extending the term of the lease to twenty (20) years, (2) providing customary leasehold mortgagee protections, and (c) including such other non-economic modifications of the terms of the Existing Lease reasonably requested by such lender which do not materially adversely affect Seller's rights or obligations under said Existing Lease. Nothing herein shall require either Party to agree to such Lease Amendment.

8.7 Entitlement and Construction Matters. From and after the delivery of the Go-Hard Notice and provided Buyer is not then in material default hereunder:

8.7.1 Seller shall not take or authorize, directly or indirectly, any action which modifies or changes the current entitlements of the Property without the written consent of Buyer.

8.7.2 Buyer, at its sole cost and expense, shall have the right to (a) procure any subdivision or any governmental entitlements, approvals, permits, consents and licenses it deems reasonably necessary to further develop the Property (collectively, the "**Development Rights**"), and (b) file any reports or other documents and otherwise providing any information relating to the Property required by applicable laws or requested by the applicable governmental agencies in connection therewith. Seller agrees to (a) furnish information reasonably requested by Buyer in connection with the Development Rights and (b) within five (5) business days of request from Buyer, execute any and all reasonably necessary or desired documents, agreements or other items in connection with the Development Rights, including all applications, agreements, plans, plats and similar items; provided that Seller shall have no obligation to execute any agreement that results in a material increase in the obligations or potential liability of Seller.

8.7.3 So long as Buyer has not received written notice that it is in material default of its obligations under this Agreement, Buyer, at its sole cost and expense, may perform or cause to be performed any design, engineering and construction and services in connection with the development of the Property (collectively, the "**Work**"), including (i) providing any labor, materials, equipment and services, (ii) installing or constructing any additional improvements, (iii) posting any required bonds, guarantees, sureties, and deposits, (iv) obtaining any design documents, architectural plans, drawings, and schematics, and (v) filing any reports and other documents and otherwise providing any information relating to the Property or the Work; provided that (1) any such Work is limited to reasonably minimal site preparation work (it being agreed that Work limited to the establishing and construction of the foundation of a new structure is reasonably minimal site preparation), and (2) no such Work shall alter or change the existing building located on the Property as of the date hereof. Buyer shall perform, or cause to be performed, any Work in a good and workmanlike manner and comply with and give all notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the Property and the performance of the Work. Buyer shall immediately provide to Seller copies of all notices received by Buyer alleging any failure to comply with applicable laws.

8.7.4 Seller agrees to execute any estoppel, consent or recognition agreement reasonably requested by any lender providing Construction Financing.

9. Disposition of Escrow Deposit.

9.1 If the transaction herein provided shall not close by reason of Seller's default under this Agreement or the failure of satisfaction of the conditions benefiting Buyer under Section 4 or the termination of this Agreement in accordance with Section 6, then any remaining Escrow Deposit shall be immediately returned to Buyer, and no party shall have any further obligation or liability to the other (except under those provisions of the TIC Agreement or the provisions of this Agreement that expressly survive a termination of this Agreement); *provided*, *however*, if the transactions, or some of them, provided for hereunder shall fail to close by reason of Seller's default, then Buyer shall be entitled to either (1) specifically enforce this Agreement or (2) terminate Buyer's remaining purchase obligations under this Agreement and obtain a return of any remaining Escrow Deposit, but no other action, for rescission of previously completed transfers of partial interests hereunder, for damages or otherwise, shall be permitted.

9.2 IN THE EVENT THE TRANSACTION HEREIN PROVIDED SHALL NOT CLOSE BY REASON OF BUYER'S DEFAULT (ALL CONDITIONS BENEFITING BUYER UNDER SECTION 4 HAVING BEEN SATISFIED OR WAIVED IN WRITING), THEN THE ESCROW DEPOSIT SHALL BE DELIVERED TO SELLER AS FULL COMPENSATION AND LIQUIDATED DAMAGES UNDER AND IN CONNECTION WITH THIS AGREEMENT, AND IN SUCH EVENT, BUYER SHALL NOT BE LIABLE TO SELLER FOR MONETARY DAMAGES EXCEPT FOR FORFEITURE OF THE ESCROW DEPOSIT (AND AS PROVIDED UNDER THOSE PROVISIONS OF THIS AGREEMENT THAT EXPRESSLY SURVIVE A TERMINATION OF THIS AGREEMENT). IN CONNECTION WITH THE FOREGOING, THE PARTIES RECOGNIZE THAT SELLER WILL INCUR EXPENSE IN CONNECTION WITH THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT AND THAT THE PROPERTY WILL BE REMOVED FROM THE MARKET; FURTHER, THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN THE EXTENT OF DETRIMENT TO SELLER CAUSED BY THE BREACH BY BUYER UNDER THIS AGREEMENT AND THE FAILURE OF THE CONSUMMATION OF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT OR THE AMOUNT OF COMPENSATION SELLER SHOULD RECEIVE AS A RESULT OF BUYER'S BREACH OR DEFAULT. IN THE EVENT THE SALE CONTEMPLATED HEREBY SHALL NOT BE CONSUMMATED ON ACCOUNT OF BUYER'S DEFAULT, THEN THE RETENTION OF THE ESCROW DEPOSIT SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT BY REASON OF SUCH DEFAULT, SUBJECT TO THE PROVISIONS OF THIS AGREEMENT THAT EXPRESSLY SURVIVE A TERMINATION OF THIS AGREEMENT AND THE PARTIES SHALL TAKE SUCH ACTION AS MAY BE REQUIRED TO CAUSE THE ESCROW DEPOSIT TO BE DELIVERED TO SELLER. NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, IF ANY OF THE TRANSACTIONS PROVIDED FOR HEREUNDER SHALL FAIL TO CLOSE BY REASON OF BUYER'S DEFAULT, SELLER SHALL HAVE FULLY PERFORMED OR HAVE TENDERED FULL PERFORMANCE OF ITS OBLIGATIONS HEREUNDER AND SHALL BE READY, WILLING AND ABLE TO CLOSE AND SELLER HAS GIVEN BUYER WRITTEN NOTICE TO BUYER OF ITS ELECTION TO PROCEED UNDER THIS SENTENCE WITHIN THIRTY (30) DAYS AFTER SUCH DEFAULT, THEN SELLER SHALL BE ENTITLED TO SPECIFICALLY ENFORCE THIS AGREEMENT (AND SELLER SHALL NOT, AS TO THE PENDING TRANSFER OF AN INTEREST IN THE PROPERTY, BE ENTITLED TO THE FOREGOING LIQUIDATED DAMAGES BY REASON OF SUCH DEFAULT OF BUYER, OR TO BRING ANY OTHER ACTION, FOR DAMAGES OR OTHERWISE, EXCEPT FOR DAMAGES CUSTOMARILY AVAILABLE IN SPECIFIC PERFORMANCE ACTIONS RESULTING FROM A DELAY IN THE CLOSING, PROVIDED, FURTHER, THAT SUCH SPECIFIC PERFORMANCE ACTION SHALL BE FILED AND PROSECUTED PURSUANT TO AN ARBITRATION PROCEEDING UNDER SECTION 10 OF THIS AGREEMENT.

/s/ SD	**/s/ KT**
Seller's Initials	**Buyer's Initials**

9.3 In the event the transaction herein provided shall close, the Escrow Deposit shall be applied as a partial payment of the Purchase Price or Installment Purchase Price, in accordance with the provisions of Section 3.1 hereof, if applicable.

9.4 Notwithstanding anything to the contrary in this Agreement, in no event shall Buyer or Seller be liable to the other for any consequential or punitive damages with respect to defaults under this Agreement.

10. ARBITRATION OF DISPUTES. ANY CONTROVERSY OR CLAIM ARISING UNDER OR RELATING TO THIS AGREEMENT OR ANY OF THE EXHIBITS ATTACHED TO IT, AND ANY PROCEEDINGS TO ENFORCE THIS AGREEMENT OR RIGHTS UNDER (OR RELATING TO) THIS AGREEMENT AND ITS EXHIBITS OTHER THAN THE "EXCLUDED MATTERS" (AS HEREINAFTER DEFINED) SHALL BE SETTLED BY ARBITRATION IN THE CITY OF SAN FRANCISCO, CALIFORNIA, IN ACCORDANCE WITH THE THEN EXISTING RULES ("**RULES**") OF PRACTICE AND PROCEDURE OF THE JUDICIAL ARBITRATION & MEDIATION SERVICES ("**JAMS**"). NOTWITHSTANDING ANYTHING CONTAINED IN THIS SECTION 10 TO THE CONTRARY, THE PARTIES AGREE THAT ANY ARBITRATION HEREUNDER SEEKING SPECIFIC PERFORMANCE SHALL BE FILED, PROSECUTED AND A FINAL DECISION OR AWARD MADE THEREIN ON AN EXPEDITED BASIS TO THE EXTENT NECESSARY TO PROTECT THE SELLER FROM BEING UNABLE, DUE TO THE PASSAGE OF TIME, TO COMPLETE A REVERSE, A SIMULTANEOUS OR A DEFERRED EXCHANGE OF THE SELLER'S INTEREST IN THE PROPERTY BEING SOLD, AS MAY BE REQUIRED TO COMPLY WITH INTERNAL REVENUE CODE SECTION 1031 AND RELATED SECTIONS AND REGULATIONS. THE PARTIES SHALL USE GOOD FAITH EFFORTS TO SELECT A SINGLE ARBITRATOR WITHIN TEN (10) DAYS OF A REQUEST BY ANY PARTY. IF THE PARTIES FAIL TO AGREE ON A SINGLE ARBITRATOR DURING SUCH 10-DAY PERIOD, THEN EITHER PARTY MAY REQUEST THAT JAMS APPOINT AN ARBITRATOR. AT THE TIME OF HIS OR HER APPOINTMENT, THE ARBITRATOR WILL BE REQUESTED TO HOLD AN ARBITRATION HEARING WITHIN THIRTY (30) DAYS. AS SOON AS PRACTICABLE AFTER SELECTION OF THE ARBITRATOR, THE ARBITRATOR SHALL DETERMINE A REASONABLE ESTIMATE OF THE ANTICIPATED FEES AND COSTS OF THE ARBITRATOR, AND SHALL RENDER A STATEMENT TO EACH PARTY SETTING FORTH SAID FEES AND COSTS. THEREAFTER EACH PARTY SHALL, WITHIN TEN (10) DAYS OF RECEIPT OF SAID STATEMENT, DEPOSIT ONE-HALF OF SAID SUM WITH THE ARBITRATOR(S) TO BE APPLIED AGAINST SUCH FEES AND COSTS (SUBJECT TO THE PROVISIONS OF THIS AGREEMENT). THE ARBITRATOR SHALL HAVE THE RIGHT TO DETERMINE THE SCOPE OF HIS OR HER JURISDICTION, THE EXTENT OF DISCOVERY AND TO GRANT EQUITABLE RELIEF, INCLUDING, THE RIGHT TO ORDER SPECIFIC PERFORMANCE OF THIS AGREEMENT, IN WHOLE OR IN PART , THE EXPUNGEMENT OF ANY LIS PENDENS WHICH THE ARBITRATOR DEEMS IMPROPER AND THE AMENDING OF CHANGES RELATING TO ANY IMPROPER LIS PENDENS FILING. THE PREVAILING PARTY SHALL BE ENTITLED TO REASONABLE ATTORNEYS' FEES AND OTHER REASONABLE COSTS INCURRED IN CONNECTION WITH THE ARBITRATION OR ANY OTHER LITIGATION PLUS INTEREST ON THE AMOUNT OF ANY AWARD. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED

IN ANY COURT HAVING JURISDICTION THEREOF. AS USED HEREIN, "**EXCLUDED MATTERS**" MEANS ANY CONTROVERSY, CLAIM OR PROCEEDING AFTER THE FINAL CLOSING OCCURS. THE PROVISIONS OF THIS ARTICLE 10 SHALL SURVIVE A TERMINATION OF THIS AGREEMENT.

ASSENT TO ARBITRATION PROVISION

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY (EXCEPT AS PROVIDED IN THE JAMS RULES) AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

/s/ SD	**/s/ KT**
Seller's Initials	**Buyer's Initials**

11. Miscellaneous.

11.1 Survival. Except as otherwise expressly provided herein, all warranties, representations, covenants, obligations and agreements contained in this Agreement shall survive the Closing and the transfer and conveyance of the Property hereunder and any and all performances hereunder.

11.2 Further Instruments. Each party will, whenever and as often as it shall be requested so to do by the other, cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the intent and purpose of this Agreement.

11.3 Cumulative Remedies. Except as otherwise expressly herein provided, no remedy conferred upon a party in this Agreement is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or by statute.

11.4 No Waiver. No waiver by a party of any breach of this Agreement or of any warranty or representation hereunder by the other party shall be deemed to be a waiver of any other breach by such other party (whether preceding or succeeding and whether or not of the same or

similar nature), and no acceptance of payment or performance by a party after any breach by the other party shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder by such other party, whether or not the first party knows of such breach at the time it accepts such payment or performance. No failure or delay by a party to exercise any right it may have by reason of the default of the other party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right by the first party while the other party continues to be so in default. Closing shall constitute a waiver of any condition to Closing, but shall not constitute a waiver of liability for a breach occurring prior to Closing.

11.5 Consents and Approvals. Except as otherwise expressly provided herein, any approval or consent provided to be given by a party hereunder must be in writing to be effective and may be given or withheld in the sole and absolute discretion of such party.

11.6 Press Releases. Any press release issued with respect to the transactions contemplated by this Agreement shall be subject to the prior approval of Buyer and Seller.

11.7 Modification. This Agreement may not be modified or amended except by written agreement signed by Seller and Buyer.

11.8 Matters of Construction.

11.8.1 Incorporation of Exhibits. All exhibits attached and referred to in this Agreement are hereby incorporated herein as fully set forth in (and shall be deemed to be a part of) this Agreement.

11.8.2 Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matters.

11.8.3 Non-Business Days. Whenever action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time (or by a particular date) that ends (or occurs) on a non-business day, then such period (or date) shall be extended until the immediately following business day. As used herein, "**business day**" means any day other than a Saturday, Sunday or federal or California state holiday.

11.8.4 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

11.8.5 Interpretation. Words used in the singular shall include the plural, and vice-versa, and any gender shall be deemed to include the other. Whenever the words "including", "include" or "includes" are used in this Agreement, they shall be interpreted in a non-exclusive manner. The captions and headings of the Sections of this Agreement are for convenience of reference only, and shall not be deemed to define or limit the provisions hereof. Except as otherwise indicated, all Exhibit and Section references in this Agreement shall be deemed to refer to the

Exhibits and Sections in this Agreement. Each party acknowledges and agrees that this Agreement (a) has been reviewed by it and its counsel, (b) is the product of negotiations between the parties, and (c) shall not be deemed prepared or drafted by any one party. In the event of any dispute between the parties concerning this Agreement, the parties agree that any ambiguity in the language of the Agreement is to not to be resolved against Seller or Buyer, but shall be given a reasonable interpretation in accordance with the plain meaning of the terms of this Agreement and the intent of the parties as manifested hereby.

11.8.6 Governing Law. THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF CALIFORNIA (WITHOUT REGARD TO CONFLICTS OF LAW).

11.8.7 Third Party Beneficiaries. Except as otherwise expressly provided in this Agreement, Seller and Buyer do not intend by any provision of this Agreement to confer any right, remedy or benefit upon any third party, and no third party shall be entitled to enforce or otherwise shall acquire any right, remedy or benefit by reason of any provision of this Agreement.

11.9 Effectiveness of Agreement. In no event shall any draft of this Agreement create any obligations or liabilities, it being intended that only a fully executed and delivered copy of this Agreement will bind the parties hereto.

11.10 No Joint Venture. This Agreement does not and shall not be construed to create a partnership, joint venture or any other relationship between the parties hereto except the relationship of the seller and buyer specifically established hereby.

11.11 Successors and Assigns. Buyer may not assign or transfer its rights or obligations under this Agreement without the prior written consent of Seller (in which event such transferee shall assume in writing all of the transferor's obligations hereunder, but such transferor shall not be released from its obligations hereunder). Provided Buyer gives Seller prior written notice of the same, Seller hereby consents to the assignment by Buyer of its interest in this Agreement to (a) an entity controlled by or under common control with Buyer, or (b) any lender in order to secure any Construction Financing. No consent given by Seller to any transfer or assignment of Buyer's rights or obligations hereunder shall be construed as a consent to any other transfer or assignment of Buyer's rights or obligations hereunder. No transfer or assignment in violation of the provisions hereof shall be valid or enforceable. Subject to the foregoing, this Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties.

11.12 Notices. Any notice which a party is required or may desire to give the other shall be in writing and may be sent by personal delivery or by mail (either [i] by United States registered or certified mail, return receipt requested, postage prepaid, or [ii] by Federal Express or similar generally recognized overnight carrier regularly providing proof of delivery), addressed as follows (subject to the right of a party to designate a different address for itself by notice similarly given):

TO BUYER:

Equinix, Inc.
10780 Parkridge Blvd., Suite 150
Reston, Virginia 20191
Attention: Mr. Howard B. Horowitz
Telecopier: (703) 251-3330
Telephone: (703) 251-3300

and

Equinix, Inc.
301 Velocity Way, 5th Floor
Foster City, California 94404
Attention: Scott D. Hettema, Esq.
Telecopier: (650) 513-7913
Telephone: (650) 513-7200

With Copy To:

Pircher, Nichols & Meeks
1925 Century Park East, Suite 1700
Los Angeles, California 90067
Attention: Real Estate Notices (JLB/4859-3)
Telecopier: (310) 201-8922
Telephone: (310) 201-8900

TO SELLER:

Rose Ventures II, Inc.
101 Redwood Shores Parkway, Suite 100
Redwood City, California 94065
Attention: Stephen P. Diamond
Telecopier: 650-595-7071
Telephone: 650-595-7070

With Copy To:

Kent Mitchell, Esq.
Mitchell, Herzog & Klingsporn, LLP
550 Hamilton Avenue, Suite 230
Palo Alto, California 94301-2082
Telecopier: 650-327-7994
Telephone: 650-327-7476

Any notice so given by mail shall be deemed to have been given as of the date of delivery (whether accepted or refused) established by U.S. Post Office return receipt or the overnight carrier's proof of delivery, as the case may be. Any such notice not so given (including notices by facsimile) shall be deemed given upon receipt of the same by the party to whom the same is to be given.

11.13 Section 1031 Exchange Cooperation: Buyer and Seller agree to cooperate with each other in effecting a tax-deferred exchange or exchanges under Internal Revenue Code Section 1031; *provided*, *however*, that (a) consummation of this Agreement is not predicated or conditioned on any such exchange, (b) the Closing shall not be delayed due to any exchange, (c) any rights of the non-exchange party pursuant to this Agreement shall not be impaired due to any exchange requested by the other party, (d) the non-exchange party shall incur no additional costs, expenses or liabilities as a result of or in connection with any exchange requested by the other party except those incurred in connection with the non-exchange party's review of customary exchange documentation, and (e) the non-exchange party shall not be required to take title to any other property in connection with any exchange requested by the other party. Subject to the foregoing, the parties agree to execute customary escrow instructions, documents, agreements, or instruments to effect an exchange. Each party agrees to indemnify, defend and hold the other party free and harmless from and against any liability, loss, damage, cost or expense, including reasonable attorneys' fees, that may arise from the indemnifying party's exchange.

11.14 Legal Costs. The parties hereto agree that they shall pay directly any and all legal costs which they have incurred on their own behalf in the preparation of this Agreement, all other agreements pertaining to this transaction and that such legal costs shall not be part of the closing costs. In addition, if any party hereto brings any suit or other proceeding with respect to the subject matter or the enforcement of this Agreement, the prevailing party (as determined by the court, agency or other authority before which such suit or proceeding is commenced), in addition to such other relief as may be awarded, shall be entitled to recover reasonable attorneys' fees, expenses and costs of investigation actually incurred from the non-prevailing party. The foregoing includes reasonable attorneys' fees, expenses and costs of investigation (including those incurred in appellate proceedings), costs incurred in establishing the right to indemnification, or in any action or participation in, or in connection with, any case or proceeding under Chapter 7, 11 or 13 of the Bankruptcy Code (11 United States Code Sections 101 *et seq.*), or any successor statutes. This Section shall survive any termination of this Agreement.

11.15 Confidentiality. Seller shall keep the terms and conditions of this Agreement and the transactions contemplated hereunder, including the identity of Buyer, confidential and will not disclose them to anyone, other than legal counsel, financial consultants and agents and representatives who need to know such information in connection with the transaction contemplated hereby. Subject to the requirements of applicable law, neither Seller nor any of its respective agents or representatives, shall make any news releases or other public disclosure with respect to the transactions without the prior written consent of Buyer.

11.16 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SELLER:

ROSE VENTURES II, INC.,
a California corporation

By: /s/ Stephen P. Diamond
Name: Stephen P. Diamond
Title: President

BUYER:

EQUINIX, INC.,
a Delaware corporation

By: /s/ Keith D. Taylor
Name: Keith D. Taylor
Title: Chief Financial Officer

Exhibit 10.42

[LETTERHEAD OF HOLDER]

March ___, 2007

Keith Taylor
Equinix, Inc.
301 Velocity Way, 5th Floor
Foster City, CA 94404

Re: Exchange of the Equinix, Inc. 2.50% Convertible Debentures due February 15, 2024

Dear Keith:

This will confirm your agreement to an exchange with the undersigned (the "Holder") of $[ ] principal amount of the 2.50% Convertible Debentures due February 15, 2024, CUSIP No. 29444UAE6 (the "Bonds") of Equinix, Inc. (the "Company"), currently held by Holder in exchange for (i) a number of shares of the Company's common stock, par value $0.001 per share, CUSIP No. 29444U502 (the "Common Stock") equal to the Exchange Shares (as defined below) and (ii) the Exchange Payment (as defined below, and, together with the Exchange Shares, the "Exchange Consideration"), on the terms set forth herein (the "Exchange").

1. Exchange of Bonds. The settlement of the Exchange will take place on or about March [ ], 2007 (the "Settlement Date"), at which time Holder will cause delivery of the Bonds to the Company, and the Company will cause delivery to Holder of the Exchange Consideration, in exchange for the Bonds and all claims Holder may have arising out of or relating to the Bonds (including without limitation any accrued but unpaid interest thereon).

2. Exchange Shares. The "Exchange Shares" shall be the number of shares of Common Stock which shall be equal to 25.3165 shares of Common Stock per $1,000 principal amount of the Bonds.

3. Exchange Payment. The "Exchange Payment", per $1,000 principal amount of Bonds, shall equal $[ ], which equals the present value of all of the interest due under the Bonds to the Holder for the principal amount being exchanged between the date hereof and February 15, 2009, plus $[ ].

4. Representations, Warranties and Covenants.

(a) In connection with this transaction, the Holder hereby represents, warrants, acknowledges and agrees as follows:

(1) The Holder is the sole legal and beneficial owner of the Bonds and the Bonds being transferred hereunder are free and clear of any liens, charges or encumbrances and upon completion of the Exchange, Holder will convey to the Company good title to the Bonds free and clear of all liens, charges and encumbrances.

(2) Neither the Holder nor anyone acting on Holder's behalf has received any commission or remuneration directly or indirectly in connection with or in order to solicit or facilitate the Exchange.

(3) The Holder acknowledges that the transaction contemplated hereby is intended to be exempt from registration by virtue of Section 3(a)(9) of the Securities Act of 1933, as amended (the "Securities Act"). The Holder knows of no reason why such exemption is not available.

(4) The Holder has sufficient experience in business, financial and investment matters to be able to evaluate the risks involved in, and to make an informed investment decision with respect to, the Exchange and receipt of the Exchange Consideration and the Holder acknowledges that the Company makes no representation regarding the value of the Bonds or the Exchange Consideration.

(5) The Holder has had such opportunity as it has deemed adequate to obtain from representatives of the Company such information as is necessary to permit the Holder to evaluate the merits and risks of the transaction contemplated.

(6) Holder represents that (i) it has all of the power and authority necessary to enter into this transaction and to consummate the transaction contemplated hereunder, (ii) it has taken all action as may be necessary to authorize the execution and delivery of this agreement and the consummation of the transaction contemplated by this agreement and the performance of its obligations hereunder, (iii) this agreement is an obligation enforceable in accordance with its terms, and (iv) neither the execution and delivery hereof or the performance of its obligations hereunder will violate or contravene any applicable requirements of law or any of its governing documents or material agreements.

(7) Holder covenants that, unless otherwise required by law or if otherwise publicly disclosed by the Company, it will keep the terms of this agreement confidential and shall not disclose such terms to any other party (other than its investment manager, and the owners, employees, agents, representatives and advisors, including, attorneys, accountants and consultants of the Holder and its investment manager (together, the "Representatives"), provided that such Representatives shall be advised of the confidentiality obligations hereunder and Holder shall be responsible for any breach of the terms hereof by the Representatives).

(8) Holder represents that it does not currently hold and will not hold after giving effect to this transaction in excess of 4.99% of the Common Stock of the Company based on 29,810,254 shares of Common Stock outstanding as of January 31, 2007.

(b) In connection with this transaction, the Company hereby represents, warrants, acknowledges and agrees as follows:

(1) Any Shares of Common Stock issued as part of the Exchange Consideration will not be "restricted securities" within the meaning of the Securities Act and will be freely transferable by the Holder. The certificate(s) representing such shares will not bear a restrictive legend under the Securities Act.

(2) The Company acknowledges that the transaction contemplated hereby is intended to be exempt from registration by virtue of Section 3(a)(9) of the Securities Act of 1933, as amended (the "Securities Act"). The Company knows of no reason why such exemption is not available.

(3) The Company represents that (i) it is a corporation duly organized and validly existing under the laws of the State of Delaware, (ii) it has all of the corporate power and authority necessary to enter into this transaction and to consummate the transaction contemplated hereunder, (iii) it has taken all corporate action as may be necessary to authorize the execution and delivery of this agreement and the consummation of the transaction contemplated by this agreement and the performance of its obligations hereunder, (iv) this agreement is an obligation enforceable in accordance with its terms, and (v) neither the execution and delivery hereof or the performance of its obligations hereunder will violate or contravene any applicable requirements of law or any of its charter, by-laws or material agreements.

5. Governing Law. This Agreement shall be governed by the laws of the State of New York without giving effect to the conflict of law rules contained therein and each party hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any New York State court or Federal court sitting in New York City in any action or proceeding arising out of or relating to this Agreement.

Very truly yours,

[HOLDER]

By: ____________________

Signature: ____________________

Title: ____________________

AGREED AND ACCEPTED:

EQUINIX, INC.

By: ____________________

Signature: ____________________

Title: ____________________

Date: ____________________

Exhibit 10.43

March 16, 2007

Stephen M. Smith

Dear Steve:

Equinix Operating Company, Inc. ("Equinix") is pleased to offer you employment on the following terms:

1. **Position**. You will serve in a full-time capacity of Chief Executive Officer and will report to the Board of Directors, Equinix. You will also serve as a member of the Board of Directors of Equinix while serving as Chief Executive Officer. By signing this letter agreement, you represent and warrant to Equinix that you are under no contractual commitments inconsistent with your obligations to Equinix. We acknowledge that you currently serve as a member of the Board of Directors of Ingres.

2. **Salary**. You will be paid a salary at the annual rate of $450,000.00, which will be paid on a semi-monthly basis at $18,750 in accordance with Equinix's standard payroll practices for salaried employees. This salary will be subject to adjustment pursuant to Equinix's employee compensation policies in effect from time to time.

3. **Restricted Stock Awards**. It has been recommended to the Compensation Committee of Equinix's Board of Directors that you be granted within 30 days of the commencement of your employment the following under Equinix's 2000 Equity Incentive Plan and pursuant to the terms of the Notice of Restricted Stock Award and Restricted Stock Agreement attached as Exhibit C:

(i) 24,000 restricted shares of common stock of Equinix vesting from your commencement of employment (the "Vesting Commencement Date"). The first 25% of the shares subject to the award shall vest on the one year anniversary of the Vesting Commencement Date. Thereafter, an additional 12.5% of the shares subject to the award shall vest on your completion of each six months of continuous service thereafter.

(ii) 60,000 performance-based restricted shares of common stock of Equinix vesting from the Vesting Commencement Date. The first 25% of the shares subject to the award shall vest on the one year anniversary of the Vesting Commencement Date, provided a stock price appreciation target is met. Thereafter, an additional 12.5% of the shares subject to the award shall vest on

your completion of each six months of continuous service thereafter provided certain stock price appreciation targets are met. Such stock price appreciation targets shall be based on a price appreciation target of 8.75% per annum measured from the date you commence employment with Equinix.

Both restricted share awards will be subject to vesting acceleration as provided in the Severance Agreement, attached hereto as Exhibit B and the Restricted Stock Agreement, attached hereto as Exhibit C.

4. **Proprietary Information and Inventions Agreement**. Like all Equinix employees, you will be required, as a condition to your employment with Equinix, to sign Equinix's standard Proprietary Information and Inventions Agreement, a copy of which is attached hereto as Exhibit A.

5. **Period of Employment**. Your employment with Equinix will be "at will," meaning that either you or Equinix will be entitled to terminate your employment at any time and for any reason, with or without cause. Any contrary representations which may have been made to you are superseded by this offer. This is the full and complete agreement between you and Equinix on this term. Although your job duties, title, compensation and benefits, as well as Equinix's personnel policies and procedures, may change from time to time, the "at will" nature of your employment may only be changed in an express written agreement signed by you and a duly authorized officer of Equinix.

6. **Outside Activities**. While you render services to Equinix, you will not engage in any other gainful employment, business or activity without the written consent of Equinix. Equinix consents to your continued membership on the board of directors of Ingres Corporation. While you render services to Equinix, you also will not assist any person or organization in competing with Equinix, in preparing to compete with Equinix or in hiring any employees of Equinix.

7. **Indemnification.** Equinix will indemnify you and pay for your legal expenses with respect to any claims, lawsuits or other proceedings made or threatened against you or in which you are named as a party which arise out of the performance of your duties to Equinix to the maximum extent permitted by law and Equinix will provide Director and Officer insurance coverage in accordance with its existing practice. The foregoing indemnification will cover you for your performance of duties on behalf of Equinix prior to your commencement of employment.

8. **Withholding Taxes**. All forms of compensation referred to in this letter are subject to reduction to reflect applicable withholding and payroll taxes.

9. **Entire Agreement**. This letter and the Exhibits attached hereto contain all of the terms of your employment with Equinix and supersede any prior understandings or agreements, whether oral or written, between you and Equinix.

10. **Amendment and Governing Law**. This letter agreement may not be amended or modified except by an express written agreement signed by you and an authorized representative of Equinix's Board of Directors. The terms of this letter agreement and the resolution of any disputes will be governed by the laws of the state of California.

11. **Benefits**. You and your dependents will be entitled to participate in the Company's medical and dental benefit plans in accordance with their terms. You will be entitled to participate in all benefit arrangements provided by Equinix on the same basis as those benefits are made available to the executive officers of Equinix.

12. **Paid Time Off**. You will be entitled to Paid Time Off (PTO) that accrues on a semi-monthly basis. You will accrue 5 hours per pay period. See the U.S. Equinix Employee handbook for more information.

13. **Other Terms.** As required by law, your employment with Equinix is also contingent upon your providing legal proof of your identity and authorization to work in the United States.

14. **Sign-On Bonus.** When you join Equinix, you will receive a one time 'signing' bonus of $100,000 less statutory withholding at the first payroll date following your commencement of employment. The parties agree that your first day of employment will be April 2, 2007.

15. **Company-Wide Bonus**. You are also eligible to participate in the Equinix U.S. 2007 Annual Cash Incentive Plan. The cash incentive plan is based on Equinix's financial performance and your individual performance. The Operating Plan Achievement Bonus you are eligible to receive will be up to 50% of your base salary. The Over-Performance Bonus you are eligible to receive will be an additional amount up to 50% of your base salary. The cash incentive bonus will be pro-rated based on your start date, with the full 2007 pro-rated bonus guaranteed (100% of base salary). Detailed information on this plan will be provided to you after you start.

16. **Severance Agreement**. You will be entitled to certain severance benefits upon an involuntary termination of your employment with Equinix as detailed in the Severance Agreement, which is attached hereto as Exhibit B.

17. **Attorney's Fees**. Equinix will reimburse you for all attorneys' fees you incur for the review, preparation, analysis and negotiation of your employment documents, up to a maximum of $5,000.

This offer, if not accepted, will expire at the close of business on March 19, 2007.

If you have any questions, please call me at (650) 513-7121.

Sincerely,

By: /s/ Peter Van Camp
Peter Van Camp
CEO

I have read and accept this employment offer:

/s/ Stephen M. Smith
Stephen M. Smith

Dated: March 16, 2007

My Start Date will be April 2, 2007

<u>Attachment</u>
Exhibit A: Proprietary Information and Inventions Agreement
Exhibit B: Severance Agreement
Exhibit C: Notice of Restricted Stock Award and Restricted Stock Agreement

Exhibit 10.44

SEVERANCE AGREEMENT

THIS AGREEMENT is entered into as of March 16, 2007 by and between Stephen M. Smith (the "Executive") and **EQUINIX, INC.**, a Delaware corporation (the "Company").

1. **Term of Agreement**.

This Agreement shall remain in effect from the date hereof until the earlier of:

(a) The date the Executive's employment with the Company terminates for a reason other than Involuntary Termination as described in Section 2; or

(b) The date the Company has met all of its obligations under this Agreement following a termination of the Executive's employment with the Company for a reason described in Section 2.

2. **Severance Payment**.

(a) **Severance Benefit**. If the Executive is subject to an Involuntary Termination, then the Company shall pay the Executive 100% of his or her annual base salary and target bonus (at the annual rate in effect immediately prior to the actions that resulted in the Involuntary Termination). Such severance benefit shall be paid in accordance with the Company's standard payroll procedures. In addition, any outstanding stock awards shall vest pro-rata with respect to the current outstanding installment, but as to any stock award that vests based both on time-based vesting and upon satisfaction of performance milestones, only to the extent any applicable performance milestones have been met. For example, if Executive is subject to an Involuntary Termination six months after the grant of a restricted stock award where the restricted stock award vests as to 25% of its shares solely upon completion of one year of service after its grant, then Executive would vest in 12.5% of such restricted stock award. Finally, Executive shall be paid any unpaid bonus for the prior fiscal year provided he has met the goals for payment of such bonus. Subject to Section 2(d), the Executive will receive his or her severance payment in a lump-sum payment which will be made within ten (10) business days of the latest of the following dates:

(i) the date of Executive's Involuntary Termination;

(ii) the date of the Company's receipt of the Executive's executed General Release; and

(iii) the expiration of any rescission period applicable to the Executive's executed General Release.

(b) **Health Care Benefit**. If the Executive is subject to an Involuntary Termination, and if the Executive elects to continue his or her health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act ("COBRA") following the termination of his or her employment, then the Company shall pay the Executive's monthly premium under COBRA until the earliest of (i) the close of the twelve-month period following cessation of his or her employment or (ii) the expiration of the Executive's continuation coverage under COBRA.

(c) **General Release**. Any other provision of this Agreement notwithstanding, Subsections (a) and (b) above shall not apply unless the Executive (i) has executed a general release (in the form attached hereto as Attachment A) of all known and unknown claims that he or she may then have against the Company or persons affiliated with the Company and (ii) has agreed not to prosecute any legal action or other proceeding based upon any of such claims.

(d) **Section 409A**. The other provisions of Section 2 above notwithstanding, the payment(s) under Section 2(a) and the COBRA reimbursements under Section 2(b) shall in no event commence prior to the earliest date permitted by Section 409A(a)(2)(B)(i) of the Internal Revenue Code of 1986, as amended ("the Code"). If the commencement of such payments or reimbursements must be delayed, then any deferred installments shall be paid in a lump sum on the earliest practicable date permitted by Section 409A(a)(2)(B)(i) of the Code.

3. **Covenants**.

(a) **Non-Solicitation**. During the Executive's employment with the Company and during the twelve-month period following his or her cessation of employment, the Executive shall not directly or indirectly, personally or through others, solicit or attempt to solicit the employment of any employee of the Company or any of the Company's affiliates, whether on the Executive's own behalf or on behalf of any other person or entity. The Executive and the Company agree that this provision is reasonably enforced as to any geographic area in which the Company conducts its business.

(b) **Non-Competition**. The Executive agrees that, during his or her employment with the Company, he or she shall not directly or indirectly, individually or in conjunction with others, engage in activities that compete with the Company or work for any entity that competes with the Company.

(c) **Cooperation and Non-Disparagement**. The Executive agrees that, during the twelve-month period following his or her cessation of employment, he or she shall cooperate with the Company in every reasonable respect and shall use his or her best efforts to assist the Company with the transition of Executive's duties to his or her successor; in both cases subject to Executive's personal and any other professional obligations or employment. The Executive further agrees that, during this twelve-month period, he or she shall not in any way or by any means disparage the Company, the members of the Company's Board of Directors or the Company's officers and employees. The Company agrees that members of the Company's Board of Directors and its officers will not in any way or by any means disparage Executive for the same twelve-month period.

4. **Definitions**.

(a) **Definition of** "**Cause.**" For all purposes under this Agreement, "Cause" shall mean the Executive's unauthorized use or disclosure of trade secrets which causes material harm to the Company, the Executive's conviction of, or a plea of "guilty" or "no contest" to, a felony, or the Executive's gross misconduct. The foregoing shall not be deemed an exclusive list of all acts or omissions that the Company may consider as grounds for the termination of the Executive's employment without Cause.

(b) **Definition of** "**Good Reason."** For all purposes under this Agreement, "Good Reason" shall mean (i) a change in the Executive's position with the Company that materially reduces his or her authority or level of responsibility, provided that in the event of a Change in Control of the Company (as defined in the Company's 2000 Equity Incentive Plan), if Executive is no longer the chief executive officer of the successor entity, or, its parent (if the successor entity is controlled by another entity), then the Change in Control of the Company shall materially reduce Executive's authority and level of responsibility and shall qualify as Good Reason, (ii) a reduction in his or her level of compensation (including base salary and target bonus) other than pursuant to a Company-wide reduction of compensation where the reduction affects the other executive officers and Executive's reduction is substantially equal, on a percentage basis, to the reduction of the other executive officers, (iii) a relocation of Executive's place of employment by more than 30 miles, provided and only if such change, reduction or relocation is effected by the Company without Executive's consent or (iv) a material breach of this Agreement or the Executive's offer letter by the Company or the failure of any successor to the Company to assume this Agreement or the offer letter pursuant to the terms of Section 5(a) of this Agreement.

(c) **Definition of** "**Involuntary Termination.**" For all purposes under this Agreement, "Involuntary Termination" shall mean that one of the following events occurs:

(i) The Executive voluntarily resigns his or her employment for Good Reason; or

(ii) The Company terminates the Executive's employment for any reason other than Cause.

5. **Successors**.

(a) **Company's Successors**. The Company shall require any successor (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets, by an agreement in substance and form satisfactory to the Executive, to assume this Agreement and Executive's offer letter and to agree expressly to perform this Agreement and Executive's offer letter in the same manner and to the same extent as the Company would be required to perform it in the

absence of a succession. For all purposes under this Agreement, the term "Company" shall include any successor to the Company's business and/or assets or which becomes bound by this Agreement by operation of law.

(b) **Executive's Successors**. This Agreement and all rights of the Executive hereunder shall inure to the benefit of, and be enforceable by, the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

6. **Golden Parachute Taxes**.

(a) **Best After-Tax Result**. In the event that any payment or benefit received or to be received by Executive pursuant to this Agreement or otherwise ("Payments") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code") and (ii) but for this subsection (a), be subject to the excise tax imposed by Section 4999 of the Code, any successor provisions, or any comparable federal, state, local or foreign excise tax ("Excise Tax"), then, subject to the provisions of Section 6(b) hereof, such Payments shall be either (A) provided in full pursuant to the terms of this Agreement or any other applicable agreement, or (B) provided as to such lesser extent which would result in no portion of such Payments being subject to the Excise Tax ("Reduced Amount"), whichever of the foregoing amounts, taking into account the applicable federal, state, local and foreign income, employment and other taxes and the Excise Tax (including, without limitation, any interest or penalties on such taxes), results in the receipt by Executive, on an after-tax basis, of the greatest amount of payments and benefits provided for hereunder or otherwise, notwithstanding that all or some portion of such Payments may be subject to the Excise Tax. Unless the Company and Executive otherwise agree in writing, any determination required under this Section shall be made by independent tax counsel designated by the Company and reasonably acceptable to Executive ("Independent Tax Counsel'), whose determination shall be conclusive and binding upon Executive and the Company for all purposes. For purposes of making the calculations required under this Section, Independent Tax Counsel may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code; provided that Independent Tax Counsel shall assume that Executive pays all taxes at the highest marginal rate. The Company and Executive shall furnish to Independent Tax Counsel such information and documents as Independent Tax Counsel may reasonably request in order to make a determination under this Section. The Company shall bear all costs that Independent Tax Counsel may reasonably incur in connection with any calculations contemplated by this Section. In the event that Section 6(a)(ii)(B) above applies, then based on the information provided to Executive and the Company by Independent Tax Counsel, Executive may, in Executive's sole discretion and within 30 days of the date on which Executive is provided with the information prepared by Independent Tax Counsel, determine which and how much of the Payments (including the accelerated vesting of equity compensation awards) to be otherwise received by Executive shall be eliminated or reduced (as long as after such determination the value (as calculated by Independent Tax Counsel in accordance with the provisions of Sections 280G and 4999 of the Code) of the amounts payable or distributable to Executive equals the Reduced Amount). If the Internal Revenue Service (the "IRS") determines that any Payment is subject to the Excise Tax, then Section 6(b) hereof shall apply, and the enforcement of Section 6(b) shall be the exclusive remedy to the Company.

(b) **Adjustments**. If, notwithstanding any reduction described in Section 6(a) hereof (or in the absence of any such reduction), the IRS determines that Executive is liable for the Excise Tax as a result of the receipt of one or more Payments, then Executive shall be obligated to surrender or pay back to the Company, within 120 days after a final IRS determination, an amount of such payments or benefits equal to the "Repayment Amount." The Repayment Amount with respect to such Payments shall be the smallest such amount, if any, as shall be required to be surrendered or paid to the Company so that Executive's net proceeds with respect to such Payments (after taking into account the payment of the Excise Tax imposed on such Payments) shall be maximized. Notwithstanding the foregoing, the Repayment Amount with respect to such Payments shall be zero if a Repayment Amount of more than zero would not eliminate the Excise Tax imposed on such Payments or if a Repayment Amount of more than zero would not maximize the net amount received by Executive from the Payments. If the Excise Tax is not eliminated pursuant to this Section 6(b), Executive shall pay the Excise Tax.

7. **Miscellaneous Provisions**.

(a) **Other Severance Arrangements**. This Agreement supersedes any and all cash severance arrangements under any prior separation, severance and salary continuation arrangements, programs and plans which were previously offered by the Company to the Executive, including arrangements pursuant to an employment agreement or offer letter. In no event shall any individual receive cash severance benefits under both this Agreement and any other severance pay or salary continuation program, plan or other arrangement with the Company. This Agreement provides additional terms for vesting acceleration for stock awards and does not supersede the terms of any vesting acceleration pursuant to a stock award.

(b) **Notice**. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid or deposited with Federal Express Corporation, with shipping charges prepaid. In the case of the Executive, mailed notices shall be addressed to him or her at the home address which he or she most recently communicated to the Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary.

(c) **Waiver**. No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by the Executive and by an authorized officer of the Company (other than the Executive). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(d) **Withholding Taxes**. All payments made under this Agreement shall be subject to reduction to reflect taxes or other charges required to be withheld by law.

(e) **Severability**. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.

(f) **No Retention Rights**. Nothing in this Agreement shall confer upon the Executive any right to continue in service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company or any subsidiary of the Company or of the Executive, which rights are hereby expressly reserved by each, to terminate his or her service at any time and for any reason, with or without Cause.

(g) **Choice of Law**. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California (other than their choice-of-law provisions).

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by its duly authorized officer, as of the day and year first above written.

/s/ Stephen M. Smith
Stephen M. Smith

EQUINIX, INC.

/s/ Peter Van Camp
By: Peter Van Camp
Title: Chief Executive Officer

Exhibit 10.45

EQUINIX, INC. 2000 EQUITY INCENTIVE PLAN
NOTICE OF RESTRICTED STOCK AWARD

You have been granted restricted shares of Common Stock of Equinix, Inc. (the "Company") on the following terms:

Name of Recipient:	
Total Number of Shares Granted:	
Fair Market Value per Share:	$
Total Fair Market Value of Award:	$
Date of Grant:	
Vesting Commencement Date:	
Vesting Schedule:	The first 25% of the shares subject to this award shall vest on the date you complete twelve months of continuous "Service" (as defined in the Restricted Stock Agreement) from the Vesting Commencement Date. Thereafter, an additional 12.5% of the shares subject to this award shall vest on your completion of each six months of continuous Service thereafter.

You and the Company agree that these shares are granted under and governed by the terms and conditions of the Equinix, Inc. 2000 Equity Incentive Plan (the "Plan") and the Restricted Stock Agreement, which is attached to and made a part of this document.

You further agree that the Company may deliver by email all documents relating to the Plan or this award (including, without limitation, prospectuses required by the Securities and Exchange Commission) and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements). You also agree that the Company may deliver these documents by posting them on a web site maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a web site, it will notify you by email. By your signature below, you agree to pay any withholding taxes due on vesting or transfer of the shares.

RECIPIENT:	**EQUINIX, INC.**
______________________________	By: ______________________________
	Title: ______________________________

EQUINIX, INC. 2000 EQUITY INCENTIVE PLAN
RESTRICTED STOCK AGREEMENT

Payment for Shares	No payment is required for the shares that you are receiving, except for satisfying any withholding taxes that may be due as a result of the grant of this award or the vesting or transfer of the shares.
Transfer	On the terms and conditions set forth in the Notice of Restricted Stock Award and this Agreement, the Company agrees to transfer to you the number of Shares set forth in the Notice of Restricted Stock Award.
Vesting	The shares will vest in installments, as shown in the Notice of Restricted Stock Award. No additional shares will vest after your service as an employee, consultant or outside director of the Company or a parent or subsidiary of the Company ("Service") has terminated for any reason.
Change in Control	In the event of a Change in Control, then the vesting of the shares will automatically accelerate as if you had completed an additional 12 months of Service. In addition, in the event of a Change in Control, the vesting of the shares will automatically accelerate in full if this award is, in connection with the Change in Control, not to be assumed by the successor corporation (or its parent) or to be replaced with an equivalent award for shares of the capital stock of the successor corporation (or its parent). The determination of award equivalence will be made by the Company's Board of Directors in good faith, and its determination will be final, binding and conclusive. Change in Control is defined in the Company's 2000 Equity Incentive Plan. Section 18 of the Plan shall not apply to this Agreement
Involuntary Termination	If the award is assumed by the successor corporation (or its parent) and you experience an Involuntary Termination within eighteen months following a Change in Control, the vesting of the shares will automatically accelerate so that this award will, immediately before the effective date of the Involuntary Termination, become fully vested for all of the shares of Common Stock subject to this award. Involuntary Termination shall have the meaning ascribed to such term in the Severance Agreement between you and the Company dated March 16, 2007.
Shares Restricted	Unvested shares will be considered "Restricted Shares." You may not sell, transfer, pledge or otherwise dispose of any Restricted Shares without the written consent of the Company, except as provided in the

	next sentence. You may transfer Restricted Shares to your spouse, children or grandchildren or to a trust established by you for the benefit of yourself or your spouse, children or grandchildren. However, a transferee of Restricted Shares must agree in writing on a form prescribed by the Company to be bound by all provisions of this Agreement.
Forfeiture	If your Service terminates for any reason, then your shares will be forfeited to the extent that they have not vested before the termination date and do not vest as a result of the termination. This means that the Restricted Shares will immediately revert to the Company. You receive no payment for Restricted Shares that are forfeited. The Company determines when your Service terminates for this purpose.
Leaves of Absence and Part-Time Work	For purposes of this award, your Service does not terminate when you go on a military leave, a sick leave or another *bona fide* leave of absence, if the leave was approved by the Company in writing and if continued crediting of Service is required by applicable law, the Company's leave of absence policy or the terms of your leave. But your Service terminates when the approved leave ends, unless you immediately return to active work. If you go on a leave of absence, then the vesting schedule specified in the Notice of Restricted Stock Award may be adjusted in accordance with the Company's leave of absence policy or the terms of your leave. If you commence working on a part-time basis, then the vesting schedule specified in the Notice of Restricted Stock Award may be adjusted in accordance with the Company's part-time work policy or the terms of an agreement between you and the Company pertaining to your part-time schedule.
Stock Certificates	The Company will hold your Restricted Shares for you. After shares have vested, a stock certificate for those shares will be released to a broker for your account. The Company will select the broker at its discretion.
Voting Rights	You may vote your shares even before they vest.
Withholding Taxes	No stock certificates will be released to you unless you have made arrangements acceptable to the Company to pay any withholding taxes that may be due as a result of this award or the vesting of the shares. With the Company's consent, these arrangements may include (a) withholding shares of Company stock that otherwise would be issued to you when they vest, (b) surrendering shares that you previously acquired, or (c) deducting the withholding taxes from any cash compensation payable to you. The fair market value of the shares you

	surrender, determined as of the date taxes otherwise would have been withheld in cash, will be applied as a credit against the withholding taxes.
Restrictions on Resale	By signing this Agreement, you agree not to sell any shares at a time when applicable laws, Company policies or an agreement between the Company and its underwriters prohibit a sale. This restriction will apply as long as your Service continues and for such period of time after the termination of your Service as the Company may specify.
No Retention Rights	Your award or this Agreement does not give you the right to be employed or retained by the Company or a subsidiary of the Company in any capacity. The Company and its subsidiaries reserve the right to terminate your Service at any time, with or without cause.
Adjustments	In the event of a stock split, a stock dividend or a similar change in Company capital stock, the number of shares that remain subject to forfeiture will be adjusted accordingly.
Applicable Law	This Agreement will be interpreted and enforced under the laws of the State of Delaware (without regard to their choice-of-law provisions).
The Plan and Other Agreements	The text of the Plan is incorporated in this Agreement by reference. This Agreement and the Plan constitute the entire understanding between you and the Company regarding this award. Any prior agreements, commitments or negotiations concerning this award are superseded. This Agreement may be amended only by another written agreement between the parties.

BY SIGNING THE COVER SHEET OF THIS AGREEMENT, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED ABOVE AND IN THE PLAN.

EQUINIX, INC. 2000 EQUITY INCENTIVE PLAN
NOTICE OF RESTRICTED STOCK AWARD

You have been granted restricted shares of Common Stock of Equinix, Inc. (the "Company") on the following terms:

Name of Recipient:	
Total Number of Shares Granted:	
Fair Market Value per Share:	$
Total Fair Market Value of Award:	$
Date of Grant:	
Vesting Commencement Date:	
Vesting Schedule:	The first 25% of the shares subject to this award shall vest on the later of (A) the date after you complete twelve months of continuous "Service" (as defined in the Restricted Stock Agreement) from the Vesting Commencement Date and (B) the first trading day on which the Common Stock closes at or above the price appreciation target for the first vesting installment as set forth on Schedule A. Thereafter, an additional 12.5% of the shares subject to this award shall vest on the later of (A) your completion of each six months of continuous Service thereafter and (B) the first trading day on which the Common Stock closes at or above the price appreciation target for the applicable vesting installment as set forth on Schedule A.

You and the Company agree that these shares are granted under and governed by the terms and conditions of the Equinix, Inc. 2000 Equity Incentive Plan (the "Plan") and the Restricted Stock Agreement, which is attached to and made a part of this document.

You further agree that the Company may deliver by email all documents relating to the Plan or this award (including, without limitation, prospectuses required by the Securities and Exchange Commission) and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements). You also agree that the Company may deliver these documents by posting them on a web site maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a web site, it will notify you by email. By your signature below, you agree to pay any withholding taxes due on vesting or transfer of the shares.

RECIPIENT:

____

EQUINIX, INC.

By: ______________________________

Title: ______________________________

EQUINIX, INC. 2000 EQUITY INCENTIVE PLAN
RESTRICTED STOCK AGREEMENT

Payment for Shares	No payment is required for the shares that you are receiving, except for satisfying any withholding taxes that may be due as a result of the grant of this award or the vesting or transfer of the shares.
Transfer	On the terms and conditions set forth in the Notice of Restricted Stock Award and this Agreement, the Company agrees to transfer to you the number of Shares set forth in the Notice of Restricted Stock Award.
Vesting	The shares will vest in installments, as shown in the Notice of Restricted Stock Award. No additional shares will vest after your service as an employee, consultant or outside director of the Company or a parent or subsidiary of the Company ("Service") has terminated for any reason.
Change in Control	In the event of a Change in Control, then the vesting of the shares will automatically accelerate as if you had completed an additional 12 months of Service and the price appreciation targets set forth on Schedule A during that 12 month period shall not be applicable. In addition, in the event of a Change in Control, the vesting of the shares will automatically accelerate in full if this award is, in connection with the Change in Control, not to be assumed by the successor corporation (or its parent) or to be replaced with an equivalent award for shares of the capital stock of the successor corporation (or its parent). The determination of award equivalence will be made by the Company's Board of Directors in good faith, and its determination will be final, binding and conclusive. Change in Control is defined in the Company's 2000 Equity Incentive Plan.
	Section 18 of the Plan shall not apply to this Agreement.
Involuntary Termination	If the award is assumed by the successor corporation (or its parent) and you experience an Involuntary Termination within eighteen months following a Change in Control, the vesting of the shares will automatically accelerate so that this award will, immediately before the effective date of the Involuntary Termination, become fully vested for all of the shares of Common Stock subject to this award.
	Involuntary Termination shall have the meaning ascribed to such term in the Severance Agreement between you and the Company dated March 16, 2007.

Shares Restricted	Unvested shares will be considered “Restricted Shares.” You may not sell, transfer, pledge or otherwise dispose of any Restricted Shares without the written consent of the Company, except as provided in the next sentence. You may transfer Restricted Shares to your spouse, children or grandchildren or to a trust established by you for the benefit of yourself or your spouse, children or grandchildren. However, a transferee of Restricted Shares must agree in writing on a form prescribed by the Company to be bound by all provisions of this Agreement.
Forfeiture	If your Service terminates for any reason, then your shares will be forfeited to the extent that they have not vested before the termination date and do not vest as a result of the termination. This means that the Restricted Shares will immediately revert to the Company. You receive no payment for Restricted Shares that are forfeited. The Company determines when your Service terminates for this purpose.
Leaves of Absence and Part-Time Work	For purposes of this award, your Service does not terminate when you go on a military leave, a sick leave or another *bona fide* leave of absence, if the leave was approved by the Company in writing and if continued crediting of Service is required by applicable law, the Company’s leave of absence policy or the terms of your leave. But your Service terminates when the approved leave ends, unless you immediately return to active work. If you go on a leave of absence, then the vesting schedule specified in the Notice of Restricted Stock Award may be adjusted in accordance with the Company’s leave of absence policy or the terms of your leave. If you commence working on a part-time basis, then the vesting schedule specified in the Notice of Restricted Stock Award may be adjusted in accordance with the Company’s part-time work policy or the terms of an agreement between you and the Company pertaining to your part-time schedule.
Stock Certificates	The Company will hold your Restricted Shares for you. After shares have vested, a stock certificate for those shares will be released to a broker for your account. The Company will select the broker at its discretion.
Voting Rights	You may vote your shares even before they vest.
Withholding Taxes	No stock certificates will be released to you unless you have made arrangements acceptable to the Company to pay any withholding taxes that may be due as a result of this award or the vesting of the shares. With the Company’s consent, these arrangements may include (a) withholding shares of Company stock that otherwise would be issued

	to you when they vest, (b) surrendering shares that you previously acquired, or (c) deducting the withholding taxes from any cash compensation payable to you. The fair market value of the shares you surrender, determined as of the date taxes otherwise would have been withheld in cash, will be applied as a credit against the withholding taxes.
Restrictions on Resale	By signing this Agreement, you agree not to sell any shares at a time when applicable laws, Company policies or an agreement between the Company and its underwriters prohibit a sale. This restriction will apply as long as your Service continues and for such period of time after the termination of your Service as the Company may specify.
No Retention Rights	Your award or this Agreement does not give you the right to be employed or retained by the Company or a subsidiary of the Company in any capacity. The Company and its subsidiaries reserve the right to terminate your Service at any time, with or without cause.
Adjustments	In the event of a stock split, a stock dividend or a similar change in Company capital stock, the number of shares that remain subject to forfeiture will be adjusted accordingly.
Applicable Law	This Agreement will be interpreted and enforced under the laws of the State of Delaware (without regard to their choice-of-law provisions).
The Plan and Other Agreements	The text of the Plan is incorporated in this Agreement by reference. This Agreement and the Plan constitute the entire understanding between you and the Company regarding this award. Any prior agreements, commitments or negotiations concerning this award are superseded. This Agreement may be amended only by another written agreement between the parties.

BY SIGNING THE COVER SHEET OF THIS AGREEMENT, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED ABOVE AND IN THE PLAN.

Schedule A

Vesting Triggers Tied to Stock Price Appreciation

Vesting Installment	Time Based Vesting Date	Stock Price Appreciation Target

In order to vest at each six (6) month interval, the Common Stock must have closed on at least one (1) trading day, at or above the corresponding price appreciation target indicated for the applicable vesting installment. If the price is achieved at a later date, then the Shares vest on that date. Vesting may be cumulative as tied to closing stock price appreciation.

Exhibit 10.46

AMENDMENT NO. 1
TO
SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

THIS AMENDMENT NO. 1 TO SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this "***Amendment***") is entered into as of this 26th day of March, 2007, by and among **EQUINIX, INC.,** a Delaware corporation ("***Equinix***"), **EQUINIX OPERATING CO., INC**., a Delaware corporation ("***Opco***", and together with Equinix, "***Borrowers***"), **GENERAL ELECTRIC CAPITAL CORPORATION** ("***GECC***"), **SILICON VALLEY BANK** ("***SVB***" and together with GECC, "***Lenders***"), and SVB in its capacity as Administrative Agent for the Lenders (as such, the "***Agent***"). Capitalized terms used herein without definition shall have the same meanings given them in the Loan Agreement (as defined below).

RECITALS

A. Borrowers, Agent and Lenders have entered into that certain Second Amended and Restated Loan and Security Agreement dated as of August 10, 2006 (the "***Loan Agreement***"), pursuant to which Lenders agreed to extend and make available to Borrowers certain advances of money.

B. Borrowers desire that Agent and Lenders amend the Loan Agreement to, among other things, modify certain covenants.

C. GECC and SVB constitute Requisite Lenders pursuant to the Loan Agreement.

D. Subject to the representations and warranties of Borrowers herein and upon the terms and conditions set forth in this Amendment, Agent and Lenders are willing to amend the Loan Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and intending to be legally bound, the parties hereto agree as follows:

1. AMENDMENTS TO LOAN AGREEMENT.

1.1 Section 5.1 (Due Organization and Authorization). The third sentence of Section 5.1 is hereby amended in its entirety to read as follows:

"Each Borrower represents and warrants to Agent and Lenders that, as of the Effective Date: (a) such Borrower's exact legal name is that indicated on the Collateral Information Certificate and on the signature page hereof; (b) such Borrower is an organization of the type, and is organized in the jurisdiction, set forth in the Collateral Information Certificate; (c) the Collateral Information Certificate accurately sets forth such Borrower's organizational identification number or accurately states that such Borrower has none; (d) the Collateral

Information Certificate accurately sets forth such Borrower's place of business, or, if more than one, its chief executive office as well as such Borrower's mailing address if different, and (e) all other information set forth on the Collateral Information Certificate pertaining to such Borrower is accurate and complete."

1.2 Section 6.7(a) (Financial Covenants). Section 6.7(a) is hereby amended in its entirety to read as follows:

"(a) At each date that is a quarter-end, Equinix and its consolidated Subsidiaries shall maintain a Quick Ratio of not less than 1.25:1.0 for quarters ending through 12/31/07; and 1.50:1.0 for quarters ending 3/31/08 and 6/30/08."

1.3 Section 6.7(d) (Financial Covenants). Section 6.7(d) is hereby amended in its entirety to read as follows:

"(d) At each date that is a fiscal quarter-end, the Total Funded Debt *divided by* the trailing two fiscal quarter annualized EBITDA of Equinix and its consolidated Subsidiaries (the ***"Total Leverage Ratio"***) shall be less than or equal to the ratio set forth below opposite each time period set forth below:

Period	Maximum Total Leverage Ratio
For the fiscal quarters ending through 6/30/07	4.25:1.0*
For the fiscal quarters ending 9/30/07 and each fiscal quarter end thereafter	3.75:1.0*
*In the event Approved Subordinated Debt is issued:	
(a) For the four fiscal quarters following the date of issuance	6.00:1.00
(b) For the next four fiscal quarters thereafter	5.00:1:00
(c) For all fiscal quarters commencing with the ninth fiscal quarter after the date of issuance	4.00:1.00

1.4 Section 6.7(e) (Financial Covenants). A new Section 6.7(e) is added to the Loan Agreement as follows:

"(e) At all times, Borrowers shall maintain a sum of (i) cash, Cash Equivalents, short term investments, and 80% of long term investments, in each case maintained in Domestic Collateral Accounts, *plus* (ii) ten percent (10%) of net accounts receivable, equal to not less than

$75,000,000. For purposes of this Section 6.7(e), accounts receivable shall mean those accounts receivable owing to a Borrower in the ordinary course of its business that are not more than 60 days past invoice date, and where the account debtor is not subject to an Insolvency Proceeding. Such minimum liquidity shall be reported quarterly to Bank, unless the Quick Ratio calculated in accordance with Section 6.7(a) above is less than 1.75:1.0, in which case Borrower shall report minimum liquidity monthly."

1.5 Section 6.8 (Modifications to 2007 Indenture). Section 6.8, currently titled "Intentionally Omitted," is retitled "Modifications to 2007 Indenture" and amended to read as follows:

"Borrowers shall not permit any amendments or modifications to the 2007 Indenture which would change, in a manner adverse to Lenders notwithstanding the ability of Borrowers to otherwise comply with their obligations under this Agreement, the terms of subordination set forth therein or the timing or amount of any cash payments in respect of the principal of the Borrower's Convertible Subordinated Notes due April 15, 2012."

1.6 Section 8.6 (Other Agreements). Section 8.6 is hereby amended by adding the following sentence to the end of such Section:

"If there is a Fundamental Change (as defined in the 2007 Indenture)."

1.7 Section 13.12 (Designation of Obligations as "Designated Senior Debt" and "Designated Senior Indebtedness"). Section 13.12, currently titled "Designation of Obligations as "Designated Senior Debt", is retitled "Designation of Obligations as "Designated Senior Debt" and "Designated Senior Indebtedness"" and amended to read in its entirety as follows:

"Borrowers, Agent and Lenders expressly agree that the Obligations constitute (a) "Designated Senior Debt" for purposes of and as defined in that certain Indenture, dated as of February 11, 2004, between Equinix and U.S. Bank National Association, as Trustee, as amended, modified or supplemented from time to time, and (b) "Designated Senior Indebtedness" for purposes of and as defined in the 2007 Indenture."

1.8 Section 15.1 (Definitions). A new definition is added to Section 15.1 in proper alphabetical order:

"2007 Indenture" means the Indenture dated as of March 30, 2007, between Equinix and U.S. Bank National Association, as Trustee, in the form of the draft of 3/23/07 (3:44 am).

1.9 Exhibit C (Compliance Certificate). The form of Compliance Certificate attached to the Loan Agreement as Exhibit C is hereby amended in its entirety to the form attached hereto as Exhibit A to Amendment.

1.10 Schedule 6.7. Schedule 6.7 to the Loan Agreement is amended to read in its entirety as follows:

"For purposes hereof, "***Approved Subordinated Debt***" means any new unsecured convertible subordinated debt issued by Borrowers in aggregate principal amount of not less than $100,000,000 and not more than $250,000,000, with a coupon that shall not exceed 5% and expressly subordinated to the Obligations in right of payment."

2. BORROWERS' REPRESENTATIONS AND WARRANTIES. Each Borrower represents and warrants that:

(a) immediately upon giving effect to this Amendment (i) the representations and warranties of Borrowers contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (ii) no Default or Event of Default has occurred and is continuing;

(b) Each Borrower has the corporate power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;

(c) the certificates of incorporation, bylaws and other organizational documents of Borrowers delivered to Agent on the Effective Date remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;

(d) the execution and delivery by each Borrower of this Amendment and the performance by each Borrower of its obligations under the Loan Agreement, as amended by this Amendment, have been duly authorized by all necessary corporate action on the part of such Borrower; and

(e) this Amendment has been duly executed and delivered by the Borrowers and is the binding obligation of each Borrower, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

3. LIMITATION. The amendments set forth in this Amendment shall be limited precisely as written and shall not be deemed (a) to be a waiver or modification of any other term or condition of the Loan Agreement or of any other instrument or agreement referred to therein or to prejudice any right or remedy which Agent or Lenders may now have or may have in the future under or in connection with the Loan Agreement or any instrument or agreement referred to therein; or (b) to be a consent to any future amendment or modification or waiver to any instrument or agreement the execution and delivery of which is consented to hereby, or to any waiver of any of the provisions thereof. Except as expressly amended hereby, the Loan Agreement shall continue in full force and effect.

4. EFFECTIVENESS. This Amendment shall become effective upon the satisfaction of all the following conditions precedent:

4.1 Amendment. Borrowers and Requisite Lenders shall have duly executed and delivered this Amendment to Agent.

4.2 Payment of Amendment Fee. Borrowers shall have paid to Agent, for distribution to Lenders in accordance with their Pro Rata Shares, an amendment fee equal to $37,500.00.

4.3 Payment of Bank Expenses. Borrowers shall have paid all Bank Expenses incurred through the date of this Amendment.

5. BORROWERS' COVENANTS. Not later than April 26, 2007, Borrowers shall (i) execute and deliver, and cause each bank or financial institution (other than SVB) at or with which any Domestic Collateral Account is maintained to execute and deliver, in form and substance satisfactory to Agent and Lenders, a Control Agreement or other appropriate instrument, to the extent not already delivered, with respect to such Domestic Collateral Account to perfect Agent's first priority security interest in such Domestic Collateral Account, and, (ii) with respect to Deposit Accounts and Securities Accounts of Equinix maintained with Smith Barney, execute and deliver and cause Smith Barney to execute and deliver such control agreements, amended and restated control agreements, or other appropriate instrument, in form and substance satisfactory to Agent and Lenders, to perfect Agent's first priority security interest in such Deposit Accounts and Securities Accounts. If Borrowers fail to perform any obligation or violate any covenant under this Amendment, it shall be an Event of Default under Section 8.2(a) of the Loan Agreement.

6. COUNTERPARTS. This Amendment may be signed in any number of counterparts, and by different parties hereto in separate counterparts, with the same effect as if the signatures to each such counterpart were upon a single instrument. All counterparts shall be deemed an original of this Amendment.

7. INTEGRATION. This Amendment and any documents executed in connection herewith or pursuant hereto contain the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, offers and negotiations, oral or written, with respect thereto and no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding, if any, involving this Amendment; except that any financing statements or other agreements or instruments filed by Agent with respect to Borrowers shall remain in full force and effect.

8. GOVERNING LAW. THIS AMENDMENT SHALL BE GOVERNED BY AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICT OF LAW.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date first written above.

BORROWERS:

EQUINIX, INC.
a Delaware corporation

By: /s/ Keith D. Taylor
Printed Name: Keith D. Taylor
Title: CFO

EQUINIX OPERATING CO., INC.
a Delaware corporation

By: /s/ Keith D. Taylor
Printed Name: Keith D. Taylor
Title: CFO

AGENT:

SILICON VALLEY BANK

By: /s/ Nick Tsiagkas
Printed Name: Nick Tsiagkas
Title: Relationship Manager

LENDERS:

SILICON VALLEY BANK

By: /s/ Nick Tsiagkas
Printed Name: Nick Tsiagkas
Title: Relationship Manager

GENERAL ELECTRIC CAPITAL CORPORATION

By: /s/ Ali Mirza
Printed Name: Ali Mirza
Title: Duly Authorized Signatory

Exhibit 21.1

List of Equinix's Subsidiaries

Name	Jurisdiction
Equinix Operating Co., Inc.	Delaware
Equinix-DC, Inc.	Delaware
Equinix Europe, Inc.	Delaware
Equinix Cayman Islands Holdings	Cayman Islands
Equinix Dutch Holdings N.V.	Netherlands
Equinix Netherlands B.V.	Netherlands
Equinix Asia Pacific Pte Ltd	Singapore
Equinix Singapore Holdings Pte Ltd	Singapore
Equinix Singapore Pte Ltd	Singapore
Equinix Pacific Pte Ltd	Singapore
Pihana Pacific SDN, BHD	Malaysia
Equinix Pacific, Inc.	Delaware
Equinix Japan KK (in Kanji)	Japan
Equinix Australia Pty Ltd	Australia
Equinix Hong Kong Ltd	Hong Kong
Equinix RP, Inc.	Delaware
Equinix RP II LLC	Delaware
CHI 3, LLC	Delaware
CHI 3 Procurement, LLC	Illinois
NY3, LLC	Delaware
SV1, LLC	Delaware

Exhibit 31.1

**CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Stephen M. Smith, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Equinix, 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) 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

(d) 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.

Dated: May 2, 2007

/s/ Stephen M. Smith

Stephen M. Smith
President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Keith D. Taylor, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Equinix, 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) 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

(d) 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.

Dated: May 2, 2007

/s/ Keith D. Taylor
Keith D. Taylor
Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Equinix, Inc. (the “Company”) on Form 10-Q for the period ending March 31, 2007, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Stephen M. Smith, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Stephen M. Smith
Stephen M. Smith
President and Chief Executive Officer

May 2, 2007

Exhibit 32.2

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Equinix, Inc. (the "Company") on Form 10-Q for the period ending March 31, 2007, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Keith D. Taylor, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Keith D. Taylor
Keith D. Taylor
Chief Financial Officer

May 2, 2007